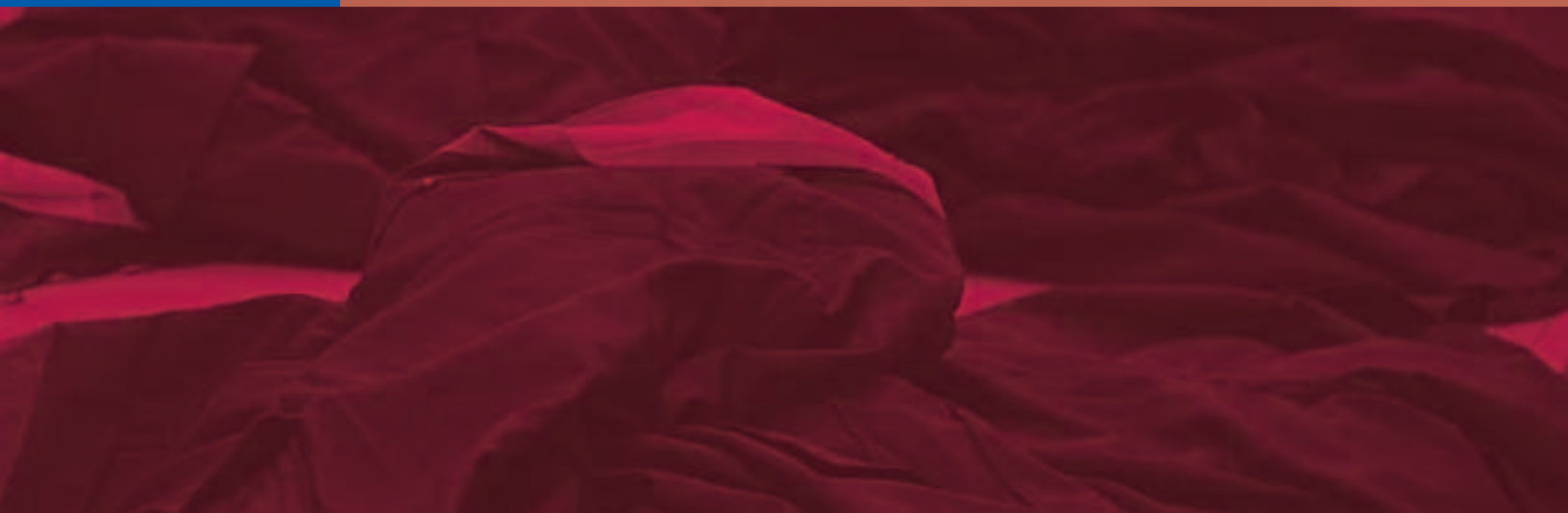




HUMAN
RIGHTS
WATCH

“Work Faster or Get Out”

Labor Rights Abuses in Cambodia’s Garment Industry





“Work Faster or Get Out”

Labor Rights Abuses in Cambodia’s Garment Industry

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“Work Faster or Get Out” Labor Rights Abuses in Cambodia’s Garment Industry

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SUMMARY AND RECOMMENDATIONS





Ly Sim passed productivity tests and was promoted to team leader in the sewing division of her factory in Phnom Penh, Cambodia's capital, in 2012.¹ A few months later, Sim, in her late 20s, became visibly pregnant. Factory management demoted her and cut her pay. When she and other workers protested with the help of the factory union, they were summarily fired.

Devoum Chivon helped form a union in the factory where he worked and was elected president in late 2013. Within days of being notified about the new union leaders, the factory managers pressured Chivon to quit the union and offered him a bribe, which he refused. The management then criticized the newly elected union leaders' job performance and fired them.

Leouk Thary, in her 20s, worked in a garment factory on four-month short-term contracts that her managers repeatedly renewed. One day in November 2013 she had a bad nosebleed and sought exemption from overtime work. Even though her managers told her to continue working, she went to see a doctor. She returned the next day with a medical certificate requesting sick leave for nose surgery. She was fired immediately.

¹ All workers' names in this report are pseudonyms.

Workers in Cambodia’s garment factories—frequently producing name-brand clothing sold mainly in the United States, the European Union, and Canada—often experience discriminatory and exploitative labor conditions. The combination of short-term contracts that make it easier to fire and control workers, poor government labor inspection and enforcement, and aggressive tactics against independent unions make it difficult for workers, the vast majority of whom are young women, to assert their rights.

Recent events linked to labor rights in Cambodia have attracted international attention. There have been repeated episodes of workers fainting on the job. In January 2014, police, gendarmes, and army troops brutally crushed industry-wide protests for a higher minimum wage. And the authorities have introduced more burdensome union registration procedures.

Lack of accountability for poor working conditions in garment factories is at the center of troubled industrial relations in Cambodia. This report—based on interviews with more than 340 people, including 270 garment workers from 73 factories in Phnom Penh and nearby provinces, union leaders, government representatives, labor rights advocates, the Garment Manufacturers Association of Cambodia, and international apparel brand representatives—documents those working conditions, identifies key labor rights concerns voiced by workers and labor rights advocates, and details the failure of Cambodia’s labor inspectorate to enforce compliance with applicable labor laws and regulations.

The report also examines the role of the Better Factories Cambodia, an International Labour Organization factory monitoring program launched in 2001.

The Cambodian government is primarily responsible for ensuring compliance with international human rights law, including labor rights. However, international clothing and footwear brands have a responsibility to promote respect for workers’ rights throughout their supply chains, including both direct suppliers and subcontractor factories. As documented in this report, many brands have not fully lived up to these responsibilities due to poor supply chain transparency, the absence of whistle-





Workers in a small, unmarked subcontractor factory in Cambodia produce for a larger factory that supplies clothing for international brands. © 2014 Samer Muscati/Human Rights Watch

blower protections, and failure to help factories correct problems in situations where that is both possible and warranted. Some brands remain nontransparent about their policies and practices, withholding information on issues of concern, while other brands notably provide information and voluntarily subject themselves to greater public scrutiny and demonstrate a commitment to improved policies.

Garment and textile exports are crucial for the Cambodian economy. In 2013, Cambodian global exports amounted to roughly US\$6.48 billion, of which garment and textile exports accounted for \$4.96 billion; export of shoes accounted for another \$0.35 billion. In 2014, garment exports reportedly totaled \$5.7 billion. The industry is a major source of non-agrarian employment, particularly for women. Women dominate Cambodia’s garment sector, making up an estimated 90 to 92 percent of the industry’s estimated 700,000 workers. These numbers do not include the many women engaged in seasonal home-based garment work.



Workers in the sewing section of a garment factory trying to meet the production target for the day. Workers from some factories report that the pressure to meet targets undermines their ability to take breaks to rest, drink water, use the toilet, or have lunch. © 2014 Aruna Kashyap/Human Rights Watch

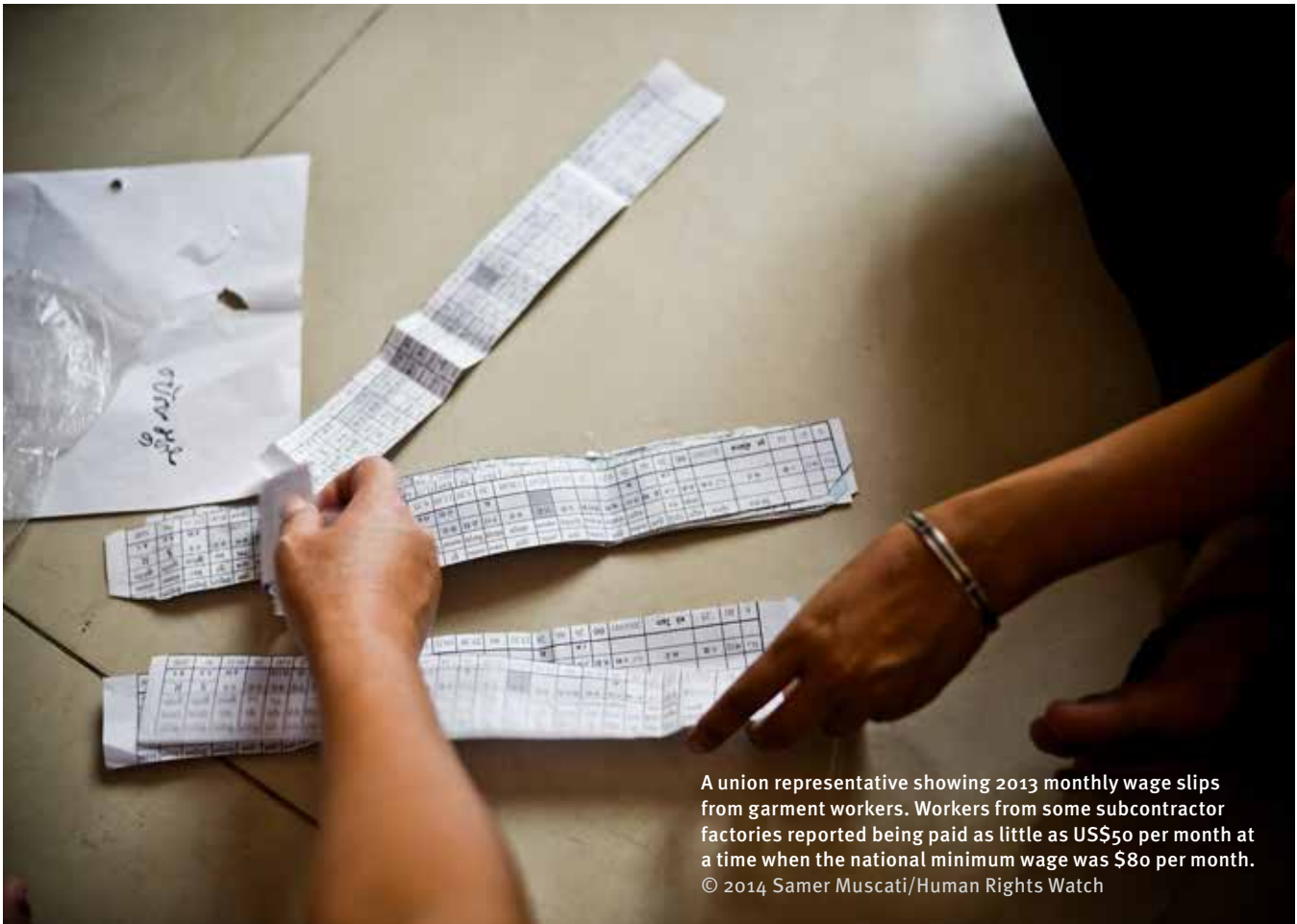
Cambodia enacted a strong labor law in 1997. But its enforcement remains abysmal, in large part due to an ineffective government labor inspectorate. Better Factories Cambodia (BFC), a third-party monitor that focuses primarily on factories with an export license, helps fill the monitoring gap in export-oriented factories and a few subcontractor factories but cannot be a substitute for a strong labor inspectorate. Some of the worst working conditions in Cambodia, however, are in smaller factories that lack such licenses and work as subcontractors for larger export-oriented factories. Because BFC’s mandatory monitoring is limited to export-oriented factories, its monitoring services extend to such subcontractors only where brands and factories identify them and pay for BFC services.

Hiring practices also influence labor law compliance. In many factories, managers repeatedly use short-term contracts beyond the legally permissible two years as a way of controlling workers, discouraging union formation or participation, or avoiding paying benefits. This practice has become a key point of contention, fueling tense industrial relations.

Some factories, especially those working on a subcontracting basis for larger factories, also employ workers on a casual daily or hourly basis. These workers face additional barriers to unionizing and filing complaints about working conditions. Some factories also outsource work seasonally to home-based workers, whose work remains poorly regulated and invisible in monitoring processes.

Even though long-term Cambodian workers, as well as limited-term workers employed full-time for 2 consecutive periods of 21 days or more, are entitled to most of the same basic workplace benefits under the law, casual workers and those on short-term contracts risk relatively easy retaliation by management through dismissal or contract non-renewal. They are more likely to be denied benefits or face other discrimination, but have less access to reporting mechanisms and union support.

Contrary to claims by the Garment Manufacturers Association of Cambodia (GMAC) that factories using repeated short-term contracts are “black sheep,” BFC reported that the number of surveyed factories complying with the two-year rule on short-term contracts (called fixed-duration



A union representative showing 2013 monthly wage slips from garment workers. Workers from some subcontractor factories reported being paid as little as US\$50 per month at a time when the national minimum wage was \$80 per month.
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contracts or FDCs in Cambodia) dropped from 76 percent in 2011 to 67 percent in 2013-2014. Since 2011, BFC has consistently found that nearly a third of all factories used FDCs to avoid paying maternity and seniority benefits.

LABOR RIGHTS ABUSES

Human Rights Watch documented labor rights abuses in both export-oriented factories and subcontractor factories in Cambodia. These include forced overtime and retaliation against those who sought exemption from overtime, lack of rest breaks, denial of sick leave, use of underage child labor, and the use of union-busting strategies to thwart independent unions. In addition, women workers faced pregnancy-based discrimination, sexual harassment, and denial of maternity benefits.

Forced Overtime

Human Rights Watch discussed concerns regarding overtime work with workers in 48 factories. Cambodia's Labor Law limits weekly (beyond 48 hours) overtime work to 12 hours (2 hours per day). Workers generally preferred some overtime work to supplement their incomes, but complained that factory managers threatened them with contract non-renewal or dismissal if they sought exemption from doing overtime work demanded of them. Most of the workers we interviewed performed overtime work far exceeding the 12-hour weekly limit.

In at least 14 of the 48 factories, Human Rights Watch documented recent examples of management retaliation against workers who did not want to do overtime work, including dismissal, wage deductions, and punitive transfers of workers from a monthly minimum wage to a piece-rate wage where income depends on the number of garments individuals produced. For example, in No-



vember 2013, a factory dismissed 40 workers for refusing to do overtime until 9 p.m. It subsequently reinstated half the workers, however, after protests and negotiation with an independent union.

Factories usually assign garment workers daily production targets. Many workers—from both large factories directly supplying to international brands and small, subcontractor factories—complained that management pressure to meet production targets undermined their ability to take breaks to use washrooms, rest, or drink water. Some workers also recounted how factory managers promised small cash incentives in the range of 500 to 3000 riels (\$0.12 to \$0.75) a day to meet production targets, but at times did not pay these promised incentives. In other cases, workers said they made upward revisions to targets to compensate for increases in statutory minimum wages. Many workers reported being subject to incentives, and a few said they were physically intimidated if perceived as being “slow.”

Key Concerns for Women Workers

Pregnancy-related discrimination and sexual harassment at the workplace were two key concerns for women workers in Cambodia.

Discrimination against pregnant workers took different forms at different stages of the employment process, including during hiring, promotion, and dismissal, and included failure to make reasonable workplace accommodations to address the needs of pregnant workers. Human Rights Watch documented one or more of these problems in at least 30 factories. Cambodia’s Constitution and the Labor Law forbid dismissals based on pregnancy. The Labor Law also guarantees all pregnant workers three months’ maternity leave irrespective of the duration of service and maternity pay for workers with a year’s uninterrupted service.

Workers said that factory managers refused to hire visibly pregnant workers, echoing findings from a 2012 International Labour Organization (ILO) report on gender equality in garment factories. Pregnant women on short-term contracts were unlikely to have their contracts renewed, allowing their managers to avoid providing maternity benefits.

Factory managers also often failed to make reasonable accommodations for pregnant workers such as more frequent bathroom breaks or lighter work without loss of pay. Many found it difficult to work long hours, including overtime, without adequate breaks to rest or use washrooms. Many interviewees said workers often resigned from factories as their pregnancy progressed because managers harassed them for being “slow” and “unproductive.”

Contrary to a ruling by the Arbitration Council, a dispute resolution forum, workers from some factories found it difficult to take medically approved sick leave and were denied their entire month’s \$10 attendance bonus for missing a few hours or single day of work. The attendance bonus is an important part of workers’ remuneration and workers who do not attend work, as attested by medical professionals, are entitled to a pro-rated share of the bonus. This especially had an impact on pregnant workers who felt unable to take sick leave.

“I sit for 11 hours and feel like my buttocks are on fire. We can’t go to the toilet.”

—Keu Sreyleak (pseudonym), garment worker, group interview, factory 60, Phnom Penh, December 7, 2013

“It doesn’t matter whether you are pregnant or not—whether you are sick or not—you have to sit and work. If you take a break, the work piles up on the machine and the supervisor will come and shout. And if [a pregnant] worker is seen as working “slowly” then her contract will not be renewed.”

—Human Rights Watch interview with Po Pov (pseudonym), worker, factory 3, Phnom Penh, November 22, 2013

“There is one male worker who harasses me a lot. Each day it’s something different. One day he says “Oh your breasts look larger than usual today.” On another day, he says, “You look beautiful in this dress—you should wear this more often so I can watch you.” There are others who purposely brush past us or pinch our buttocks while walking. Sometimes I feel like complaining. I don’t like it at all. But who do I complain to?”

—Human Rights Watch interview with Keu Sophorn (pseudonym), worker, factory 18, Phnom Penh, December 5, 2013

“A worker in my team wanted to leave early. We have to do overtime work till 9 p.m. every day. She had her period and had severe cramps and so requested that she will do overtime work only till 6 p.m. They shouted at her and said they would reduce \$7 from her wages and not renew her contract. So she didn’t leave and continued to work.”

—Human Rights Watch interview with Kong Chantha (pseudonym), worker, factory 9, Phnom Penh, November 30, 2013

“If we have taken three days [sick] leave, then they deduct \$20 from what we have earned. They say to us: “If you want to earn that money back, work more.” We only bring medical certificates because we feel they will scream at us less.”

—Human Rights Watch interview with Chhau San (pseudonym), worker, factory 15, Kandal province, November 24, 2013

Another issue affecting women is sexual harassment at the workplace. Workers, independent union representatives, and labor rights activists said that sexual harassment in garment factories is common. The 2012 ILO report found that one in five women surveyed reported that sexual harassment led to a threatening work environment.

The forms of sexual harassment that women recounted include sexual comments and advances, inappropriate touching, pinching, and bodily contact. Workers complained about both managers and male co-workers.

Cambodia’s Labor Law prohibits sexual harassment but does not define it. Nor does it define sexual harassment at

Cambodian garment workers traveling to work at 6:30 a.m. Despite often long commutes, workers are often forced to work overtime in factories and risk retaliation if they refuse.
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Garment workers at a roadside market outside their factory in Phnom Penh. Following year-long protests for higher minimum wages, the Cambodian government in 2014 raised garment workers' wages from US\$80 to US\$128 per month. © 2014 Samer Muscati/Human Rights Watch

the workplace, outline complaints procedures, or create channels for workers to secure a safe working environment.

Anti-Union Discrimination

In researching this report, Human Rights Watch found evidence of union-busting activity in at least 35 factories in Cambodia since 2012. Relevant practices included keeping long-term workers on short-term contracts to discourage their participation in union activities, shortening the length of male workers' contracts, dismissing or harassing newly elected union representatives to prevent formation of independent unions, and encouraging pro-management unions.

All of the independent unions interviewed for this report—Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU), National Independent Federation of Textile Unions in Cambodia (NIFTUC), Collective Union of

Movement of Workers (CUMW), and Cambodian Alliance of Trade Unions (CATU)—said as soon as workers initiated union-formation procedures, factory management would dismiss union office-bearers or coerce or bribe them to resign, thwarting union formation.

Cambodian officials with the Ministry of Labor and Vocational Training (the “Labor Ministry”) have also introduced bureaucratic obstacles to union formation. They have delayed licensing unions for months since December 2013. They also now require union leaders to produce a certificate from the Ministry of Justice stating the worker in question has not been convicted of any criminal offense. Independent union leaders told Human Rights Watch that these changes would prolong the union registration process, giving factory management more time to take retaliatory measures against workers temporarily leading the union.



A 2.5 meter by 3 meter room shared by two workers in Phnom Penh. In some living quarters, as many eight garment workers share a small room to reduce living expenses and send money back home.
© 2014 Samer Muscati/Human Rights Watch

Leaders from independent union federations alleged that Labor Ministry officials acted arbitrarily against independent unions, rejecting their applications citing inconsequential typographical errors. Such practices violate Cambodia’s international obligations to respect and protect workers’ freedom of association and right to organize.

In 2014, the Labor Ministry also revived an earlier draft trade union law, citing a multiplicity of unions and “fake unions” as problems that the government needed to address. The draft law curbs workers’ freedom to form a union by introducing a high threshold for the minimum number of workers needed to support union formation and gives overarching powers to the Labor Ministry to suspend union registration without any judicial review.

Workers formed a union affiliated to CCAWDU and notified factory management in late 2013. Soon after being notified, the management called the elected representatives and presented them with the option of giving up their union positions for promotions and a hike in wages. When the president and vice president refused to accept the offer, they were dismissed. CCAWDU supported the two workers in bringing a claim before the Arbitration Council, a dispute resolution body, which ruled in favor of the workers in December 2013. At this writing the factory had yet to comply with the ruling.

SUBCONTRACTING AND THE ROLE OF BRANDS

The labor rights concerns, discriminatory practices against women, and union-busting actions described above were particularly pronounced in subcontractor factories. Many factories directly supplying to international brands subcontract to other, often smaller, factories that are subjected to little or no monitoring and scrutiny. At least 14 of the 25 subcontracting factories Human Rights Watch examined appeared not to be monitored by BFC—despite operating and producing for international brands for several years most of the factories did not appear on BFC’s January 2015 factory monitoring list.

The working conditions in the subcontractor factories we investigated were usually worse than those in larger factories. The former were more likely to use casual hiring arrangements and issue repeated short-term contracts. Because many of these factories are small and physically unmarked—and often not monitored in any way— independent union leaders said it was more difficult to unionize for fear that factories would briefly suspend operations, laying off all the workers in the process. Women in these factories often said they were denied benefits including maternity leave and maternity pay.

Very few international clothing brands disclose the names and locations of their production units—suppliers and subcontractors—even though disclosures can help workers and labor advocates to alert brands to labor rights violations in factories producing for them. Such disclosure is neither impossible nor prohibitively expensive and there appears to be no valid reason for brands to withhold this information. For example, Adidas wrote to Human Rights Watch that it first started privately disclosing its supplier list to academics and nongovernmental organizations (NGOs) in 2001 and moved to a public disclosure system in 2007. In 2014, Adidas moved to a biannual disclosure. H&M started publicly disclosing its supplier list in 2013 and updates it annually.

Other brands operating in Cambodia, including Gap, Marks and Spencer, and Joe Fresh, have not disclosed their suppliers publicly. Marks and Spencer wrote to Human Rights Watch stating that the brand will make its global suppliers list public by 2016. In October 2014, a

Gap representative told Human Rights Watch that the brand is examining the implication of such disclosure for its business. Loblaw (owner of Joe Fresh) and Armani do not disclose their global supplier list and did not respond to Human Rights Watch’s inquiries on the subject.

Some suppliers may farm out their work to subcontractors without brand authorization. Dealing with unauthorized subcontracting is complex. But international apparel brands can do much more to help fix labor rights abuses in unauthorized production units brought to their attention.

While brands depend on workers and independent unions to alert them to unauthorized subcontractors in their supply chain, none of the brands except Adidas provided Human Rights Watch with evidence of a process for whistleblower protection to mitigate possible management retaliation against workers who raise concerns. In October 2014, Adidas introduced a written anti-retaliation clause in its grievance reporting system whereby workers can report retaliation, seek investigation, and obtain redress.

There is a need for much more effective whistleblower protection for workers in factories. For example, workers told Human Rights Watch that after they provided information on subcontractors to external monitors in mid-2012, factory managers filed false complaints of theft against one worker and compelled others to testify against the worker, threatening dismissal if they did not obey. Several workers were dismissed.

Brands also sometimes issue stop-production orders as soon as unauthorized subcontracts are brought to their attention, even in situations where prompt remediation in the subcontractor factory is feasible. This hurts worker incomes in the affected subcontracting factories, creating a disincentive for workers to report abusive conditions.

As set out in the United Nations Guiding Principles on Business and Human Rights, businesses have a responsibility to minimize human rights violations in their supply chains irrespective of whether they directly contributed to the violation, and to adequately address any abuses that do take place. In order to encourage workers to report abusive conditions and to avoid negative impacts on workers’ jobs and wages, Human Rights Watch

recommends that, where feasible and appropriate, international brands give suppliers in Cambodia adequate opportunities to remedy problems before terminating their business relationships.

H&M Case Study

Factory 1, a direct supplier to H&M, subcontracts work to many smaller factories. Team leaders in factory 1 allegedly told workers that they should work Sundays, their day off, at an unauthorized subcontractor to help meet production targets and supplement their incomes because factory 1 was not going to provide them with any opportunities for overtime work. In their Sunday and public holiday work at the unauthorized subcontractor, they worked on H&M garments but without overtime pay. By outsourcing the work to a subcontractor, factory 1 was able to bypass labor law provisions governing overtime wages and a compensatory day off for night shifts or Sunday work.

Human Rights Watch also spoke to five workers from a subcontractor factory supplying factory 1. Workers knew their factory was “sharing business” and was producing for H&M because the managers had discussed the brand name and designs with them. When they had rush orders, the workers report that they were not permitted to refuse excessive overtime, including on Sundays and public holidays, and were not paid overtime wage rates.

The workers in the subcontractor factory considered organizing a union but were afraid of retaliation if they did so. They also reported that the factory employed some children below the legally permissible age of 15, and that those children were made to work as hard as the adults.

Marks and Spencer Case Study

Factory 5 is a small subcontractor factory that was producing for Marks and Spencer and received regular orders from one or two direct suppliers at least until November 2013, when we spoke to workers there.

Workers told Human Rights Watch that they received three-month fixed term contracts, which were extended beyond two years. Factory managers allegedly dismissed workers who raised concerns about working conditions

or chose not to renew their contracts. Issues raised by workers that we interviewed included discrimination against pregnant workers, lack of sick leave, forced overtime, and threats against unionizing.

Joe Fresh Case Study

In 2013, factory 4 produced for Marks and Spencer, Joe Fresh, and other international brands and periodically subcontracted work to other factories.

Workers from two subcontractor factories that produced for factory 4 told Human Rights Watch that they were hired on three-month short-term contracts repeatedly renewed beyond two years. Workers reported a number of labor law violations, including wages lower than the then-statutory minimum of \$80, forced overtime without overtime pay rates, absence of maternity pay for eligible workers, and disproportionate deductions of their monthly attendance bonus for a single day of sick leave. The factories did not have a legally mandated infirmary even though there were more than 50 workers in each factory. Workers said that the subcontractor factories also employed children and hid them when there were visitors.

Gap Case Study

Factory 60 is a small subcontractor factory that periodically produced for Gap until at least December 2013, when Human Rights Watch spoke to workers there.

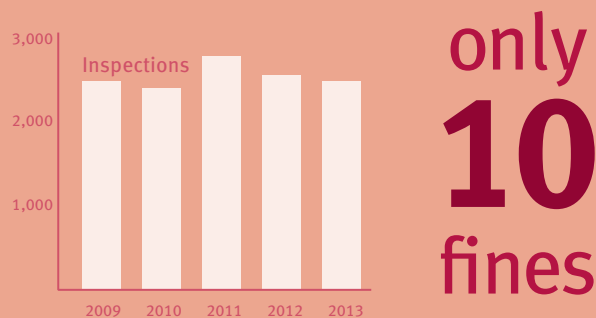
Most of the factory workers we spoke with had worked there for more than two years and were repeatedly issued short-term contracts. They did not receive benefits accorded to long-term workers. They said the managers of the factory had taken a hostile approach to unions and workers were scared of forming a union or openly organizing within factory premises.

The factory allegedly discriminated against pregnant workers in hiring. Workers reported that women who gave birth did not receive maternity pay even when they had worked at the factory for more than a year. The workers described seeing a fellow worker dismissed for refusing overtime work. Even though the factory employed more than 300 workers, there was no infirmary or nurse in the factory.

A FAILURE OF GOVERNMENT ACCOUNTABILITY

The Cambodian government has obligations under international law to ensure that the rights of workers are respected, and that when abuses occur, they have access to redress. Irrespective of whether a factory is a direct supplier or a subcontractor to an international purchaser, its working conditions should be monitored by the government's labor inspectorate, which is tasked with enforcing the Labor Law and has powers to initiate enforcement action. But to date, Cambodia's labor inspectorate has been ineffectual, and the subject of numerous corruption allegations.

Of thousands of inspections conducted between January 2009 and December 2013,



were imposed on factories violating labor regulations.

Source: Department of Labor Inspectorate, Ministry of Labor and Vocational Training, April 2014. Total number of inspections and fines are not available for 2014.

In 2014, the Labor Ministry created integrated labor inspectorate teams to streamline factory inspections. It committed itself to providing the teams with better training (in cooperation with the ILO) to investigate and report factory working conditions accurately. While these are welcome preliminary steps, it is clear that many addi-

tional measures are needed to improve government rigor in monitoring factory working conditions.

Corruption is a key issue that affects the credibility of the labor inspectorate. Two former labor inspectors independently told Human Rights Watch about an “envelope system” where factory managers thrust an envelope with money to visiting inspectors in exchange for favorable reports.

The Labor Ministry's own data shows its enforcement track record is poor. For example, official data provided to Human Rights Watch shows that between 2009 and December 2013, labor authorities imposed fines on only 10 factories and initiated legal proceedings against 7 factories. Yet, in 2013 the ministry had found that at least 295 factories (not all garment factories) had violated the Labor Law. In December 2014, Labor Ministry officials told Human Rights Watch they had fined 25 factories in the first eleven months of 2014. In February 2015, Khmer-language media reported that in 2014 the labor inspectorate had taken action against 50 factories without specifying details. Furthermore, even though ministry officials insisted that their investigators found labor rights violations in the 10 low-compliance factories named in Better Factory Cambodia's Transparency Database, they could not provide any information about resulting enforcement action in accordance with a 2005 circular issued by the Cambodian government, which empowers the Ministry of Commerce to cancel export licenses.

ENHANCING BETTER FACTORIES CAMBODIA

Particularly given the weakness of the labor inspectorate, BFC fills a critical monitoring role in Cambodia's garment industry. Its factory-level, third party monitoring reports can be purchased and used by international apparel brands for their audits. These reports are behind a paywall for all others except the factory itself. Following criticism about the lack of public disclosure of its findings, BFC launched a Transparency Database in March 2014 despite significant resistance from the Cambodian government and the manufacturers represented by GMAC.

While BFC's reports enjoy widespread credibility internationally, many Cambodian workers we spoke with expressed a lack of confidence in BFC monitoring and said managers coached or threatened workers ahead of external visits. Workers recounted how factory managers made announcements using the public announcement system, sent messages through team leaders, or called workers and warned them not to complain about their working conditions to visitors. In one case, a worker said that factory managers offered to pay money to workers who gave positive reports.

In addition to being coached, workers were told to prepare for "visitors." They were told to remove piles of clothes from their sewing machines and hide them and were given gloves and masks just before visitors arrived. Lights and fans that were normally switched off were turned on, drinking water supplies were refilled, and underage child workers were hidden.

BFC takes a number of measures aimed at counteracting management coaching. BFC's factory monitoring methods include unannounced visits, a 30-minute outer limit on the time monitors can be made to wait outside the factory when they arrive unannounced, monitors' discretion to convene a fresh group of workers if the first group appears to be coached, and interviews with some workers off-site. Workers told Human Rights Watch, however, that they still need a direct mechanism to report labor rights violations to BFC.

A significant deficiency is that BFC's factory reports are not available to workers individually or even to unions, making it practically impossible for workers to verify whether the BFC reports accurately portray actual working conditions in any given factory.

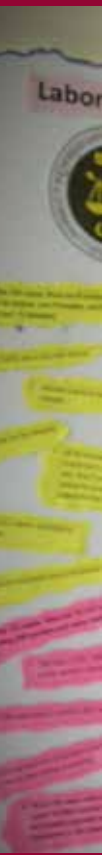
The garment industry plays a critical role in Cambodia's economy, including by employing a large number of women. The detailed recommendations below to the Cambodian government, garment factories, international brands, BFC, unions, and international donors aim to improve labor practices so that Cambodia can be a model for good working conditions for garment workers.

“Before ILO comes to check, the factory arranges everything. They reduce the quota for us so there are fewer pieces on our desks. ILO came in the afternoon and we all found out in the morning they were coming. They told us to take all the materials and hide it in the stock room. We are told not to tell them the factory makes us do overtime work for so long. They also tell us that if [we] say anything we will lose business.”

—Human Rights Watch group interview with Nov Vanny (pseudonym) and Keu Sophorn (pseudonym), workers, factory 18, Phnom Penh, December 5, 2013

“Our factory started using the lights this year. As soon as the security guard finds out there are visitors and tells the factory managers, the long light near the roof will come on.... And the group leaders will start telling all the workers to clean our desks; we have to wear our masks, put on our ID cards, and cannot talk to visitors. Everyone knows this is a signal.”

—Human Rights Watch interview with Leng Chhaya (pseudonym), worker, factory 32, Phnom Penh, November 29, 2013



RECOMMENDATIONS

The primary responsibility to improve labor conditions in the Cambodian garment industry rests with the Cambodian government. But a number of other influential actors—brands, Better Factories Cambodia (BFC), the Garment Manufacturers Association of Cambodia (GMAC), and unions—play an important role in ensuring that working conditions in factories adhere to the Labor Law and international standards. While paying attention to individual labor rights concerns, the structural issues that underlie a range of labor rights problems—hiring practices, union-busting strategies, and unauthorized subcontracting—need urgent attention. The vast majority of workers are women and the issues affecting women workers are of particular concern.



Women activists in Cambodia's male-dominated labor rights movement.

Clockwise from top-left:

Yang Sophorn, president of the Cambodian Alliance of Trade Unions (CATU), an independent union federation that promotes garment workers' rights.

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Chhorn Sokha, program officer for labor rights at the Community Legal Education Center.

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Morm Nhim, president, and Ken Chhenglang, vice president, of the National Independent Federation Textile Union of Cambodia (NIFTUC), an independent union federation that promotes garment workers' rights.

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An activist from the Worker Information Center, a local nongovernmental organization, sporting a t-shirt as part of a campaign to raise awareness about garment workers' wages in Cambodia. The Worker Information Center creates awareness programs for garment workers about their rights.

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TO THE MINISTRY OF LABOR AND VOCATIONAL TRAINING

On hiring practices

- Improve the regulation and monitoring of hiring practices:
 - » Issue a proclamation (prakas) requiring factories that employ a significant number of workers on short-term contracts (called fixed-duration contracts or FDCs in Cambodia) to furnish information on the number of workers employed each month for the preceding year to demonstrate that business-related fluctuations are driving the heavy use of FDCs.
 - » Issue a proclamation clarifying home-based garment workers have the same rights as other workers and mandating that subcontractors issue them proof of work.
 - » Issue a proclamation requiring factories to provide all workers identity cards listing their actual start date and regularly update them.

On unions

- Review, in consultation with independent unions and the ILO, all union registration procedures and eliminate unnecessarily burdensome requirements (such as certificates of no criminal conviction) that violate ILO Convention No. 87 on Freedom of Association. In the interim, accept and promptly grant pending applications for union licenses.
- Eliminate the requirement that unions inform employers of the identity of newly elected office-bearers as a prerequisite to union registration. Consult with ILO and labor rights experts and develop an alternative notification system to ensure legal protection for unions. For example, notification could be permitted to a neutral third party such as the ILO.
- Develop, in consultation with independent unions and Better Factories Cambodia, a transparent system of union registrations, in which the status of each application can be tracked online.
- Ensure that any trade union law adopted in Cambodia fully respects international standards, and ensure that the drafting process is transparent and includes consultation with independent labor unions and labor rights advocates.

On labor inspections

- Improve labor inspection methods, including through periodic joint monitoring with BFC, and paying special attention to:
 - » the repeated use of fixed-term contracts;
 - » forced overtime and retaliatory measures for refusing overtime;
 - » complaints about working conditions for pregnant workers, including discrimination in hiring, contract renewals, promotions, and provision of reasonable workplace accommodation;
 - » denial of sick leave and disproportionate deduction of attendance bonuses;
 - » child labor; and

- » complaints of discrimination against union leaders from licensed unions and newly formed unions.
- Publicly and regularly disclose (such as every four months) the number of factories inspected, key labor rights violations found, and enforcement actions taken. The terms of disclosure should be finalized in consultation with various actors, including labor rights advocates, independent unions, and BFC.
- Ensure adequate resources for labor inspectors in Phnom Penh and other provinces and periodically disclose a statement of allocation and expenditure, including out-of-pocket reimbursement for factory inspectors, in order to curb rent-seeking.

On gender-related concerns

- Issue a proclamation or other appropriate ministerial regulation, developed in consultation with various actors including the Ministry of Women’s Affairs, independent unions, and labor rights advocates, that:
 - » Establishes a definition of sexual harassment at the workplace, outlines prevention measures that employers should take, and sets forth independent grievance redress procedures that employers should create to investigate and respond to individual complaints of harassment.
 - » Establishes protections against unfair dismissal of workers in accordance with ILO Convention No. 158 on the Termination of Employment at the Initiative of the Employer, 1982.
 - » Develops reasonable accommodation measures for pregnant workers in accordance with the ILO Convention and Recommendation on Maternity Protection, 2000.

On child labor

- Work with the Ministry of Education, ILO, GMAC, nongovernmental organizations, and others to promote education and sustainable solutions to underlying causes of child labor, including through programs to support employment, skills development, and job training opportunities for young workers.

TO THE MINISTRY OF COMMERCE

- Publicly and regularly disclose (such as every six months) the names and number of garment and footwear factories that are registered with the ministry so that these may be cross-verified by labor rights groups and the Labor Ministry for inspections.
- Publicly and regularly disclose (such as every four months) any actions initiated by the ministry against garment and footwear factories that are not compliant with Cambodia's Labor Law, especially factories appearing on BFC's Transparency Database.
- Publicly and regularly disclose (such as every six months) the names of all international apparel and footwear brands sourcing from Cambodia.

TO THE ROYAL GOVERNMENT OF CAMBODIA

- Monitor and issue public progress reports on enforcement actions initiated by the Ministry of Commerce and the Ministry of Labor and Vocational Training against low-compliance factories named in the BFC Transparency Database.
- Expand the mandate of BFC to include factories without export permits.
- Enact a freedom of information law that meets international standards; consult with local and international human rights organizations in drafting the law.
- Publicly and regularly disclose (such as every six months) contributions received to any government fund, and issue a directive requiring high-level ministers and bureaucrats to also declare income sources.
- End arbitrary bans on freedom of association and peaceful assembly, and revise existing legislation on demonstrations so that any restrictions on these freedoms are absolutely necessary for public order and proportionate to the circumstances.
- Discipline or prosecute, as appropriate, members of the security forces responsible for excessive use of force, including unjustified use of lethal force, during the January 2014 protests.
- Create a tripartite minimum-wage-setting mechanism to periodically review and recommend minimum wage adjustments. The minimum-wage-setting mechanism should include worker representatives drawn from independent union federations and have a third party neutral observer to report on the proceedings.
- Ratify ILO Conventions No. 158 on Termination of Employment at the Initiative of the Employer; No. 183 on Maternity Protection (2000); and No. 131 on Minimum Wage Fixing (1983).

TO INTERNATIONAL BRANDS

On transparency and approach to subcontractor factories

- Publicly disclose all authorized production units on a regular (such as semi-annual) basis, indicate the level of production (for example, whether the unit is a small, medium, or large supplier), and disclose when the unit was most recently inspected by independent monitors.
- Create a whistleblower protection system for workers and union representatives who alert the brand to unauthorized subcontracting. The system should ensure that all workers and union representatives receive appropriate protection for a reasonable period, including legal representation to defend themselves against vexatious lawsuits or criminal complaints filed by factories; monthly wages including the minimum wage, reasonable allowances, and overtime pay; and, where workers are dismissed from work soon after reporting the subcontract, possible alternative employment at a nearby location.
- Ensure that unauthorized subcontractor factories brought to brand attention are reported to BFC's monitoring and advisory services. Where feasible and appropriate, the brand should contribute toward monitoring and remediation for a reasonable period before stopping production or terminating business relationships.
- Ensure that all factories that have subcontracted work without authorization over a particular period (for example, the past year) are reported to BFC for monitoring and advisory services, irrespective of whether the factory currently undertakes subcontracted production for the brand.
- Ensure that unauthorized subcontractor factories brought to brand attention are formally reported to the Labor Ministry for monitoring and enforcement action.
- Advocate with BFC to publicly list the names of brands that source from the factories that BFC monitors in order to facilitate greater transparency in brand supply chains.
- Revise the Code of Conduct for Suppliers to protect workers in subcontractor factories.

On labor compliance and industrial relations

- Register all authorized production units with BFC (including those without export licenses) and improve purchase and use of BFC's factory monitoring and advisory services.
- Ensure that pricing and sourcing contracts adequately reflect and incorporate the cost to suppliers of labor, health, and safety compliance. This should include the cost of minimum wage salaries, overtime payments, and benefits. These efforts should be undertaken in consultation with worker rights groups and independent unions.
- Review the Code of Conduct for Suppliers and, if not already specified in the code, add provisions on the following:

- » A clause that forbids illegal use of casual contracts and FDCs, including as a method of bypassing labor protections.
 - » Language limiting the use of FDCs to seasonal or temporary work for all workers and incentivizing the adoption of undetermined duration contracts. Communicate with all suppliers that primarily employing male workers only on short-term FDCs is discriminatory.
 - » A clause drawing a distinction between reasonable and unreasonable production targets that disregard worker rights.
- Ensure that suppliers set productivity targets that allow adequate breaks during the work day in accordance with basic human rights and dignity, including breaks for rest, drinks of water, and use of restrooms, and that increases in minimum wages do not result in intensified and unreasonable demands on workers.
 - Develop or enhance collaboration with local stakeholders to eliminate child labor in garment factories, including by working with government officials, the ILO, NGOs, and others. The initiatives should focus on preventing child labor through improved access to primary and secondary education and alternative skill-building programs.

TO BETTER FACTORIES CAMBODIA

- Develop an alternative funding model and a time-bound plan to share Better Factories Cambodia (BFC) factory monitoring reports with factory unions. In the interim, disseminate factory monitoring report findings to unions and at least those workers who are part of BFC off-site and on-site discussions.
- Disseminate information from the Transparency Database Critical Issues Factories' List to unions and workers in accessible and appropriate formats.
- Develop guidelines, in consultation with workers, independent union representatives, and labor rights activists, aimed at strengthening mechanisms for off-site interviews with workers in the course of BFC factory-level monitoring.
- Outline and implement a time-bound plan for expanding mandatory monitoring to all garment and footwear factories, irrespective of whether they have export-licenses.
- Expand the list of low-compliance factories on the Transparency Database to include the bottom 20 percent of factories performing poorly.
- Expand the information tracked in the Transparency Database to include the following:
 - » The names of the sourcing brands.
 - » Whether the factory purchased BFC advisory services.
 - » Whether BFC has notified the concerned brands of labor rights violations and, if so, any responses BFC received from brands.

- » Whether brands made a financial contribution toward factory purchase of advisory services and what percentage of the costs they covered.
- » Progress on remediation and brand contribution toward remediation.
- Include the names of brands that source from BFC-monitored factories on the public list of BFC-monitored factories.
- Create a public Transparency Database for Brands that periodically updates information on the following:
 - » The number of BFC monitoring reports that brands have purchased annually and the names of the factories concerned.
 - » The number of brands that have contributed toward purchase of advisory services by supplier or subcontractor factories, and the percentage of the overall costs paid by brands in each instance.
 - » The names of brands that have not responded to BFC's invitations to subscribe to BFC monitoring services or have failed to respond to BFC concerns about individual supplier factories.
- Conduct a study of forced overtime, the use of production quotas, and factory moves to piece-rate wages following minimum wage increases.

TO THE GARMENT MANUFACTURERS ASSOCIATION OF CAMBODIA

- Publicly and regularly disclose and make available on the Garment Manufacturers Association of Cambodia (GMAC) website an updated list of all GMAC members, including subcontractor factory members.
- Adopt and make public written policies prohibiting the illegal use of FDCs and discriminatory action against workers, such as disciplining or dismissing workers based on pregnancy or union membership.
- Adopt and make public a written policy detailing penalties to be imposed by GMAC on factory members listed as low-compliance in the BFC Transparency Database, including fines, loss of privileges, and suspension of company officials from leadership positions in GMAC and the company from general membership in GMAC. The suspensions should remain in place until the company is taken off the low compliance list.
- Adopt and make public a policy imposing penalties on GMAC member companies that do not comply with Arbitration Council findings that the companies engaged in anti-union practices.
- Support awareness programs in member factories against sexual harassment and other forms of harassment at the workplace.

TO UNIONS

- Promote and create avenues for women’s equal participation in union leadership at the factory, federation, and confederation levels, including through adoption of new union policies.
- Create gender committees at the factory level and provide training to workers about specific gender-related workplace concerns, including sexual harassment at the workplace.
- Develop procedures to allow home-based garment workers to join unions and be represented in collective bargaining agreements.

TO THE EU, US, CANADA, JAPAN, AND OTHER COUNTRIES WHOSE APPAREL AND FOOTWEAR COMPANIES SOURCE FROM CAMBODIA

- Enact legislation or regulations to require international apparel buyers domiciled in the country to periodically disclose and update the names of their global suppliers and subcontractors, and, to provide updates on the status of any inspections by independent monitors as of the date of disclosure.
- Adopt a sourcing policy for government procurement which, among other things, requires companies to disclose and update the names of their global suppliers and subcontractors, and, to provide updates on the status of any inspections by independent monitors as of the date of disclosure.
- All EU member-countries should take steps to incorporate the 2014 EU Directive on disclosure of non-financial and diversity information into national law swiftly.
- Support a proposal at the ILO Governing Body for standard setting on “violence against women and men in the world of work,” where the definition of gender-based violence specifically includes sexual harassment.

TO THE ILO, UN AGENCIES, THE WORLD BANK GROUP, ASIAN DEVELOPMENT BANK, AND OTHER MULTILATERAL AND BILATERAL DONORS TO CAMBODIA

- Work with BFC to implement the above recommendations and consider funding the progressive expansion of BFC to ensure that its monitoring and advisory services programs extend to all factories, regardless of whether or not they have export permits.
- Create, in consultation with labor rights activists and workers, a special awareness program and technical guidance to prevent and seek redress against sexual harassment and other forms of harassment at the workplace.

- Actively encourage women's participation in union leadership and encourage training, awareness-generation, and the development of factory-level complaints mechanisms against sexual harassment at the workplace.
- Assist ILO efforts to strengthen the capacity, transparency, and accountability of the Cambodian Ministry of Labor and Vocational Training to implement the above recommendations, including evaluation of the labor inspectorate through joint inspections with BFC.
- Periodically commission studies to analyze trends in apparel prices, wages, and cost of living in major apparel exporting countries to facilitate the comparison of international apparel brands' pricing and to encourage good practice.
- Support a survey of Cambodian home-based workers, including home-based garment workers, to ensure that such workers are counted and their labor rights addressed.
- Undertake due diligence on government and private sector projects in Cambodia to ensure that projects or funding do not directly or indirectly support labor rights violations. This should include assessing the labor rights risks of each activity prior to project approval and throughout the life of the project, identifying measures to avoid or mitigate risks, and comprehensively supervising the projects including through independent third-party reporting when risks are identified.

I. Methodology

This report is based on seven weeks of interviews in Cambodia conducted between November and December 2013, and March and April 2014; phone interviews in August 2014, October 2014, and January 2015; and secondary research between October 2013 and February 2015.

Interviews took place in Phnom Penh, Kandal, Kampong Speu, Kampong Cham, and Prey Veng provinces.

Human Rights Watch researchers interviewed 342 people, including:

- A total of 270 garment workers including 40 factory-level union representatives from 71 garment factories and 2 footwear factories. We conducted 25 of those interviews one-on-one with the workers; the rest stemmed from 37 group interviews. About 80 percent of the workers we interviewed were women; 11 workers were children below age 18.
- Two independent confederation representatives, 10 independent union federation leaders, 11 labor rights activists, and 2 representatives from the Arbitration Council.
- Two mothers of children working in a garment factory.
- Two factory infirmary workers and 2 private health providers.
- Twenty-five home-based workers who did seasonal work for garment factories.
- Five factory representatives, including 2 office-bearers of the Garment Manufacturers Association of Cambodia (GMAC).
- Individual and group interviews with 9 Cambodian government officials from the Labor Ministry; and interviews with 2 former government labor inspectors.

We interviewed some workers, union representatives, and Labor Ministry officials multiple times.

To supplement formal interviews, Human Rights Watch had informal conversations with more than 25 others with relevant knowledge, including labor rights experts and staff from local and international NGOs, the ILO, donor countries, and the UN.

We identified workers to interview with the assistance of local NGOs and independent union federations, as well as via chain referrals from workers themselves.

Worker interviews took place after their factory workday, during the lunch hour, or on Sundays, their day off. The interviews were conducted in local NGO offices, garment workers' homes, or in restaurants or shacks around the factory that workers identified as safe. No interviews were conducted in the presence of workers' employers, such as factory managers or other administrative staff.

All participants were informed of the purpose of the interview, its voluntary nature, and the ways the information would be used. Each orally consented to be interviewed. Interviews lasted between thirty minutes and two hours and were mostly conducted in Khmer with translation into English. We primarily used female interpreters. Interviewees did not receive any material compensation. Some workers were reimbursed the cost of transport to and from the interview.

The names of all workers interviewed for this report have been withheld or substituted with pseudonyms in the interest of the security of the individuals concerned. All incidents cited in the report occurred during or after 2013, unless expressly stated otherwise.

Factory names have been withheld to minimize the risk to the workers we interviewed. We assigned numbers 1 to 73 to each of the factories where we interviewed one or more workers. Letters A to Q have been used to label another 17 factories (both direct suppliers and subcontractors) that workers named in their accounts, but from which we have no worker interviews.

Between March and September 2014, Human Rights Watch sent two letters each to six international clothing and footwear brands that source from Cambodia for additional information about their approaches to labor rights in the supply chain, to present preliminary findings of our research, and to request meetings with company officials, as described below:

- Adidas Group (Adidas) provided detailed written responses to both letters, and met with Human Rights Watch in Bangkok in September 2014.

- The Armani Group (Armani) did not respond to any letters or several follow-up letters.
- Gap Inc. (Gap) responded in writing to both letters and a Gap representative had a phone discussion with Human Rights Watch in October 2014.
- H&M Hennes & Mauritz AB (H&M) provided a detailed written response to our first letter, responded in writing to the second letter, and met with Human Rights Watch in Bangkok in September 2014.
- Loblaw Cos. Ltd. (which owns Joe Fresh) did not respond to our first letter or to several follow-up letters. After we sent the second letter, they responded in writing to both letters.
- Marks and Spencer did not respond to our first letter or to several follow-up letters. After we sent the second letter, they responded in writing to both letters. They declined our invitation for a discussion and offered to respond in writing to any additional questions but did not respond to a follow-up email as of February 11, 2015.

This report is not a thorough investigation of any one brand's entire supply chain. Not all brands named in this report were sourcing from each of the 73 factories. Human Rights Watch does not have complete brand information for every factory, which can frequently change.

Of the 73 factories:

- Based on information publicly disclosed by H&M in 2013 and 2014, 11 factories were authorized manufacturers for H&M.
- Based on information publicly disclosed by Adidas and information that Adidas gave Human Rights Watch about its past suppliers, seven factories were authorized manufacturers.
- Marks and Spencer, Gap, Armani, and Joe Fresh have neither publicly disclosed the names of factories they source from nor furnished the information when we requested it. Based on information gathered by Human Rights Watch, thirteen factories appeared to produce regularly for Marks and Spencer, seven factories appeared to produce regularly for Joe Fresh, five factories produced for Gap, and one factory produced regularly for Armani.

In order to reflect the perspectives of factories in this report, we emailed questionnaires to 58 factories using contact information listed on the GMAC member database. These factories were chosen at random and included direct suppliers and subcontractors. Two factories responded—one in writing and the second through a meeting.

In November 2014, Human Rights Watch wrote to the Ministry of Labor and the Ministry of Commerce, outlining our findings and seeking a written response. By publication we received a response only from the Labor Ministry, which is reflected in the report.

Human Rights Watch correspondence and replies by brands and government ministries can be found at <http://www.hrw.org>.

Human Rights Watch also gathered information about which brands were produced in factories wherever this information was relevant and available from independent federations—the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU), the National Independent Federation of Textile Unions in Cambodia (NIFTUC), the Collective Union of Movement of Workers (CUMW), the Cambodian Alliance of Trade Unions (CATU), and a local nongovernmental organization—the Community Legal Education Center (CLEC). We were also able to access the Worker Information Center labels database from 2012 and 2013.

II. Background

Cambodia's Garment Industry

Although Cambodia's share of global exports of garments and textiles is relatively small, it is extremely important to Cambodia's economy, which has a gross domestic product of US\$15.35 billion.² The country's global exports in 2013 amounted to roughly \$6.48 billion, of which garment and textile exports accounted for \$4.97 billion and shoe exports accounted for another \$0.35 billion.³ In 2014, garment exports reportedly totaled \$5.7 billion.⁴

Cambodia entered the export-oriented global garment and textile industry in the 1990s. It benefitted from government promotion of foreign direct investments through tax holidays and duty-free imports of machinery and materials.⁵

Between 1995 and 2006, bilateral trade agreements with the United States, the European Union, and Canada spurred the garment industry's growth. The US, EU, Canada, and Japan are the largest importers of Cambodian garments and textiles and shoes.⁶ Except for the downturn resulting from the 2008 global economic crisis, the industry has grown consistently.

² Asian Development Bank (ADB), "Key Indicators for Asia and the Pacific 2014, Country Profiles: Cambodia," <http://www.adb.org/sites/default/files/publication/43030/cam.pdf> (accessed January 20, 2015), p. 1. For Cambodia's share of garment exports: World Trade Organization 2012 trade data as cited in UNCTAD, "Cambodia: Sector Specific Investment Strategy and Action Plan: G20 Indicators for Measuring and Maximizing Economic Value Added and Job Creation from Private Investment in Specific Value Chains, Pilot Study Results," February 2013, http://unctad.org/Sections/diae_dir/docs/diae_G20_Cambodia_en.pdf (accessed January 20, 2015), p. 3. ("UNCTAD Sector Specific Investment Strategy and Action Plan, 2013").

³ Trade Preferences System Department, General Directorate of International Trade (GDIT), Ministry of Commerce, "Estimated Cambodian Export Under GSP/MFN Scheme (From January 1 to December 31, 2013)," on file with Human Rights Watch.

⁴ Eddie Morton, "Garment Export Rate Slowed to 4 pct in 2014," *The Phnom Penh Post*, February 12, 2015 http://betterfactories.org/wp-content/uploads/2015/02/2015_02_12_PPP-Garment-export-rate-slowed-to-4-pct-in-2014.jpg (accessed February 18, 2015). At this writing, official export figures for 2014 were not available.

⁵ Sukti Dasgupta et. al., *From downturn to recovery: Cambodia's garment sector in transition* (ILO: Phnom Penh, 2011), <http://betterwork.com/cambodia/wp-content/uploads/2013/01/From-Downturn-to-Recovery.pdf> (accessed January 20, 2015), p. 2. ("Dasgupta, From downturn to recovery, 2011").

⁶ Trade Preferences System Department, GDIT, Ministry of Commerce, "Estimated Cambodian Export Under GSP/MFN Scheme (From January 1 to December 31, 2013)," on file with Human Rights Watch. The data also shows that in 2013, garment and textile exports to the US, EU, Canada, and Japan amounted to \$2.02 billion, \$ 1.75 billion, \$0.4 billion and \$0.2 billion.



The Cambodian garment industry is largely foreign-owned, with investors largely from Taiwan, Hong Kong, China, and South Korea.⁷ Less than 10 percent of factories are owned by Cambodians.⁸

⁷ UNCTAD Sector Specific Investment Strategy and Action Plan, 2013, p. 4.

⁸ Nathan Associates Inc. and Werner International commissioned by the United States Agency for International Development (USAID), “Factory-Level Value Chain Analysis of Cambodia’s Apparel Industry,” September 2007, http://s3.amazonaws.com/zanran_storage/www.usaid.gov/ContentPages/2672590.pdf (accessed January 20, 2015), Table 1.3, p. 8. (“USAID commissioned Value Chain Analysis, 2007”).

A majority of factories undertake “cut-make-trim” functions—manufacturing clothes from imported textiles based on designs provided by international buyers.⁹ Phnom Penh, the capital, is a hub for garment factories, but garment factories have mushroomed elsewhere, notably in adjoining Kandal province. Factories vary in size and operations, ranging from those with more than 8,000 workers with export licenses that directly supply international apparel buyers to small, unmarked factories with fewer than 100 workers that subcontract for larger factories.¹⁰

Women workers dominate the garment sector. The International Labour Organization (ILO) estimates that women comprise about 90 to 92 percent of Cambodia’s garment sector.¹¹ According to July 2014 government data reported in the media, Cambodia’s 1,200 garment businesses employ 733,300 workers.¹² This figure does not include home-based workers.¹³

Key Actors Influencing Labor Conditions

Manufacturers, government officials, trade union representatives, international buyers, and third-party monitors all influence labor practices in Cambodia’s garment industry.

The Cambodian Labor Ministry sets policy and its labor inspectorate is responsible for monitoring and compliance. The 1997 Cambodian Labor Law governs all garment factories irrespective of their size.¹⁴ It regulates working conditions in factories, including through

⁹ Ibid., Table 1.5, p. 11. Data for 2007 shows that about 60 percent of the factories engage in cut-make-trim activities; 25 percent provide a full package of services; and 15 percent are subcontractor factories.

¹⁰ For information on the largest factories, see UNCTAD Sector Specific Investment Strategy and Action Plan, 2013, p. 8. Citing government figures UNCTAD reports that PCCS Garments Ltd. employs 10,000 workers. See also the Better Factories Cambodia, “Price List: Training and Advisory Services,” http://betterfactories.org/wp-content/uploads/2014/08/Training_revised-Aug-25-14.pdf (accessed January 20, 2015), where the highest cost slab is for factories with more than 8,000 workers. With reference to smaller factories, Human Rights Watch learned about a subcontractor factory with about 38 workers. Human Rights Watch group interview with four staff members of a local NGO (details withheld), Phnom Penh, December 5, 2014.

¹¹ Better Factories Cambodia (BFC), “Twentieth Synthesis Report Working Conditions in Cambodia’s Garment Sector,” April 30, 2008, <http://betterfactories.org/?p=2974> (accessed January 20, 2015), p. 5.

¹² It is difficult to confirm whether this figure is updated to exclude those factories that have been registered but have since become defunct. Daniel de Carteret, “Registration of garment factories up in the first half,” *Phnom Penh Post*, July 7, 2014, <http://betterfactories.org/wp-content/uploads/2014/07/2014-07-07-Registration-of-garment-factories-up-in-the-first-half.gif> (accessed January 20, 2015); Simon Henderson and Hul Reaksmey, “Growth Masks Garment Sector Woes, Groups Say,” *The Cambodia Daily*, July 9, 2014, <http://betterfactories.org/wp-content/uploads/2014/07/2014-07-09-Growth-masks-garment-sector-woes-groups-say.gif> (accessed January 20, 2015).

¹³ See below, chapter titled, “Hiring Practices and ‘Flexible’ Labor Arrangements” for more details.

¹⁴ Labor Law, *Kingdom of Cambodia*, Royal Decree No CS/RKM/0397/01, 1997, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_150856.pdf (accessed January 20, 2015), art. 2 (“Labor Law”).

rules governing overtime work, minimum age of work in factories, pregnant workers, and leave. All factories with more than eight workers should have internal regulations governing working conditions. The Labor Ministry has issued model internal regulations. Even though the law has strong protections for workers on many subjects, its enforcement—as described below—has been abysmal, in large part because of an ineffectual labor inspectorate crippled by corruption and outpaced by factory growth.¹⁵

Independent trade unions play an important role in improving conditions through collective bargaining agreements, reporting labor rights violations, and helping workers seek redress. A 2014 report shows that 29 percent of the 371 factories surveyed had no unions; 42 percent had one union; 17 percent had two unions; and 12 percent of the factories had between three and five unions.¹⁶

According to June 2013 data compiled by the Cambodia-based staff of the Solidarity Center, an international labor rights group, there at least 63 garment trade union federations in Cambodia,¹⁷ of which only a handful are considered independent. Workers and activists widely believe the rest to be pro-management and pro-government “yellow unions.”¹⁸

Unions can bring complaints affecting workers before the Arbitration Council, whose arbiters interpret the Labor Law to decide disputes. The Arbitration Council’s decisions are considered authoritative interpretations of the Labor Law and its applications. The decisions can also be binding depending on the nature of the dispute and the parties involved.

Another key player is the Garment Manufacturers Association of Cambodia (GMAC), which has more than 600 operational factory-members.¹⁹ GMAC is the most powerful, well-

¹⁵ See BFC, “Thirtieth Synthesis Report on Working Conditions in Cambodia’s Garment Sector,” July 18, 2013, <http://betterfactories.org/?p=6706> (accessed January 20, 2015), p. 1. (“BFC, 30th Synthesis Report, 2013”) where the report discusses how attention to labor laws is waning, in part because factory growth has outpaced the labor inspectorate.

¹⁶ BFC, “Thirty First Synthesis Report on Working Conditions in Cambodia’s Garment Sector,” June 2014, <http://betterfactories.org/wp-content/uploads/2014/06/BFC-31st-Synthesis-Report-EN.pdf> (accessed January 20, 2015), p. 8 (“BFC, 31st Synthesis Report, 2014”).

¹⁷ Solidarity Center, Data on Trade Union Movements and Labor Associations in Cambodia, June 2013, on file with Human Rights Watch, p. 19.

¹⁸ Human Rights Watch interviews with 11 labor rights activists and lawyers in Cambodia, Phnom Penh, November and December 2013.

¹⁹ Human Rights Watch interview with Ken Loo, secretary general, GMAC, Phnom Penh, March 25, 2014. Loo said GMAC had about 600 operational factory-members as of March 2014. This number appears to have grown. See GMAC, “GMAC Members

organized employer association influencing labor conditions. For example, it is represented on tripartite bodies like the Labor Advisory Committee, takes public and vocal positions on policy issues like the minimum wage and use of short-term contracts; and plays a critical role in influencing industrial relations. While many of GMAC's positions appear in conflict with worker rights, it has in the past taken measures aimed at improving working conditions. For example, GMAC signed a memorandum with several union confederations where parties agreed to treat arbitral awards as binding.²⁰ In December 2014, GMAC signed an agreement to help eradicate child labor in Cambodia's garment industry.²¹

Cambodia also has an important third-party monitor—the Better Factories Cambodia (BFC) program—created in response to the 1999 US-Cambodia bilateral trade agreement that linked annual import quotas to demonstrable improvements in labor conditions in garment factories.²²

Better Factories Cambodia

The 2001 BFC program—now a partnership between the International Finance Corporation (IFC) and ILO—remains the most important third-party monitor of labor conditions in Cambodia's garment factories,²³ despite having lost clout when trade-related incentives expired in 2005.²⁴

List-Product,” January 2015, <http://www.gmac-cambodia.org/members/print.php?type=Product> (accessed January 19, 2015), which lists 681 factory-members. GMAC was set up in 1996.

²⁰ The agreement expired in December 2014. As of January 16, 2015, negotiations were ongoing to renew the agreement.

²¹ “ILO-BFC and GMAC Working hand-in-hand to Eradicate Child Labour in Cambodia's Garment Industry,” <http://betterfactories.org/?p=9383> (accessed January 20, 2015).

²² When it was first created in 2001, the ILO project was called the Garment Sector Working Conditions Improvement Project.

²³ BFC was originally an ILO program and became a joint ILO-IFC partnership in 2007. BFC is funded by a combination of international donor funding, contributions from the Cambodian government, GMAC, Cambodian union confederations, and companies' purchases of its monitoring, training, and advisory services. For more information about BFC, see http://betterfactories.org/?page_id=67 (accessed January 20, 2015).

²⁴ The phasing out of quotas under the Multifibre Arrangement (MFA) also increased competition among garment-producing countries. See World Trade Organization, “Textiles: Agreement,” http://www.wto.org/english/tratop_e/texti_e/textintro_e.htm#MFA (accessed January 20, 2015). The MFA allowed importing countries to restrict imports to protect domestic industry. In 1995, MFA was replaced by the WTO Agreement on Textiles and Clothing that phased out these quotas.

Garment manufacturers must participate in BFC’s factory monitoring program to get Cambodian government export licenses. According to January 2015 data, BFC monitors 536 garment and 12 footwear factories.²⁵

The level of transparency in BFC’s reporting on factory conditions has varied over time. Initially, BFC publicly named factories and key labor rights problems as part of its biannual reports, with follow-up reports outlining remedial measures the factories had taken. Since 2005-2006, BFC no longer publishes its factory-specific findings and instead provides an overview of working conditions of factories surveyed through synthesis reports. It makes its factory-level monitoring reports available to factories free of cost, and other third parties, for example international brands, at a cost.²⁶ Third parties—including labor unions and NGOs—cannot access these reports unless the factory authorizes such access and the third parties pay a fee to BFC.

Labor rights groups have criticized BFC’s changes and called for greater transparency in its monitoring and reporting methods.²⁷ Despite pressure from the government and garment manufacturers to keep names of non-compliant factory confidential, in March 2014, BFC launched its Transparency Database, which publicly names the 10 “low compliance” factories every three months.²⁸

Brands can participate in BFC in different ways. They can endorse BFC, buy BFC’s monitoring reports, and join in BFC’s buyers’ forum, a platform that brings together buyers, government authorities, factories, and unions to discuss key concerns and possible ways forward. They can also purchase BFC’s training and advisory services. According to January

²⁵ BFC, “Active Factories Registered with Better Factories Cambodia,” January 15, 2015, <http://betterfactories.org/wp-content/uploads/2015/01/2015-01-15-Factory-list-update-on-BFC-website.pdf> (accessed January 20, 2015). In July 2014, BFC monitored 514 garment and 11 footwear factories. BFC, “List of all factories monitored by BFC,” http://betterfactories.org/?page_id=6540 (accessed August 29, 2014).

²⁶ BFC, “Monitoring,” http://betterfactories.org/?page_id=90 (accessed January 20, 2015).

²⁷ Stanford International Human Rights and Conflict Resolution Clinic and Worker Rights Consortium, “Monitoring in the Dark: Improving Factory Working Conditions in Cambodia,” 2013, <http://humanrightsclinic.law.stanford.edu/project/monitoring-in-the-dark/> (accessed January 20, 2015) (“Monitoring in the Dark, 2013”); Clean Clothes Campaign and Community Legal Education Centre, “10 Years of the Better Factories Cambodia Project: A Critical Evaluation,” August 2012, <http://www.cleanclothes.org/resources/publications/ccc-clec-betterfactories-29-8.pdf> (accessed January 20, 2015) (“10 Years of the Better Factories Cambodia Project, 2012”).

²⁸ See BFC, Transparency Database, 2014, <http://betterfactories.org/transparency/> (accessed January 20, 2015).

2015 data, about 40 of the 200 brands representing 60 percent of the orders placed in Cambodia endorsed BFC.²⁹

BFC has been a model for the IFC-ILO Better Work Program that operates in other garment-producing countries, including Vietnam, Indonesia, Bangladesh, and Haiti.³⁰

International Apparel Buyers

Many top apparel brands including H&M, Marks and Spencer, Adidas, and Gap source their products from factories in Cambodia. Many brands attempt to demonstrate their commitment to international labor standards by incorporating them in their codes of conduct. Through their own internal factory audits and engagement with external monitors like BFC, brands track labor compliance and are well-placed to exert pressure on suppliers to make changes. Some brands also undertake such monitoring for subcontractors. They may also set up grievance redress mechanisms to respond to complaints by workers employed by their suppliers and subcontractors.

International apparel buyers also play an important role in demanding that labor conditions meet international standards and in applying pressure on the Cambodian government to enforce the Labor Law, including through public and private advocacy.³¹ As noted earlier, brands can also actively engage with third-party monitors like BFC.

A buyer's pricing and purchasing practices can contribute to robust or poor labor conditions.³² For example, when an international buyer places frequent orders or makes last-minute changes without adequate turnaround time, the additional pressure may contribute to factories exacting excessive and forced overtime from workers.³³ Ken Loo, the

²⁹ BFC, "BFC's Buyers," http://betterfactories.org/?page_id=1219 (accessed January 20, 2015). This provides a list of 39 buyers who have endorsed BFC. Human Rights Watch interview with a GMAC official (name withheld), Phnom Penh, April 8, 2014.

³⁰ ILO-IFC, Better Work, http://betterwork.org/global/?page_id=314 (accessed January 20, 2015).

³¹ Sean Teehan and Mom Kunthea, "Brands back wage bump: unionist," *The Phnom Penh Post*, May 27, 2014, <http://www.phnompenhpost.com/national/brands-back-wage-bump-unionist> (accessed January 20, 2015).

³² H&M, "Conscious Actions: Sustainability Report, 2012," <http://sustainability.hm.com/en/sustainability/downloads-resources/reports/sustainability-reports.html> (accessed January 20, 2015), p. 30. H&M is undertaking a review of its pricing that will be complete in 2015; Gap Inc, "Purchasing Practices," <http://www.gapinc.com/content/csr/html/human-rights/purchasing-practices.html> (accessed January 20, 2015).

³³ Ibid. Kate Raworth and Thalia Kidder, "Chapter 8: Mimicking 'Lean' in Global Value Chains: It's the Workers Who Get Leaned On," *Frontiers of Commodity Chain Research*, ed. Jennifer Bair (Stanford: Stanford University Press, 2009).

secretary general of GMAC, described how buyers' refusal to adjust their prices after a minimum wage increase impacted factories:

By the end of December [2013], buyers have committed to contracts [with suppliers] till May or June [2014]. The contract is signed on the previous price. The minimum wages have been raised. But the brands are not willing to renegotiate the price.³⁴

Factories may then pass the cost on to workers through higher—and what workers describe as unattainable—production targets, making labor rights violations more likely.

Recent Flashpoints in Cambodia's Garment Industry

Over the last few years, repeated incidents in which scores of garment workers fainted while working, industry-wide protests over minimum wages, and an extremely hostile environment for independent unions in Cambodia have raised the profile of problems in the garment industry among labor rights advocates locally and globally.

Building and fire safety have come under more scrutiny following the partial collapse of structures in two factories in 2013, resulting in the death of two workers, and a factory fire in July 2014.³⁵ A spate of mass fainting among Cambodian garment workers led the Labor Ministry to form a committee in August 2014 to investigate the cause of these faintings.³⁶

Against this backdrop, protests for an adequate minimum wage rocked the Cambodian garment industry in December 2013. GMAC advised its member-factories to suspend

³⁴ Human Rights Watch interview with Ken Loo, secretary general, GMAC, Phnom Penh, March 25, 2014.

³⁵ Patrick McDowell et al., "3 Die in Cambodia Factory Collapse," *The Wall Street Journal*, May 16, 2013, <http://online.wsj.com/news/articles/SB10001424127887323582904578486011628385682> (accessed January 20, 2015); Mech Dara, "Workers Protest for Speedy Pay After Fire Destroys Factory," *The Cambodia Daily*, August 1, 2014, <http://www.cambodiadaily.com/news/workers-protest-for-speedy-pay-after-fire-destroys-factory-65508/> (accessed January 20, 2015); BFC, 31st Synthesis Report, 2014, p. 3.

³⁶ Sen David, "Fainting Inquest: New body to check out blackouts," *The Phnom Penh Post*, August 20, 2014, <http://www.phnompenhpost.com/national/fainting-inquest-new-body-check-out-blackouts> (accessed January 20, 2015). For more information on mass fainting, see Community Legal Education Center (CLEC) and Labour Behind the Label, "Shop 'til They Drop: Fainting and Malnutrition in Garment Workers in Cambodia," 2013, <https://www.cleanclothes.org/resources/national-cccs/shop-til-they-drop> (accessed January 20, 2015).

operations, straining already tense labor relations. On December 31, 2013, the Labor Ministry increased the minimum wage to \$100 per month from \$80 effective February 1, 2014.³⁷

On January 2, 2014, workers defied a government deadline to end protests and demonstrated, demanding \$160 as minimum wage. Workers cited a December 2013 tripartite government-constituted task force report that estimated that a living wage should fall between \$157 and \$177 in support of their demands.

Overnight on January 2 and 3, hundreds of police and gendarmes were deployed to clear workers protesting. Violent clashes broke out with some protesters. On the morning of January 3, the authorities sent a large force of gendarmes to seize control of the area, some of whom fired their assault rifles towards the crowds, killing six people. A person beaten by gendarmes later died of his injuries. Twenty-three human rights defenders and workers arrested during these incidents were later charged with responsibility for the violence, tried and convicted, and sentenced to prison terms, despite there being no evidence against them. Their sentences were all suspended, but they remain at risk of imprisonment.³⁸ No gendarmes were prosecuted.

International outrage followed this crushing of the garment worker protests and arrests. Many international brands wrote to the Cambodian government requesting that it initiate an investigation into government violence and also create a wage-setting policy.³⁹ A new government committee led by a former minister of economy and finance began work in January on a new minimum wage policy.

Meanwhile, independent trade unions alleged that the government had suspended new union registrations after the January protests.⁴⁰ Talks around the hike in minimum wages were ongoing since January 2014 with strained industrial relations between factories and

³⁷ Worker Rights Consortium, “Crackdown in Cambodia: Workers Seeking Higher Minimum Wages Meet Violent Repression,” March 24, 2014, <http://www.workersrights.org/freports/WRC%20Report%20-%20Crackdown%20in%20Cambodia%203.24.14.pdf> (accessed January 20, 2015).

³⁸ Human Rights Watch, “Human Rights Watch Submission for the Review of Cambodia by the Human Rights Committee,” June 6, 2014, <http://www.hrw.org/news/2014/06/06/human-rights-watch-submission-review-cambodia-human-rights-committee> (accessed January 20, 2015).

³⁹ Letter from brands and global unions to H.E. Prime Minister Hun Sen, January 17, 2014, on file with Human Rights Watch.

⁴⁰ Human Rights Watch, “Cambodia: Stop Stalling Union Registrations,” April 29, 2014, <http://www.hrw.org/news/2014/04/29/cambodia-stop-stalling-union-registrations> (accessed January 20, 2015). For more information on the government’s response, please see below, section titled “Clamp Down on Independent Unions.”

unions. In September 2014, days before another round of negotiation on minimum wages, the government announced that it was initiating a criminal investigation against six independent union leaders and summoned them to appear before a court.⁴¹ Soon after, independent unions and labor rights groups launched a new advocacy campaign demanding a monthly minimum wage of \$177.⁴² In November 2014, the Cambodian government announced a revised minimum wage of \$128 effective January 2015.⁴³

⁴¹ Human Rights Watch, “Cambodia: End Political Persecution of 6 Unionists,” September 3, 2014, <http://www.hrw.org/news/2014/09/03/cambodia-end-political-prosecution-6-unionists> (accessed January 20, 2015). Prosecutors accused the union leaders of aggravated violence and destruction, threats of destruction, and obstruction of traffic during worker protest between December 25, 2013 and January 3, 2014 in the Veng Sreng area of Phnom Penh.

⁴² “Cambodian Garment Workers in New Campaign For Wage Increase,” *Radio Free Asia*, September 16, 2014, <http://www.rfa.org/english/news/cambodia/garment-workers-09162014180626.html> (accessed January 20, 2015).

⁴³ Holly Robertson, “After New Wage, Dissent Over Take Home Pay,” *The Cambodia Daily*, November 21, 2014 <https://www.cambodiadaily.com/business/after-new-wage-dissent-over-take-home-pay-72795/> (accessed January 20, 2015).

III. Hiring Practices and “Flexible” Labor Arrangements

[W]hile it is true that buyer demand fluctuates, it typically does not drop at the end of a worker’s contract and pick up significantly a week later. There is a difference between a genuine change in buyer demand, and the use of this pretext to deny benefits to workers.

—ILO, “Practical challenges for maternity protection in the Cambodian garment industry,” 2012, p. 15.

Many factories hire workers on fixed-duration contracts or on other casual bases when there is no justification for doing so, such as seasonal labor demands or other temporary business needs. Workers repeatedly hired on short-term contracts or on a casual basis are more likely to experience the labor abuses documented in this report. They have a lower likelihood of redress and are at a greater risk of experiencing union discrimination, pregnancy-based discrimination, and denial of maternity benefits and sick leave.

Repeated Use of Short-Term Contracts

The illegal use of short-term contracts is common in Cambodia’s garment industry. The threat of non-renewal of such contracts fosters an environment in which factory managers can exploit workers, and workers are too scared to complain for fear of losing their jobs. Use of short-term contracts is often a barrier to healthy workplace conditions, and can facilitate anti-union discrimination, pregnancy-based discrimination, and forced overtime work.⁴⁴

Cambodian labor law permits factory managers to engage workers either on open-ended contracts of undetermined duration (UDC) or on fixed-duration contracts (FDC) that specify an end-date. The Labor Law states that factory managers can issue short-term contracts and renew them one or more times for up to two years.⁴⁵

⁴⁴ See below, Chapter III, for a discussion of these problems.

⁴⁵ Labor Law, art. 67. “A labor contract signed with consent for a specific duration must contain a precise finishing date. The labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule leads the contract to become a labor contract of undetermined duration.”

In theory, workers on FDCs enjoy many of the same benefits that workers on UDCs enjoy, though they have less protection against dismissal. Workers on UDCs and FDCs who have at least one year's uninterrupted service in a factory are entitled to maternity pay and a seniority bonus. The seniority bonus increases annually and is directly linked to job tenure.⁴⁶ A key difference is that workers on FDCs are entitled to least 5 percent of their wages as severance at the end of each contractual period or when they are terminated.⁴⁷ Factories pay severance for UDC workers only at the end of their employment.

Workers on UDCs have longer notice periods and heavier penalties assessed against employers for unfair dismissals from work.⁴⁸ A manager can refuse to renew an FDC without having to give any reason.⁴⁹

Workers have challenged the abusive use of FDCs in collective disputes before the Arbitration Council. The Council has consistently ruled that according to article 67 of the Labor Law, factories cannot engage workers on FDCs beyond two years and that if they do, such workers are entitled to the same benefits and protections as workers on UDCs.⁵⁰

The Garment Manufacturers Association in Cambodia (GMAC) has contested the Arbitration Council's interpretation of the Labor Law.⁵¹ In March 2014, Ken Loo, the secretary general of GMAC told Human Rights Watch that "very few" employers repeatedly used FDCs, describing them as the "black sheep" of the garment industry. Explaining the use of FDCs, Ken Loo said, "How can we afford to guarantee job security when our buyers

⁴⁶ ILO-BFC, "Guide to the Cambodian Labor Law for the Garment Industry," 2014, <http://betterfactories.org/?p=6331> (accessed January 20, 2015), p. 12 ("ILO-BFC, Labor Law Guide, 2014").

⁴⁷ Labor Law, art. 73.

⁴⁸ Labor Law, arts. 73 and 74. A worker whose FDC will not be renewed should receive notice of 10 days if the contract period is more than 6 months, and 15 days if the contract period is more than 1 year. Workers on FDCs on durations shorter than 6 months will not receive notice of non-renewal. UDC workers receive 7 days' notice if they have worked for less than 6 months; 15 days' notice for 6 months to 2 years of work; 1 month notice for more than 2 years and up to 5 years; 2 months' notice for more than 5 years and up to 10 years; 3 months' notice for more than 10 years of work.

⁴⁹ Labor Law, art. 73. In theory, if an employer wants to terminate a worker on an FDC before the contract expires, then they can do so only if the parties agree or if the worker is found to have committed "serious misconduct." Art. 83 defines "serious offenses" by workers, including stealing, embezzlement, presenting false documents, using abusive language, and so on. Where there is no serious misconduct and the worker is nevertheless prematurely terminated, they are entitled to damages.

⁵⁰ Arbitration Council Awards 10/03, 02/04, 155/09(9), 70/11(1), 105/11(3) as cited ILO-BFC, Labor Law Guide, 2014, p. 8.

⁵¹ Worker Rights Consortium, "Update on Ongoing Abuse of Temporary Employment Contracts in the Cambodian Garment Industry," <http://workersrights.org/freports/WRC%20Update%20on%20Misuse%20of%20FDCs%20in%20Cambodia%204.11.14.pdf> (accessed January 20, 2015), ("WRC, Update on FDCs, 2014"). The report analyzes in detail GMAC's position on FDCs and critiques the position GMAC has taken.

place orders seasonally? I don't know if my buyers will place orders again.”⁵² Human Rights Watch research for this report, however, corroborated by information given by some international apparel brands (discussed in detail below), shows that even factories with assured business use FDCs in ways that appear to contravene the Labor Law.

The Cambodian government has in the past supported GMAC's position on the repeated use of short-term contracts and has not made monitoring for illegal use of FDCs a priority in its inspections or enforcement measures. For example, Human Rights Watch reviewed the labor inspectorate reports for a factory where all workers were repeatedly issued short-term contracts and found no documentation of the length of the contracts or any assessment of why the factory's entire workforce was on such contracts.⁵³ In December 2014, Labor Ministry officials responded to Human Rights Watch's written concerns about the repeated use of FDCs stating, “[a]s there has been disputation about the interpretation and comprehension of the Labour Law, the result has been that each party has made an interpretation of these provisions in order to serve their own interests.”⁵⁴

Proliferation of FDCs

Human Rights Watch found that many factories issued FDCs to workers who had been working in the factory for more than two years.⁵⁵ The duration of the short-term contracts varied from twenty-one days to one year, with three or six-month contracts the most common.⁵⁶ Some newer factories appeared to hire their entire workforce on FDCs without basing it on any apparent seasonal or temporary business needs.⁵⁷ In some factories, workers said men were hired on shorter term contracts than their female counterparts and

⁵² Human Rights Watch interview with Ken Loo, secretary general, GMAC, Phnom Penh, March 25, 2014.

⁵³ Labor inspectorate report for factory 36, on file with Human Rights Watch. Human Rights Watch group interview with Han Che (pseudonym), Seng Manin (pseudonym) and another worker, factory 36, Phnom Penh, November 28, 2014.

⁵⁴ Letter from H.E. Ith Samheng, Minister of Labor and Vocational Training to Human Rights Watch, December 19, 2014 (translated from Khmer to English by Human Rights Watch), on file with Human Rights Watch.

⁵⁵ Human Rights Watch interviews and group interviews with workers from factories 1, 2, 3, 4, 5, 9, 15, 19, 21, 26, 27, 31, 32, 35, 37, 41, 44, 49, 50, 53, 55, 56, 60, 61, 64, Phnom Penh, Kandal, and Kampong Speu provinces, November and December 2013, and April 2014.

⁵⁶ Human Rights Watch group interview with 12 male workers, factory 4, location withheld, November 20, 2013. Factory 4 repeatedly issued 21-day contracts.

⁵⁷ Human Rights Watch interviews with workers from factories 6, 7, 24, 25, and 52, Phnom Penh and other locations, November and December 2013. Chea Thida (pseudonym) from factory 25 said her factory was set up in 2012 and all of the factory's approximately 1,000 workers were on three-month FDCs.

The Worker Rights Consortium (WRC), an international labor rights organization, conducted a survey of 127 factories, including 119 GMAC members, between August 2012 and May 2013. The survey results found that nearly 80 percent of factories employ “most or all of their workers on FDCs” and “at least 72% violate the labor law’s two-year limit on successive FDCs.”⁶²

Bent Gehrt, WRC’s Southeast Asia field director, told Human Rights Watch that many factories falsely claim they need to use FDCs because of fluctuating buyer demand. For instance, WRC found that MSI Garment (now closed), claimed fluctuating orders forced it to hire more than half of its 1,600 workers on repeated three-month FDCs. But upon close examination, WRC representatives found that its monthly employment figures for 2006 fluctuated by less than 50 from an average of 1,600 workers over the course of the entire year. Gehrt, while stressing that using UDCs does not hinder factories in laying off people when they have a valid reason, explained that if the fluctuating orders were the reason then factories should use the lowest number of workers employed in the preceding 12 months as a baseline and issue UDCs to all workers up to that baseline.⁶³

Some proponents of FDCs from the business sector point out that workers themselves often demand FDCs. Ken Loo, the GMAC secretary general, suggested that independent unions were not accurately representing workers’ demands. He said, “Over the last three years we have not really seen cases where workers are demanding UDCs. Now workers are demanding FDCs.” He also said, “Workers know crystal clear what they are signing at the dotted line. So I really don’t understand how a worker hired on an FDC can want a UDC.”⁶⁴

Contrary to GMAC’s assertions, in almost all cases where Human Rights Watch discussed worker contracts in detail, workers said they had no choice regarding their employment contract.⁶⁵ Many workers had no information about a written contract—they started working and were orally informed about their wages. For example, Cheng Thai, in her mid-20s, from factory 11, said, “They just told me I would be on a monthly wage. I didn’t sign any contract and don’t know my employment status.”⁶⁶

⁶² WRC, Update on FDCs, 2014, p. 9.

⁶³ Human Rights Watch email correspondence with Bent Gehrt, Bangkok, August 12, 2014.

⁶⁴ Human Rights Watch interview with Ken Loo, secretary general, GMAC, Phnom Penh, March 27, 2014.

⁶⁵ Human Rights Watch documented only two cases where workers said they were asked what type of contract they wanted.

⁶⁶ Human Rights Watch interview with Cheng Thai (pseudonym), factory 11, Phnom Penh, November 21, 2013.

Where workers said they had a written contract, they were called to the factory office and asked to affix their thumbprint on a document. Sren Seang's experience in factory 9 is similar to that of most workers interviewed by Human Rights Watch:

First I had a two-month contract [probation]. Now I have a four-month contract....All they say to me when they call me: "If you want to continue working, put your thumbprint here." Every four months they ask me to thumbprint. I have been working here for three years [on the FDC].⁶⁷

In some cases, the factory managers destroyed FDC workers' old identity cards and issued new ones, assigning a fresh start date, sometimes a few days after the earlier FDC expired, making it difficult for a worker to demonstrate continuity of service and seniority.⁶⁸

Garment workers, labor activists, union leaders, and lawyers all said that factory managers told workers that an FDC entitled them to a 5 percent wage benefit at the end of each contractual period, but did not explain other differences with UDCs.⁶⁹ For example, Preap Win from factory 73 described how managers told workers that they would receive 5 percent of their wages at the end of the contract with an FDC but did not explain the differences in job security and other benefits dependent on tenure and uninterrupted service. She was unaware that other FDC workers in her factory had lost their jobs when they became visibly pregnant or experienced other forms of discrimination.⁷⁰

Chhorn Sokha, a former garment worker and labor rights activist from the Community Legal Education Center (CLEC), a nongovernmental organization, put it poignantly, "Workers pay a heavy price for that 5 percent [wage benefit]—they lose their voice and their rights. They have to work very hard. They are scared of making any demands or protest. They are constantly in fear that they will be fired."⁷¹

⁶⁷ Human Rights Watch group interview with Sren Seang (pseudonym) and another worker, factory 9, Phnom Penh, November 16, 2013.

⁶⁸ For example, Human Rights Watch group interviews with workers from factories 3, 15, 30, 60, Phnom Penh and Kandal provinces, November and December 2013. This list of factories is indicative and not exhaustive.

⁶⁹ Human Rights Watch interview with Chhorn Sokha, former garment worker and program officer, Community Legal Education Center, Phnom Penh, November 14, 2013.

⁷⁰ Human Rights Watch interview with Preap Win (pseudonym), worker, factory 71, Phnom Penh, December 1, 2013.

⁷¹ Human Rights Watch interview with Chhorn Sokha, program officer, Community Legal Education Center, Phnom Penh, November 13, 2013.

Furthermore, not all factories paid FDC workers 5 percent of their wages at the end of each contractual period. Workers felt cheated but that they could not complain. Human Rights Watch heard accounts of non-payments, delayed or inconsistent payments, payments made annually even when workers were on shorter-term FDCs, or promises of payment when the worker finally left the factory.⁷²

Brand response

Human Rights Watch examined the codes of conduct for H&M, Adidas, Gap, Marks and Spencer, Armani, and Joe Fresh and asked the brands about the use of FDCs in their supplier factories.

Marks and Spencer's Global Sourcing Principles discourage the "excessive" use of short-term contracts to avoid obligations arising from a "regular employment relationship."⁷³ However, the brand did not respond to Human Rights Watch questions on the use of short-term contracts in its supplier factories in Cambodia.⁷⁴

Gap prohibits modifying or terminating worker contracts to avoid paying benefits in its Vendors' Code of Conduct.⁷⁵ Gap did not provide specific information about the use of FDCs in its supplier factories in Cambodia or how the brand's 700 performance indicators integrated these in factory audits.⁷⁶ Nevertheless, Gap confirmed that "FDCs are a common

⁷² Human Rights Watch interviews with workers from factories 3, 4, 5, 29, and 69, Phnom Penh and Kandal provinces, November 2013. Factory 5 and factory 69 workers reported non-payment; factory 4 workers reported inconsistent payments following union intervention; factory 29 workers were promised payment at the end of each year even though they were on four-month contracts; and factory 3 workers reported delayed payments.

⁷³ Marks and Spencer, "Global Sourcing Principles," undated, <http://corporate.marksandspencer.com/documents/policy-documents/global-sourcing-principles.pdf> (accessed January 20, 2015), p. 4.

⁷⁴ Human Rights Watch letter to Mike Barry, director, Sustainable Business, Marks and Spencer, March 17, 2014, on file with Human Rights Watch, section A, question 2. Human Rights Watch requested information on a number of issues including how the company defined "excessive" use of short-term contracts.

Human Rights Watch letter to Marc Bollard, chief executive, Marks and Spencer, August 21, 2014, on file with Human Rights Watch, questions j to m. Human Rights Watch requested a breakdown of suppliers based on type of contract issued and the extent to which FDCs are used, and how the brand's "ethical audits" of factories and resulting ratings reflected the repeated use of short-term contracts.

⁷⁵ Gap Inc., "Code of Vendor Conduct," www.gapinc.com/content/dam/csr/documents/COVC_070909.pdf (accessed January 20, 2015), para. G5, p. 10.

⁷⁶ Human Rights Watch letter to Glen Murphy, chairman and chief executive officer, Gap Inc. August 21, 2014, on file with Human Rights Watch, questions i to l.

practice in Cambodia” and reiterated its commitment to the Arbitration Council’s ruling limiting use of short-term contracts.⁷⁷

H&M’s Code of Conduct does not explicitly prohibit the repeated use of short-term contracts. But its 2008 Guidance for Implementation of Good Labour Practice, which is currently being updated, advises that the “employment contract must never include clauses stating conditions that are below the legal requirements,” “may not be used as a means to restrict the worker’s right to compensation and or employment security,” and that “short-term contracts may not be used as a measure to deprive workers of social benefits.”⁷⁸

H&M representatives told Human Rights Watch that they had many “strategic partners” who were assured of between three and five years of steady business in Cambodia but did not provide a breakdown of FDC use by their suppliers.⁷⁹ H&M representatives said that in 2015, H&M would require its suppliers to adhere to the Arbitration Council ruling on the use of FDCs and that failure to do so would be treated as a violation of H&M’s Code of Conduct and factored into internal audits. They also said that they would seek legal clarification from the government on these issues, but it’s not clear that the government position would improve workers’ rights.⁸⁰

The Armani Supplier Social Code of Conduct states that “the use of contract, temporary or other non-full-time employment schemes shall not be used to systematically avoid the payment of worker benefits.”⁸¹

The 2009 Supplier Code of Conduct of Loblaw Ltd., which owns Joe Fresh, states that suppliers “should reflect the commitment of Loblaw to fair and reasonable labour and employment practices” and “are expected to comply with all local and applicable labour

⁷⁷ Gap Inc. letter to Human Rights Watch, “Gap Inc. Response, September 16, 2014,” on file with Human Rights Watch, p. 3.

⁷⁸ H&M, “Code of Conduct: Guidance for Implementation of Good Labour Practice,” July 2008, on file with Human Rights Watch, p. 23.

⁷⁹ Human Rights Watch discussion with Lars-Ake Bergqvist, Sustainability Department; Anna Palmqvist, global sustainability manager; and Jonah Wigerhall, sustainability country manager for Cambodia and Vietnam, H&M, Bangkok, September 26, 2014.

⁸⁰ Human Rights Watch email correspondence with Jonah Wigerhall, Anna Palmqvist, and Lars-Ake Bergqvist, November 7, 2014.

⁸¹ Armani Supplier Social Code of Conduct, <http://cdn3.yoox.biz/armani2013/wp-content/uploads/2014/01/Armani-Social-Code-of-Conduct1.pdf> (accessed January 20, 2015), p. 3.

laws and employment standards.”⁸² As of mid-January 2015, it carries no explicit prohibition against the repeated use of short-term contracts or casual hiring arrangements that can be used to defeat other labor rights protections.⁸³

Adidas classifies the use of “contract workers on a continuous basis, on multiple short-term contracts, or as regular practice, to support normal business needs” as code non-compliance.⁸⁴ Adidas was the only brand that provided detailed information to Human Rights Watch about its suppliers’ and licensees’ use of FDCs or UDCs: 55 percent of workers producing Adidas products were on UDCs and the remaining were on FDCs, of which 10 percent of workers were in newly formed factories.⁸⁵ Two of its long-term suppliers employed the factory’s entire workforce on FDCs. Adidas pointed out that the two factories were yet to convert worker contracts into UDCs because the factories were new and less than two years old.⁸⁶ Adidas representatives did not explain how this squares with brand policy to disallow the regular use of short-term contracts to meet regular business needs.

Adidas told Human Rights Watch that 7 of its 19 long-term suppliers and 2 of its 4 licensees use FDCs beyond the two-year limit because workers or unions in the factories had “opposed” UDCs.⁸⁷ It added that some of its suppliers had faced difficulty instilling worker confidence in UDCs because “during the 2008-9 financial crisis foreign factory owners fled the country, leaving behind debts, unpaid wages and severance owed to workers. This had a profound effect on workers’ belief in UDCs.”⁸⁸

David Welsh, the Cambodia country director of Solidarity Center, told Human Rights Watch that worker representatives in factories cannot legitimately use their negotiating power to

⁸² Loblaw Cos. Ltd., “Supplier Code of Conduct,” 2009, http://www.loblaw.ca/files/doc_downloads/2014/SUPPLIER-CODE-OF-CONDUCT-Loblaw_v001_m2f5h7.pdf (accessed January 20, 2015).

⁸³ Letter from Loblaw Cos. Ltd. to Human Rights Watch, November 11, 2014, on file with Human Rights Watch. Loblaw is in the process of reviewing its Supplier Code of Conduct “to ensure its alignment with industry standards” and stated that a copy of the latest code would be forwarded to Human Rights Watch when the review process is complete. Human Rights Watch did not receive any further updates to the supplier code as of January 16, 2014.

⁸⁴ adidas Group, “Guidelines on Employment Standards,” http://www.adidas-group.com/media/filer_public/2013/07/31/guidelines_on_employment_standards_english.pdf (January 20, 2015), para. 5.1.2, p. 108.

⁸⁵ Letter from adidas Group to Human Rights Watch, “Response to Additional Questions Raised by HRW on Cambodia,” September 17, 2014, on file with Human Rights Watch.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

reduce legal protection for workers.⁸⁹ Collective bargaining agreements with the management should at a minimum respect the law or introduce better legal standards, he said.

Welsh, together with other industry experts familiar with brand practices, told Human Rights Watch that most international apparel brands are not doing enough to examine whether unions in their supplier factories are genuinely representing worker concerns and need to do a lot more to ensure their supplier factory unions are not merely parroting management preferences.⁹⁰

The Solidarity Center office in Cambodia is working closely with independent union federations to gather additional information on brands' use of FDCs in supplier factories and exploring the option of taking collective action to challenge their illegal use.⁹¹

Casual Workers

Garment workers interviewed by Human Rights Watch said most workers hired on daily, hourly, or other casual bases did not join unions, collectively bargain for better working conditions, or file complaints because they feared their contracts would be terminated if they did so. It was practically more difficult for them to assert their rights even though the Arbitration Council ruled that they are eligible for the same benefits as regular workers after they have worked 21 days for 2 consecutive months.⁹² They are less likely than regular workers to be paid the minimum wage.⁹³

⁸⁹ Human Rights Watch phone discussion with David Welsh, country director, Solidarity Center, Phnom Penh, October 10, 2014.

⁹⁰ Human Rights Watch phone discussion with David Welsh, October 10, 2014; phone discussion other industry experts (names withheld), September and October 2014.

⁹¹ Human Rights Watch phone discussion with David Welsh, October 10, 2014.

⁹² Labor Law, 1997, arts. 9-10. In theory, casual and regular workers enjoy all rights provided for under Cambodian labor law except where otherwise mentioned. The law defines casual workers as workers hired to perform an unstable job or "specific work"—temporary, intermittent, or seasonal— that can be completed within a short period. Regular workers are hired on a permanent basis.

Arbitration Council Awards 26/04, 10/08(1), 116/11(6) as cited in ILO-BFC, Labour Law Guide, 2014, p. 8. The Arbitration Council has consistently ruled that workers employed for 21 days in a month for 2 consecutive months should be treated as regular workers.

⁹³ See for example, BFC, 31st Synthesis Report, 2014, p. 7. BFC reports 98 percent compliance on minimum wage for regular workers; 85 percent for casual workers.

Even though our research did not focus on casual workers in the garment sector, we spoke to at least 30 workers employed on an hourly, daily, weekly, or other casual bases from at least nine factories that worked as subcontractors for larger factories.⁹⁴ And union leaders from two other factories supplying to international brands said their factories periodically hired daily wage workers and employed them for months without giving them the benefits of regular workers.⁹⁵

About half of the casual workers we spoke to had worked continuously for consecutive months. Workers from several factories reported being on contracts titled “*Kechsaniya Karngea Madong Makal*,” literally “once in a while work contract” or casual contracts, although they were working six-day weeks for months on end.⁹⁶

Most workers employed on a casual basis said they had no worker identity cards or other proof of employment in the factory. This creates barriers to raising collective labor disputes or claiming wages and other due benefits.⁹⁷ For example, one union leader from a large factory that supplies to international brands described how his factory periodically hired casual workers first in 2010, estimating that 500 of the factory’s 1,400 workers were hired on a daily-wage basis during peak production season from March through November. He said:

Daily wage workers don’t sign attendance records. When they come to the factory they get a small white piece of paper with some Chinese writing on it. We don’t even know what is written on this paper. When they finish the day’s work, they have to take this paper and go to the office—and he [the

⁹⁴ Human Rights Watch interviews with four workers, factory 1 who reported working on an hourly basis in other smaller factories; four workers, factories 10 and 72; two workers, factory 46; five workers, factory 47; four workers, factory 48; six workers, factory 58, Phnom Penh, Kandal and other undisclosed locations, November and December 2013. Human Rights Watch group interview with Theoum Sophea (pseudonym) and Theun Srey (pseudonym), home-based workers, Phnom Penh, November 20 and 22, 2013. Sophea and Srey said that they had previously worked on a casual basis doing night-shifts in a number of factories for about a year.

⁹⁵ Human Rights Watch interviews with two union leaders, factories 8 and 4, locations withheld, November 2013.

⁹⁶ Human Rights Watch group interview with seven workers, factory 57, location withheld, December 3, 2014; group interview with six workers, factory 58, location withheld, December 4, 2013.

⁹⁷ For example, “Social Affairs Ministry to Pay Garment Worker Wages,” *Cambodia Daily*, July 25, 2013, <http://betterfactories.org/wp-content/uploads/2013/07/2013-07-25-Social-Affairs-Ministry-to-pay-garment-workers-wages.gif> (accessed January 20, 2015). The Ministry of Social Affairs had offered to pay back wages and severance benefits owed to 750 workers of a factory that had shut down. But in order to claim those benefits, the ministry required workers to bring their factory-issued worker identity cards and other identifying documents.

official] will take that paper back—and give them their wages for the day. We cannot even keep that paper to photocopy it.⁹⁸

Outsourcing to Home-Based Workers

Some garment factories also use home-based workers seasonally. Home-based garment workers are not counted as workers, are not able to join factory unions or unionize, and their work remains unregulated.

Women engage in such subcontracted work because it provides them income with flexible working hours, letting them juggle caregiving work at home.⁹⁹ Older women—especially age 40 and above—were able to earn money this way even when factories refused to hire them.¹⁰⁰ Women also saw it as a form of work that allowed college and school students to supplement family incomes without disrupting their education.

Human Rights Watch spoke with 25 women in two districts of Phnom Penh who have been engaged in seasonal home-based work for garment factories in surrounding areas, many of them for 10 to 15 years. Middlemen employed these women mostly to trim extra thread from stitched garments, embroider, make button holes, or package garments into plastic bags.

The work is often available when factories have rush orders with deadlines to meet. The workers said they typically got orders from November to April with extra orders coming to them in the months of March and April. They supplemented their income by making and selling crafts.

These women typically made less than the minimum wage. If they damaged clothes, the resulting penalties cut significantly into their earnings. For example, one group of women said they get 5,000 riels (US\$1.25) for trimming thread from 100 garments and 2,000 riels (\$0.50) for every 10 buttonholes they made. If they damaged any clothes, the contractors

⁹⁸ Human Rights Watch interview with a union leader, factory 8, location withheld, November 2013.

⁹⁹ Three Human Rights Watch group interviews with eight, six, and eleven home-based workers, Phnom Penh, November 2013.

¹⁰⁰ Ibid. ILO, “Action-oriented on gender equality and the working and living conditions of garment factory workers in Cambodia,” 2012, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_204166.pdf (accessed January 20, 2015), p. 4 (“ILO Report on Gender Equality in Cambodia’s Garment Sector, 2012”). This report discusses how age-based discrimination in hiring persists in garment factories.

deducted \$10 per damaged piece from their earnings.¹⁰¹ Workers also said that they had been receiving the same pay for many years and in some cases, the amounts had dropped.¹⁰² The women had no information about the factories or brands they produced for.¹⁰³

¹⁰¹ Human Rights Watch group interview with six home-based workers, Phnom Penh, November 2013.

¹⁰² Human Rights Watch group interview with eight home-based workers, Phnom Penh, November 2013. Women from the first group said they were paid 200 riels (\$0.05) for each embroidered piece, which was reduced to 50 or 100 riels (\$0.01 or \$0.02).

¹⁰³ Ibid.

IV. Key Labor Rights Abuses

Production “Targets”

I sit for 11 hours and feel like my buttocks are on fire. We can't go to the toilet. We have to produce many lots [sets comprising 12 pieces].

—Keu Sreyleak (pseudonym), garment worker, group interview, factory 60, Phnom Penh, December 7, 2013

I feel like they have tied our feet to the [sewing] machine.

—Nov Aem (pseudonym), garment worker, group interview, factory 40, Phnom Penh, December 6, 2013

Garment workers from many factories—both large factories directly supplying to international brands as well as subcontractor factories—said they are under constant pressure from their supervisors to meet production targets in a way that undermined their ability to take breaks to rest, use restrooms, and drink water. Workers generally welcome reasonable amounts of overtime work beyond an eight-hour work day to supplement incomes. But many workers feel unable to refuse overtime work without risking retaliation by the factory. Supervisors also frequently engage in abusive behavior and intimidation to force workers to try and meet production targets.

Workers in the sewing divisions of garment factories operate in assembly lines, divided into groups, where each group has an hourly or daily production target that varies by type of garment, its design, and difficulty level. Workers in other divisions—such as trimming excess thread, checking the quality of garments, or packaging—are also usually assigned production targets.

The workers Human Rights Watch spoke with had multiple complaints about how this target system was used to cheat them. Sometimes factory management promised extra money if the daily target was exceeded, usually in the range of 500 riels (US\$0.12) to 3,000 riels (\$0.75), but did not pay this even when workers met or surpassed such targets. For example, Nov Aem from factory 40 described how workers in the sewing division were promised 3,000 riels if they produced 130 blouses within 10 hours, but did not receive it

despite exceeding the quota many times.¹⁰⁴ Workers in factory 15 said they were forced to work overtime until 8 p.m. to meet the daily target but were not paid overtime wage rates if they could not meet the target.¹⁰⁵

Some workers complained that their targets were revised upwards, making it impossible to meet them.¹⁰⁶ Preung Sophy, from factory 57, said: “They told me I am not producing enough pieces. But they keep raising the quota. First, it was eight lots, then it increased to 15 lots, then they made it 25, and now 30 [lots within the same amount of time].”¹⁰⁷ Another worker from factory 60 said she had to produce 1,200 garments in 11 hours for difficult designs and 2,000 garments for simple designs. She continued: “When we reached 2,000, they made it 2,300, and then they made it 2,500. They make it difficult for us to reach this target.”¹⁰⁸

Workers from several factories said that their managers compensated for the hike in minimum wages in 2013 and 2014 by increasing the production quota.¹⁰⁹ One worker from factory 66 said,

The quota for us [sewing division] was 80 per hour. But when the minimum wage was increased, they increased our quota to 90. If we don’t meet this we get screamed at a lot. They will say we are slow workers. We have to do overtime work. We cannot say no. We are like slaves—not workers. Even if we go to the toilet, they whistle for us to come back. We can’t even go to the toilet.¹¹⁰

In one large factory supplying to international brands, a group of workers complained that engineering students were monitoring efficiency in their factory on behalf of H&M, adding

¹⁰⁴ Human Rights Watch group interview with Nov Aem (pseudonym) and four other workers, factory 40, Phnom Penh, December 6, 2013.

¹⁰⁵ Human Rights Watch group interview with nine workers, factory 15, location withheld, November 24, 2013.

¹⁰⁶ Human Rights Watch group interviews with workers from factories 15, 57, and 60, Phnom Penh and other undisclosed locations, November and December 2013.

¹⁰⁷ Human Rights Watch interview with Preung Sophy (pseudonym), factory 57, location withheld, December 3, 2013.

¹⁰⁸ Human Rights Watch group interview with 10 workers, factory 60, Phnom Penh, December 7, 2013.

¹⁰⁹ Human Rights Watch group interview with workers from factories 18, 57, and 66, Phnom Penh and another undisclosed location, November and December 2013, and April 2014.

¹¹⁰ Human Rights Watch group interview with N.V. (who chose to remain anonymous) and nine other workers, factory 66, Phnom Penh, April 1, 2014.

more pressure and making it harder for them to take breaks.¹¹¹ One of the workers in the group said,

They are now assessing how much time it takes to make a shirt. I don't know what H&M is thinking but this is very difficult for workers.... We can't rest.... For some types of shirts they are setting 2,000 as quota. We have to meet this quota every day. Otherwise we get shouted at.¹¹²

H&M representatives told Human Rights Watch that they had not commissioned any study on productivity in their supplier factories. However, they said it is possible that one of their supplier factories was using students placed with them as part of H&M's Skill Building program to do research on production targets without H&M's knowledge. H&M committed to investigating this and reiterated that any supplier's use of production targets without adequate rest breaks would be a violation of its Code of Conduct.¹¹³

Many workers complained that managers who perceived them as being “slow” and “unproductive” derided and humiliated them, usually verbally. For example, workers from factory 15 reported how their manager regularly insulted and humiliated them: “Slut, bitch, you have a dog's brain. Tell me, do you have a human brain or a dog's brain? Work faster!”¹¹⁴

Workers from a few factories reported that their managers physically intimidated them by banging desks or throwing garments at workers to make them work faster.¹¹⁵ For example, Phan Sarim from factory 16 described her manager's behavior:

“You woman—you must learn to use that machine faster. Otherwise you can leave the factory. Do you understand?” And he would throw the materials

¹¹¹ Human Rights Watch group interview with nine workers, factory code withheld to protect workers, Phnom Penh, November 29, 2013.

¹¹² Human Rights Watch group interview with That Senai (pseudonym) and eight other workers, factory code withheld, Phnom Penh, November 29, 2013.

¹¹³ Human Rights Watch group discussion with Lars-Åke Bergqvist, Sustainability Department, Anna Palmqvist, global sustainability manager, and Jonah Wigerhall, sustainability country manager for Cambodia and Vietnam, Bangkok, September 26, 2014.

¹¹⁴ Human Rights Watch group interview with Chhau San (pseudonym) and eight other workers, factory 15, location withheld, November 24, 2013.

¹¹⁵ Human Rights Watch group interview with 12 workers, factory 21, Phnom Penh, April 2, 2014.

we were supposed to stitch on the machine or on us, and bang the desk and come close to our face and scream. He is very harsh.¹¹⁶

A 2012 ILO study in Cambodia reported that 54 percent of the workers who participated in the study reported harassment, including cursing, threatening, and throwing things.¹¹⁷

Forced Overtime

Overtime work—work beyond the regular eight-hour day stipulated in the Labor Law—is pervasive in the garment industry.

Laws and regulations governing overtime require that it be limited to “exceptional or urgent work”¹¹⁸ and limit it to 12 hours per week, or about 2 hours per day.¹¹⁹ Labor regulations also stipulate that overtime work should be “voluntary” and employers should not penalize workers who choose not to do overtime work.¹²⁰ Workers should be paid an overtime rate for their work after the regular eight hour work day. The overtime rates differ depending on whether the overtime work is performed on a week day, a weekly day off (typically Sunday), or on a public holiday.¹²¹

Most of the workers interviewed by Human Rights Watch reported working between three and five hours of overtime per day.

BFC’s factory survey data since 2011-2 have consistently found that a majority of the factories surveyed did not limit overtime to two hours a day and the work was not “exceptional” in nature, with the most recent 2014 BFC report revealing that only 18 percent of the 371 factories surveyed limited overtime to 2 hours a day.¹²²

¹¹⁶ Human Rights Watch interview with Phan Sarim (pseudonym), worker, factory 16, Phnom Penh, November 16, 2013.

¹¹⁷ ILO Report on Gender Equality in Cambodia’s Garment Sector, 2012, p. 4.

¹¹⁸ Labor Law, art. 139.

¹¹⁹ ILO-BFC, Labor Law Guide, 2014, p. 17.

¹²⁰ Ibid.

¹²¹ Labor Law, art. 139. “If workers are required to work overtime for exceptional and urgent jobs, the overtime hours shall be paid at a rate of fifty percent higher than normal hours. If the overtime hours are worked at night or during weekly time off, the rate of increase shall be one hundred percent.”

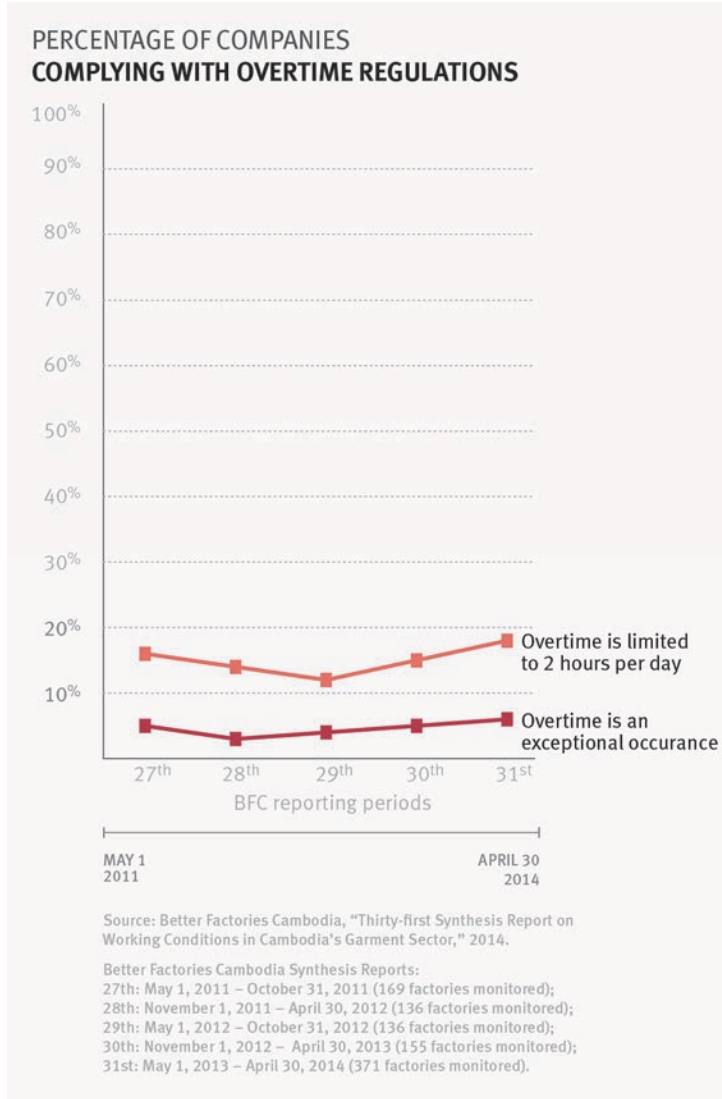
¹²² ILO-BFC, 31st Synthesis Report, p. 6.

Given the low monthly minimum wage levels—\$80 in 2013 and \$100 in 2014—many workers appreciate opportunities to earn overtime pay.¹²³

But the vast majority of workers Human Rights Watch interviewed said that overtime was seldom genuinely voluntary: they feared retaliation if they refused. Based on discussions with workers from 48 factories, Human Rights Watch found that while many workers sought overtime work to earn more money, they could not refuse without risking retaliation.

Retaliation for Refusing Overtime Work

Workers said factory managers marked workers who refused overtime work as “unproductive workers” and threatened contract non-renewal or dismissal.¹²⁴ Workers from



¹²³ Workers who spoke to Human Rights Watch said they welcomed some overtime work to supplement their incomes. See for example, WRC, *Monitoring in the Dark*, p. 11; BDLINK Cambodia and HR Inc. Cambodia, “Study on the Perceptions of Garment Factory Owners on Nutrition and the Feasibility for Pursuing Canteen Services in the Garment Sector in Cambodia,” January 2012, <http://betterwork.com/cambodia/wp-content/uploads/2013/01/Harga-Report.pdf> (accessed July 15, 2014), p. 24.

¹²⁴ Human Rights Watch interviews and group interviews with workers from factories 1, 3, 5, 7, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 40, 43, 46, 47, 48, 49, 51, 52, 53, 57, 58, 59, 60, 61, 62, 66, 68, 69, and 71, 72, Phnom Penh and other provinces, November and December 2013, and April 2014.

at least 14 factories gave examples of dismissals, wage deductions, and punitive transfers of workers from a monthly minimum wage to a more precarious piece-rate wage.¹²⁵

A worker from factory 49 recounted how managers fired two workers who lived far away from the factory and refused to do overtime work. “Workers who live there find it very hard to go home. They won’t reach home till 10 or 11 at night,” she explained. Both workers were called separately to the factory administrative office and told not return to work, she said. Other workers with similar concerns were warned: “If you don’t want to work here till 8 p.m. stay at home. You don’t have to come from tomorrow.”¹²⁶

In another case, in late November 2013, factory P allegedly fired 40 workers who refused to do overtime work lasting until 9 p.m. The workers lived very far from the factory and no trucks were available to transport them back to their villages. They protested that they wanted to leave at 6 p.m. The factory refused permission and fired all 40 workers. Eventually after about 20 days and negotiations with the union, about 20 of the workers were reinstated.¹²⁷

A worker from factory 71 described a similar case of mass dismissal of male factory workers who refused to do overtime work beyond 4 p.m. on a Sunday. She said: “The factory called the male workers and told them to do overtime till 6 on Saturday and again on Sunday. The workers who refused to do overtime until 6 [p.m.] on Sunday were all dismissed.”¹²⁸

Firing workers for requesting exemption from overtime work has a chilling ripple effect—other workers are deterred from seeking such permission. Khum Rachana explained how an incident from 2011 in her factory left all workers on short-term contracts so fearful for their jobs that they never dared to refuse overtime work since. She said,

In 2011 a worker requested permission to not do overtime work. The
“Chinese” leader terminated her. I was with her that day. We were in the

¹²⁵ Human Rights Watch interviews and group interviews with workers from factories 1, 3, 7, 9, 21, 32, 34, 40, 43, 46, 49, 51, 60, and 68, Phnom Penh and other provinces, November and December 2013, and April 2014.

¹²⁶ Human Rights Watch group interview with three workers, factory 49, Kampong Speu, December 1, 2013. The workers in the factory were on three-month FDCs.

¹²⁷ Human Rights Watch interviews with a representative from CCAWDU (details withheld), November 28, 2013 and April 9, 2014.

¹²⁸ Human Rights Watch interview with Preap Win (pseudonym), worker, factory 71, Phnom Penh, December 1, 2013.

same [sewing] group. She went and asked for permission and she lost her job. We are too scared after that.¹²⁹

Three workers from factory 32, which kept workers on three-month FDCs, said the management told them: “If you don’t want to do OT [overtime] then we will find other workers who want to. You can leave the factory.”¹³⁰

A worker from factory 9 recalled an incident from November 2013:

A worker in my team wanted to leave early. We have to do overtime work till 9 p.m. every day. She had her period and had severe cramps and so requested that she will do overtime work only till 6 p.m. They shouted at her and said they would reduce \$7 from her wages and not renew her contract. So she didn’t leave and continued to work.¹³¹

Pouch Sopheap, 31 years old, from factory 16, was on a six-month FDC and said: “We cannot refuse OT. Only once in a while if we are really sick we can say no to OT. ... Workers on UDC will ask [for exemption from overtime]—they are less scared than workers on FDC. We are very scared.”¹³²

Human Rights Watch also documented one case of a punitive transfer of a worker for seeking permission to refuse overtime work. One day in January 2014, Khay Nak wanted to leave the factory at 4 p.m. after working a regular eight-hour work day because his wife was unwell. When he sought written permission to be exempted from overtime, his manager tore up the application, he said. Defying orders, Khay Nak left the factory premises. The next day he returned to the factory to find that they had transferred him to another division where he would earn a piece-rate wage.¹³³

¹²⁹ Human Rights Watch interview with Khum Rachana (pseudonym) and nine other workers, factory 60, Phnom Penh, December 7, 2013.

¹³⁰ Human Rights Watch group interview with three workers, factory 32, Phnom Penh, November 30, 2013.

¹³¹ Human Rights Watch interview with Kong Chantha (pseudonym), factory 9, Phnom Penh, November 30, 2013. The workers were on three-month FDCs.

¹³² Human Rights Watch interview with Puoch Sopheap (pseudonym), factory 16, November 16, 2013. Human Rights Watch group interview with Lay Thida (pseudonym) and five other workers, factory 5, Kandal province, November 23, 2013. Workers from factory 5 reported similar threats to workers, forcing them to work.

¹³³ Human Rights Watch interview with Khay Nak (pseudonym), factory 61, Kandal, April 7, 2014.

Undermining Workers Ability to Take Needed Breaks

A consistent complaint by workers from different factories—direct suppliers and subcontractors—was that they were forced to work without adequate breaks for trips to the bathroom or to get a drink of water. They found the restrictions, in place to pressure workers to meet production targets, inhumane.

Some workers reported that factory managers, to maximize workers' time and meet production deadlines, placed excessive restrictions on their ability to use the restroom, take rest or water breaks, or eat their lunch. Cheng Thai from factory 11 said:

We have to sit and work till we finish the quota. If we work without a single break the whole day, we can produce 120 t-shirts an hour...They don't allow the workers to take a break....We cannot use the toilet even if we have diarrhea if we don't get a toilet pass.¹³⁴

An Sineum from factory 14 said:

We cannot go to the toilet when we want. If we go three times during the day it is considered too much. They announce it on the speaker: "Don't go to the toilet. You cannot produce a lot and meet your targets. You need to sew faster."¹³⁵

The union president from factory 13 said management made such announcements regularly.¹³⁶ Based on her discussions with garment workers in other factories who live around her, she believes such announcements are common.¹³⁷

Seng Sim, a worker on a long-term contract from factory 1 who has worked there for more than a decade, said that the newer workers were all given three- or six-month contracts. She said,

¹³⁴ Human Rights Watch interview with Cheng Thai (pseudonym), factory 11, Phnom Penh, November 21, 2013.

¹³⁵ Human Rights Watch interview with An Sineum (pseudonym), factory 14, Phnom Penh, November 15, 2013.

¹³⁶ Human Rights Watch interview with Van Sreng (pseudonym), union president, factory 13, Phnom Penh, November 14, 2013.

¹³⁷ Ibid.

Nowadays even if we take one break then the Chinese leaders [administrative staff workers] take photos of this on their phone camera and say they will show this to admin. The building manager does this all the time. So workers are so scared they don't take breaks—even if they are sick they continue to work.¹³⁸

Po Pov, in her 30s, works in the sewing division of factory 3 on a three-month contract. She said:

We don't take breaks. It doesn't matter whether you are pregnant or not—whether you are sick or not—you have to sit and work. If you take a break, the work piles up on the machine and the supervisor will come and shout. And if [a pregnant] worker is seen as working “slowly” then her contract will not be renewed. It has happened to workers I've been working with this year. Eight workers—one male and the rest women— were told their contracts will not be renewed. They don't issue warnings. They just call you and tell you your contract will not be renewed.¹³⁹

Nov Vanny repeated a similar story from factory 18:

Workers are not allowed to go to the toilet. Sometimes they don't even allow us to drink water. And I am scared so I don't take a break. If I take a break then clothes will pile up on my desk. Depending on the design, I will have 30 or 50 pieces of clothing piled on my desk within five minutes. And then the manager will see it and say I am not a fast worker. They will point to the others who have not taken breaks and say: “If they have two hands and two legs and can sit here and work, why can't you?”¹⁴⁰

Kith Nary, 36, said that in her sewing group in factory 10 they had to produce 800 skirts a day. They were forced to continue working till 8 or 9 p.m. until they finished the day's

¹³⁸ Human Rights Watch interview with Seng Sim (pseudonym), factory 1, Phnom Penh, November 15, 2013.

¹³⁹ Human Rights Watch interview with Po Pov (pseudonym), worker, factory 3, Phnom Penh, November 22, 2013.

¹⁴⁰ Human Rights Watch group interview with Nov Vanny (pseudonym) and Keu Sophorn (pseudonym), factory 18, Phnom Penh, December 5, 2013.

assigned quota. “Sometimes they increased our quota to 1500 and cut our [one-hour] lunch break short and give us only 15 minutes to eat,” she said.¹⁴¹

Overtime work and a lack of adequate nutrition are cited by NGOs as factors contributing to workers fainting in garment factories.¹⁴² Human Rights Watch did not seek to investigate the cause of incidents of mass fainting in the course of this research, though some workers had witnessed it.¹⁴³

Sick Leave and the “Killer Bonus”

The extent to which factories follow rules governing sick leave and payment of monthly attendance bonuses has a significant impact on workers’ health and rights. Contrary to a ruling by the Arbitration Council, some workers we spoke with had their entire monthly attendance bonus, or a large portion of it, deducted if they took even a single day of medically approved sick leave.

Cambodian Labor Law entitles workers to authorized sick leave for a maximum of six months. Sick leave should be certified by a qualified doctor.¹⁴⁴ While the law does not make paid sick leave mandatory, the Labor Ministry encourages factories to provide 100 percent of wages during the first month of sick leave, and 60 percent of wages during the second and third months.¹⁴⁵

Workers are also entitled to a \$10 attendance bonus if they attend work regularly for a full month. The Arbitration Council has ruled that where workers take sick leave authorized by a recognized medical practitioner, their attendance bonus must be paid in proportion to the days worked. So, for example, if a worker misses one day’s work and produces a

¹⁴¹ Human Rights Watch interview with Kith Nary (pseudonym), factory 10, Phnom Penh, November 21, 2013.

¹⁴² See Labour Behind the Label and Community Legal Education Center, “Shop ‘til They Drop: Fainting and Malnutrition in Garment Workers in Cambodia,” 2013, p. 7.

¹⁴³ Human Rights Watch received anecdotal testimony of worker faintings because of poor nutrition and exhaustion. Human Rights Watch group interview with Cheoun Thea (pseudonym) from factory 19; Kum Chanthy (pseudonym) from factory 20, Phnom Penh, December 5, 2013; workers from factory 57, location withheld, December 3, 2014.

Human Rights Watch group interview with Heng Sonita and Sok Chanthy (pseudonyms), factory 27, Phnom Penh, November 24, 2013. Heng Sonita and Sok Chanthy described that they often did overtime work until 9 p.m. and workers were only allowed a break if they were so exhausted that they felt faint.

¹⁴⁴ ILO-BFC, Labor Law Guide, 2014, p. 23.

¹⁴⁵ Annex to Notice 14/02 as cited in ILO-BFC, Labor Law Guide, 2014, *ibid*.

medical certificate from a qualified practitioner, the factory management can deduct one day's worth of the attendance bonus, or around \$0.38 (1/26th of \$10).¹⁴⁶

Factory managers, however, often deducted the entire or a disproportionate amount from the \$10 attendance bonus instead of an amount proportional to the approved days a worker actually took off.

In practice, many workers—especially those on FDCs— said they felt unable to request sick leave for fear that they would be seen as “unproductive” and risk eventually having their contract not renewed.

Some factories allowed paid sick leave if workers produced medical certificates.¹⁴⁷ In other cases, factories did not allow their employees even one day of paid sick leave. In these instances, workers reported having a flat rate deducted from their wage—for example \$3 for every day absent from work.¹⁴⁸ If workers in such factories asked for sick leave for four or five days, their employers told them to simply quit and rejoin when they felt better.¹⁴⁹

Some factories refused to accept medical certificates from private doctors and insisted that workers travel to government hospitals. But these could be far away and added transportation costs for workers. For example, workers from factory 43 said,

When we request sick leave the factory demands that the worker submit a medical certificate from big public hospitals—Calmette or Russian hospital [in Phnom Penh]. But workers cannot afford to go so far so they cannot take sick leave.¹⁵⁰

On weekdays workers were generally unable to take time off to visit the doctor; and on Sundays—usually their only day off—workers said government hospitals were closed,

¹⁴⁶ ILO-BFC Labor Law Guide, p. 12.

¹⁴⁷ Human Rights Watch group interview with six workers, factory 33, Phnom Penh, November 30, 2013.

¹⁴⁸ Human Rights Watch group interviews with three workers, factory 36; three workers, factory 29; two workers, factory 28; five workers, factory 38, two workers, factory 37, Phnom Penh, November 2013.

¹⁴⁹ Human Rights Watch group interviews with three workers, factory 36; five workers, factory 38, Phnom Penh, November 28, 2013.

¹⁵⁰ Human Rights Watch group interview with 11 workers, factory 43, Phnom Penh, April 1, 2014.

leaving them with no option but to visit a more expensive private doctor.¹⁵¹ Leouk Thary, in her 20s, said she was fired in November 2013 for refusing overtime work in her factory and seeking sick leave. She was hired on a four-month FDC. On the day she refused overtime work, Leouk Thary had a persistent nosebleed. Having already worked a full day, she wanted to leave without doing overtime. The factory manager refused permission and she left anyway. She produced a medical certificate and requested sick leave because she needed to have nose surgery. “I went to a private doctor because government hospitals do not work on Sundays. I only have time on Sundays to go to the doctor,” Leouk Thary explained. But despite having produced a medical certificate, they denied her sick leave and dismissed her.¹⁵² Han Che, who was fired from factory 29 said,

I was having stomach problem—a lot of pain in my stomach. I made an application for sick leave and they refused to grant it. I took four days off and came back to the factory. I had a doctor’s certificate. It was from a private hospital. But they refused to believe me and said they would not take me back to work. They said it was not from a public hospital. The public hospital is far away from my house.¹⁵³

Tola Meoun, a long-time labor rights activist from the Community Legal Education Center, described the attendance bonus as a “killer bonus” because of how workers often carried on working through illness and other problems to ensure that their attendance bonus stayed intact, as many employers manipulated deductions from the bonus.¹⁵⁴ This financial penalty discouraged other workers from seeking sick leave.

Chhau San from factory 15 said:

If we have taken three days [sick] leave, then they deduct \$20 from what we have earned. They say to us: “If you want to earn that money back, work

¹⁵¹ Human Rights Watch group interviews with workers from factory 21, 31, 43, Phnom Penh, Kandal, and Kampong Speu provinces, November and December 2013, and April 2014.

¹⁵² Human Rights Watch interview with Leouk Thary (pseudonym), factory 64, Phnom Penh, April 9, 2014.

¹⁵³ Human Rights Watch group interview with Han Che (pseudonym), former worker from factory 38 and two other workers from other factories, Phnom Penh, November 28, 2013.

¹⁵⁴ Human Rights Watch interview with Tola Meoun, head of the Labor Rights Program, Community Legal Education Center, Phnom Penh, November 5, 2013.

more.” We only bring medical certificates because we feel they will scream at us less.¹⁵⁵

Treatment of Pregnant Workers

Many workers reported pregnancy-based discrimination at the time of hiring, contract renewal, and promotion. In addition, the pressure to meet production quotas limited pregnant workers’ ability to take rest breaks or sick leave, and led to disproportionate cuts of attendance bonuses. Workers from 30 factories either experienced or witnessed one or several of these problems.

Cambodian authorities have taken steps to improve women’s access to reproductive health care generally.¹⁵⁶ However, more needs to be done to monitor actual practice and eliminate abuses in order to end workplace discrimination and facilitate pregnant workers’ access to health care.

Labor Law and Pregnancy

The Cambodian Constitution forbids employers from firing women on the basis of pregnancy,¹⁵⁷ but is silent on pregnancy-based discrimination in hiring and promoting. The Labor Law forbids discrimination on the basis of sex at the time of “hiring, defining and assigning work, vocational training and advancement.”¹⁵⁸ It also forbids factory managers from firing a pregnant worker just before she is about to take maternity leave.¹⁵⁹

¹⁵⁵ Human Rights Watch group interview with Chhau San (pseudonym) and eight other workers, factory 15, Kandal province, November 24, 2013.

¹⁵⁶ Ministry of Health, Royal Government of Cambodia, Fast Track Initiative Road Map for Reducing Maternal and Newborn Mortality (2010-2015), http://www.unfpa.org/sowmy/resources/docs/library/R123_MOHCambodia_2010_Fast_TrackInitiativeRoadMapforReducingMaternalandNewbornMortality.pdf (accessed June 28, 2014); the National Strategy for Reproductive and Sexual Health 2012-2016 are two such policy documents.

¹⁵⁷ The Constitution of the Kingdom of Cambodia (“Constitution of Cambodia”), adopted September 21, 1993, available at http://cambodia.ohchr.org/klc_pages/KLC_files/section_001/section_01_01_ENG.pdf (accessed October 10, 2014), art. 46: “A woman shall not lose her job because of pregnancy. Woman shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits.”

¹⁵⁸ Labor Law, art. 12.

¹⁵⁹ Labor Law, art. 182. A pregnant worker cannot be fired “on a date when the end of the notice period would fall during the maternity leave.”

In addition to protection against discrimination, the Labor Law entitles all women to three months of maternity leave.¹⁶⁰ Women with a year’s uninterrupted service are also entitled to maternity pay—at the rate of half their average wages over the past 12 months.¹⁶¹

Prohibition of sex discrimination includes prohibition of pregnancy-based discrimination.¹⁶² Cambodian Labor Ministry officials told Human Rights Watch in April 2014 that they penalize discrimination against pregnant workers.¹⁶³ This is difficult to verify because the Labor Ministry does not disaggregate data about the complaints it receives by type of complaint.¹⁶⁴

Cambodian labor law does not explicitly provide workers a right to reasonable accommodation of their needs during pregnancy.¹⁶⁵ However, unions have negotiated such accommodation through collective bargaining agreements.¹⁶⁶ The law does provide, however, that mothers returning from maternity leave “are only expected to perform light work” for the first two months.¹⁶⁷

Discriminatory Tactics

Many workers told Human Rights Watch that garment factories do not hire visibly pregnant women.¹⁶⁸ Thach Sophal advised a pregnant friend to apply for a job during a recruitment drive at the factory where she worked. But factory managers turned the woman’s visibly four or five-month pregnant friend away. “When my friend went to the office, the official

¹⁶⁰ Labor Law, art. 182: “The employer is prohibited from laying off women in labor during their maternity leave or at a date when the end of the notice period would fall during the maternity leave.”

¹⁶¹ Labor Law, art. 183.

¹⁶² Convention on the Elimination of All Forms of Discrimination against Women, art. 11(2).

¹⁶³ Human Rights Watch group interview with six labor ministry officials, Phnom Penh, March 27, 2014.

¹⁶⁴ *Ibid.*

¹⁶⁵ International law defines reasonable accommodation as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” See International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008, art. 2.

¹⁶⁶ Workers may negotiate reasonable accommodation using collective bargaining agreements but this depends on whether the factory has a union and the union actually represents worker interests.

¹⁶⁷ Labor Law, art. 182.

¹⁶⁸ Only two women Human Rights Watch spoke with said that visibly pregnant women were recruited to work. Both these were workers who were engaged on a daily wage basis by labor-only contractors and rotated among factories to do night time work. Because of the casual nature of the work, they felt the contractors were more lenient with visibly pregnant workers as well as with “old workers”—workers they described as being above age 40.

there said they did not need any workers,” she recalled. But the very next day they were recruiting workers. “I don’t know the number [of new workers recruited]—but there were many workers. There were also advertisements asking for new workers,” Sophal said.¹⁶⁹

A 2012 ILO study found that 72 percent of participants believed that factories discriminated at the time of hiring and 48 percent said they had experienced discrimination based on sex, pregnancy, marital status, or age.¹⁷⁰

Many workers we spoke with, especially those whose factories issued UDCs after two months’ probation, believed women who became visibly pregnant within the probation period were fired for that reason.¹⁷¹ For example, Nov Vanny recounted how a probation worker in her group hid her pregnancy in early 2013 for fear of being fired. She eventually got a special worker identity card issued to the woman so she could sit more often.¹⁷² Within a week of changing her worker ID, the pregnant friend was dismissed. Vanny told Human Rights Watch:

She was called separately to the admin office and fired but they gave her that month’s wages. She had not yet got her [UDC] contract—she was on probation... They shouldn’t know you are pregnant during probation—if they know—they will fire you.¹⁷³

In many cases, workers told us, pregnant women’s short-term contracts were not renewed when they became visibly pregnant, but proving pregnancy-based discrimination was

¹⁶⁹ Human Rights Watch group interview with Thach Sophal (pseudonym) and nine other workers, factory 60, Phnom Penh, December 7, 2013.

¹⁷⁰ ILO Report on Gender Equality in Cambodia’s Garment Sector, 2012, p. 4.

¹⁷¹ See, for example, Human Rights Watch group interviews with workers from factories 18, 29, and 38, Phnom Penh, November and December 2013.

¹⁷² Workers from some factories said that pregnant workers received a worker identity card of a different color that allowed factory managers and guards to identify them and allow them to leave the factory premises five or seven minutes earlier than others to miss the rush.

¹⁷³ Human Rights Watch interview with Nov Vanny (pseudonym), worker, factory 18, Phnom Penh, December 5, 2013.

almost impossible.¹⁷⁴ The Arbitration Council has cast the onus of proving discrimination on pregnant women instead of on employers.¹⁷⁵

Desperate to avoid losing their jobs, some women tried to hide their pregnancy for as long as they could. “I have seen pregnant women who are five-months pregnant wear their skirts or clothes really tight and try to squeeze their belly in so they can hide the pregnancy,” said Chhorn Sokha, a former garment worker and decades-long labor rights activist from the Community Legal Education Center.¹⁷⁶

Workers described how pregnant women’s contracts were suddenly terminated. In late 2011, two weeks before she was about to have her first baby, managers called Po Pov and told her to leave the factory. She had been working on a three-month FDC. She said her decision to abort her second pregnancy in 2012 was motivated in part by the fear of losing her job again.¹⁷⁷

Seng Phalla from factory 1 said her factory regularly refused to renew the FDCs of visibly pregnant workers. Her friend was on a three-month FDC that was repeatedly renewed. In mid-2013, “[w]hen she was seven-months pregnant, she went to the administrative staff and asked them about maternity leave and pay. They said her contract was not going to be renewed and she won’t get anything,” Seng Phalla said.¹⁷⁸

Sok Chanthy from factory 27 recounted how in 2013 a colleague from her sewing group was told her six-month FDC would not be renewed when she was seven-months pregnant.¹⁷⁹

¹⁷⁴ In all recent cases of contract non-renewals of pregnant workers, Human Rights Watch was not able to make contact with the pregnant workers themselves because they had left Phnom Penh and gone back to their home villages to give birth. In such cases, we relied instead on the accounts of workers who had pregnant friends or workers in their groups and saw how they were treated.

¹⁷⁵ Arbitration Council awards 115/08 and 92/7 as cited in ILO, “Practical challenges for maternity protection in Cambodia,” 2012, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_203802.pdf (accessed January 20, 2015), p. 20.

¹⁷⁶ Human Rights Watch interview with Chhorn Sokha, program officer, Community Legal Education Centre, Phnom Penh, November 14, 2013.

¹⁷⁷ Human Rights Watch interview with Po Pov (pseudonym), worker, factory 3, Phnom Penh, November 22, 2013. When Po Pov took a day’s sick leave to undergo an abortion, the factory deducted her entire attendance bonus.

¹⁷⁸ Human Rights Watch interview with Seng Phalla (pseudonym), worker, factory 1, Phnom Penh, November 15, 2013.

¹⁷⁹ Human Rights Watch group interview with Sok Chanthy and Heng Sonita (pseudonyms), factory 27, Phnom Penh, November 24, 2013.

In November 2013, Chhon Chantha recalled that her factory managers had refused to renew the contract of a visibly pregnant friend shortly before we met with her. “They told her to leave the factory and paid her \$130. I don’t know if that was meant to be maternity benefit but they gave her that money and told her not to return,” she said.¹⁸⁰

Ly Sim, a garment worker in her late 20s, was promoted because she could make 350 pairs of underwear in an hour. “I got \$20 more [after the promotion],” she said. About four months after her promotion, Ly Sim became pregnant and took one day off every month for an antenatal check. Her supervisors told her she could not be a group leader anymore. They reduced her salary and demoted her. Eventually, when she was six-months pregnant, the managers dismissed her. Ly Sim, together with other workers in her factory, went on strike challenging the dismissal. But the management refused to reinstate Ly Sim and dismissed the other workers who were on strike. Ly Sim was forced to leave the factory in late 2012.¹⁸¹

Lack of Reasonable Accommodation of the Needs of Pregnant Workers

The pressure to meet targets and work overtime without taking breaks has a particularly strong impact on pregnant workers and workers who are sick. Unable to withstand the pressure and working conditions, pregnant workers often resigned in the third trimester of their pregnancy.¹⁸²

Pregnant workers have the right to reasonable accommodation, that is, workplace modifications that allow them to perform their jobs without loss of pay, such as light duty and more frequent bathroom breaks.¹⁸³

¹⁸⁰ Human Rights Watch group interview with Chhon Chantha (pseudonym) and another worker, factory 26, Phnom Penh, November 24, 2013.

¹⁸¹ Human Rights Watch interview with Ly Sim (pseudonym), formerly in factory 71 now working in factory 7, Phnom Penh, November 14, 2013.

¹⁸² Human Rights Watch interviews and group interviews with workers from factory 3, 5, 16, 18, 49, Phnom Penh and Kampong Speu province, November 2013.

¹⁸³ An ILO Committee of Experts has found that “[t]he concept of reasonable accommodation is considered a fundamental principle of equality of access to employment, for it takes account of limitations and special needs which may lend themselves to unlawful distinctions . . . [T]he unjustified refusal to undertake such adaptations may in itself constitute an act of discrimination.” See ILO, “Equality in Employment and Occupation, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference,” 75th. Session, 1988, Report III (Part 4B), (Geneva: International Labor Office, 1996), p. 146.

In December 2013, Preap Vanna, a worker who was five-months pregnant told Human Rights Watch how her supervisor scolded and labeled her unproductive because she took restroom breaks that were seen as “excessive.” She said:

I am able to produce only four or five lots [one lot is a dozen] a day and I go to the toilet often—sometimes three or four times a day [i.e. during eight hours]. The managers call me to the office and shout at me: “If you are pregnant and you are not able to work you should quit.” They call me almost every day. Even today they called me.¹⁸⁴

Chan Sopheap described how she quit working in a factory when she was eight-months pregnant and rejoined in November 2013 after childbirth, foregoing her maternity pay. She said,

My health was really bad and I couldn’t sit for long hours. And I couldn’t ask for breaks or ask to leave early without doing overtime work. I was scared. I had seen other workers being screamed at and their contracts were not renewed. It happened to two people I know—they were in the sewing division but in different groups.¹⁸⁵

One worker described how “[s]ome pregnant women’s bodies become so weak from the OT that they have to go to the factory clinic and take a break.” She saw how the managers blamed these women for not being “good workers.” “If they ask not to do OT the manager will not allow that. They gave notice of two or three days and fired pregnant workers. This happened last year—they fired three pregnant women like this,” she said.¹⁸⁶

Pregnant workers who experienced morning sickness or other discomfort or who needed regular antenatal checks were especially adversely impacted by factories’ requirements for government hospital certificates for sick leave and deductions from the attendance bonus that are not proportional to the number of doctor-certified sick days workers take off.

¹⁸⁴ Human Rights Watch interview with Preap Vanna (pseudonym), factory 57, location withheld, December 3, 2013.

¹⁸⁵ Human Rights Watch interview with Chan Sopheap (pseudonym), factory 3, Phnom Penh, November 13, 2013.

¹⁸⁶ Human Rights Watch interview with Pung Mom (pseudonym), factory 53, November 18, 2013.

Given that the garment industry is a significant and growing employer of reproductive-age women, workplace regulations should accommodate their health needs by encouraging and enforcing good practices. In some cases, workers said their factory unions had negotiated special time off for pregnant workers for health care. For example, in one case pregnant workers could use their annual leave to take off a half-shift every month to visit a doctor without deductions from their attendance bonus.¹⁸⁷

As explained above, being an FDC worker and facing the constant fear of non-renewal of one's contract is itself a barrier to seeking leave. Women we spoke with said they were too scared to ask for any time off. But where they did, their entire attendance bonus was deducted. Lol Sreyneang, a union leader, described how an eight-month pregnant worker had taken two hours off in the morning to see a doctor and lost her entire attendance bonus.¹⁸⁸ Similarly, Lay Thida recollected how a pregnant colleague sitting five desks away from her complained of severe abdominal pain from prolonged sitting. Thida said,

[She] asked for [sick] leave permission and they [supervisors] refused it...This happened at around 2 p.m. She was crying because she was in that much pain. But she continued to work because she was scared they would not renew her contract if she left even after they refused permission.¹⁸⁹

Nheoum Soya, 33, worked on an FDC in her factory. As a mother of a 10-year-old child with a husband who had a disability, she worked hard to make ends meet, never refusing overtime work. She also described how she never took breaks from work or to drink water even during her pregnancy. "I would go to the toilet only if I felt like I was bursting," she said, to make sure that she did not do anything that jeopardized her job.¹⁹⁰

Eventually when her contract expired, the administrative staff at the factory told her they were not renewing it. Distraught that she had lost her job, she attempted an abortion at home, which was unsuccessful and she had to be taken to hospital to terminate the

¹⁸⁷ Human Rights Watch group interview with three workers, factory 32, Phnom Penh, November 29, 2013.

¹⁸⁸ Human Rights Watch group interview with union leader Lol Sreyneang (pseudonym) and with another union leader, factory 31, Phnom Penh, November 24, 2013.

¹⁸⁹ Human Rights Watch group interview with Lay Thida (named changed) and five other workers, factory 5, Kandal province, November 2013.

¹⁹⁰ Human Rights Watch interview with Nheoum Soya (pseudonym), factory 12, Phnom Penh, November 19, 2013.

pregnancy. Workers in the factory went on a strike and negotiated that she be taken back. The factory took her back in December 2012.¹⁹¹

Ku Kam Rein, 32, sells fruit in front of a factory. She used to work in the factory but she quit when she was about five-months pregnant in October 2013. She said,

I used to be exhausted but we just had to work very hard. I couldn't go for any health checks. I didn't have any time to go. We had targets to meet. And I was too scared to ask for permission. I asked the group leader and he asked another leader—and that leader refused. They told me I couldn't go because I hadn't completed the quota.¹⁹²

Maternity Benefits

Women face a number of barriers to claiming their maternity leave and pay entitlements. These include factories' use of FDCs and firing visibly pregnant women to avoid giving eligible workers maternity pay,¹⁹³ orchestrating a few days' gap between contract renewals, and casual hiring practices that prevent workers from accumulating the one year's uninterrupted service that makes them eligible for maternity pay.¹⁹⁴ Additionally whether or not a worker demanded maternity pay depended on her awareness of legal entitlements.¹⁹⁵

Clampdown on Independent Unions

Independent factory unions often play a critical role in Labor Law enforcement. They can negotiate on behalf of workers and sign collective bargaining agreements with factory management. Some factory managers in Cambodia have used multiple strategies to thwart unionizing or diminish the effectiveness of independent unions. The Cambodian government has also created obstacles to union formation, especially for independent unions.

¹⁹¹ Ibid.

¹⁹² Human Rights Watch interview with Ku Kam Rein (pseudonym), factory 51, Phnom Penh, November 16, 2013.

¹⁹³ BFC, 31st Synthesis Report, 2014, p. 7. As mentioned above, BFC reported that about a third of all factories it has surveyed since 2011 have been using FDCs to deny maternity and other benefits.

¹⁹⁴ Human Rights Watch group interviews with workers from five subcontractor factories in Kandal province, November 2013.

¹⁹⁵ Human Rights Watch group interview with five workers, factory 1, Phnom Penh, November 11, 2013; Human Rights Watch interview with three workers, factory 49, Kampong Speu, December 1, 2013.

Cambodia's Constitution guarantees the rights to strike and to non-violent demonstration.¹⁹⁶ The Labor Law guarantees workers the right to form unions of their choice, protects workers against interference from employers—for example, employers cannot offer workers incentives to join or leave unions.¹⁹⁷ The law also has protections against discrimination on the basis of union membership.

Curtailing Union Activity

Misuse of Fixed-Duration Contracts

People who are on FDCs do not want to join the union because we are concerned about our contracts. We have families to support. If the factory knows that we have joined the union then they will not renew the contract.

—Tola Sovann (pseudonym), factory 4, November 2013

The repeated use of fixed-duration contracts (FDCs) and other forms of long-term casual hiring practices within factories are formidable obstacles to unionizing.

Representatives from independent union federations interviewed by Human Rights Watch—including the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU), National Independent Federation of Textile Unions in Cambodia (NIFTUC), Collective Union of Movement of Workers (CUMW), and Cambodian Alliance of Trade Unions (CATU)—said that the increased use of FDCs has impeded their ability to organize within factories and meet freely with workers.¹⁹⁸

Yang Sophorn, president of CATU, described the extent of the problem:

Almost every factory [where we have a union] has problems because a majority of the workers are on FDCs.... They are reluctant to join unions or

¹⁹⁶ Constitution of Cambodia, art. 37.

¹⁹⁷ Labor Law, arts. 266, 271 and 280.

¹⁹⁸ Human Rights Watch interviews with Yang Sophorn, president, Cambodian Alliance of Trade Unions (CATU), Phnom Penh, November 6, 2013; group interview with Morm Nhim and Chheng Lang, president and vice president, National Independent Federation of Textile Unions in Cambodia (NIFTUC), Phnom Penh, November 8, 2013; Ath Thorn, president, Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU), Phnom Penh, November 5, 2013.

even meet union activists. Sometimes they are threatened and told their contracts will not be renewed.¹⁹⁹

Workers from factory 66 said the management used non-renewal of FDCs to thwart their efforts to set up an independent union in the factory:

Whenever someone has tried to form another union, the factory [management] has fired the person and not renewed their contract. Last Saturday one woman from the sewing division was fired. She had just started work. She was very skilled and was actually a trainer. They fired her because she was giving workers [the] CCAWDU number.²⁰⁰

Reth Piseth, the union president of factory 2, said that FDC workers were particularly likely to face management harassment when the union was planning collective action. He said, “This usually happens when the union leaders are not in the factory. They [the managers] verbally harass and warn workers that their contracts will not be renewed if they participate in union activities.”²⁰¹

As discussed above, many workers said their factories had started issuing shorter-term FDCs to male workers to discourage them from joining and participating in unions. Tola Sovann, a male worker on a two-month FDC from factory 4, said that a worker from the stock division of his factory was fired for joining the union. He said, “We were told that we cannot join the union—they told me this when I signed the contract.... And [they] also reminded me a few times when the contract was renewed.”²⁰²

Firing and Other Union-Busting Strategies

Some workers said that factory managers took retributive action against workers who helped form unions and became office-bearers. Officials from CATU, CCAWDU, NIFTUC, and

¹⁹⁹ Human Rights Watch interview with Yang Sophorn, president, Cambodian Alliance of Trade Unions, Phnom Penh, November 6, 2013.

²⁰⁰ Human Rights Watch group interview with 10 workers (who chose to remain anonymous), factory 66, Phnom Penh, April 1, 2014.

²⁰¹ Human Rights Watch interview with Reth Piseth (pseudonym), union leader, factory 2, Phnom Penh, November 12, 2013.

²⁰² Human Rights Watch group interview with Tola Sovann (pseudonym) and 11 other male workers, factory 4, location withheld, November 20, 2013.

CUMW told Human Rights Watch that in these cases managers identified the workers using information that workers are required to provide during the union registration process.²⁰³

Workers must notify factory management about an upcoming union election and then provide information about the results, including the names of office-bearers, before applying for a license to the Labor Ministry. Ironically, according to Prakas (ministerial declaration) 305/2001, workers are required to provide the names of union office-bearers to protect them against being unfairly dismissed.²⁰⁴ Irrespective of whether workers are hired on FDCs or UDCs, the law should protect them against retaliatory dismissal from the date the union registration application is filed to 30 days after the union license is received.²⁰⁵

As detailed below, however, we found that once the factory managers were notified, they intimidated or lured workers with bribes or promotions to resign from the union, or fired elected union office-bearers with impunity. Often by the time they filed a union application for registration, the union leaders had been dismissed or otherwise harassed. Legal protection has done little to prevent union-busting in practice. At best workers were able to challenge dismissals and attempt to have workers reinstated by raising collective disputes before the Arbitration Council. In the interim, employers have stalled union formation for months or longer.

Human Rights Watch raised concerns about union-busting in discussions with Ken Loo, the secretary general of GMAC. He dismissed such concerns, calling union organizers “unproductive workers” or saying that “workers who commit an offense call a bunch of friends and form a union,” to seek legal protection.²⁰⁶ Government officials reacted similarly, saying some workers were coming together to form unions just before their contracts ended to deliberately seek protection using laws and regulations governing unions.²⁰⁷

²⁰³ Human Rights Watch interviews with Yang Sophorn, President, CATU, Phnom Penh, November 6, 2013; Morm Nhim and Ken Chhenglang, president and vice president, NIFTUC, Phnom Penh, November 8, 2013; Ath Thorn, president, CCAWDU, Phnom Penh, November 5, 2013; Pav Sina and Preang Muny Savann, president and public relations officer, CUMW, Phnom Penh, December 2, 2013.

²⁰⁴ Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation, Royal Government of Cambodia, Prakas 305, November 22, 2001, on file with Human Rights Watch, art. 4.

²⁰⁵ Ibid. ILO-BFC, Labor Law Guide, 2014, p. 48.

²⁰⁶ Human Rights Watch interview with Ken Loo, Secretary General, GMAC, Phnom Penh, March 25, 2014.

²⁰⁷ Human Rights Watch group interview with six labor ministry officials, Phnom Penh, March 27, 2014.

Contrary to GMAC and government claims, Human Rights Watch documented cases that indicate factory efforts to thwart independent federations from unionizing garment workers. The timing of dismissals closely followed the notification procedures. The workers who alleged that they had been summarily dismissed told Human Rights Watch that they had not received prior warnings or complaints about their performance.

In factory 23, two workers on three-month FDCs had completed their probation periods and had received no complaints about their performance. They helped form a union and were elected office-bearers in late 2013. Within days of notifying the factory, Devoum Chivon, the union president-elect was called to meet the owners. They confronted him about the union and asked him why he formed it. In a second meeting, another man was present. Deoum Chivon said,

He introduced himself as an officer from the Ministry of Interior. He asked me how much money I wanted to leave the factory. I didn't accept the money. The next day, the factory manager called me, the vice president [of the union], and the secretary [of the union] and told us our performance was not good and we were being dismissed. They instructed the security guards not to let us in from the next day.²⁰⁸

In a similar case in May 2013, workers notified factory 24 managers that they had elected two union representatives, and the two were soon dismissed. Both workers had been employed in the factory for more than six months and had their FDCs renewed before. Workers said there were no complaints about their performance. But after the factory was notified about them being elected representatives of the union, managers told them they were “unproductive” and dismissed them. With the help of lawyers, the workers were able to file a complaint before the Arbitration Council, write to the brands, and eventually get reinstated.²⁰⁹

In factory P, workers formed a union affiliated to CCAWDU and notified factory management in late 2013. Immediately upon notification the management called the

²⁰⁸ Human Rights Watch group interview with Deoum Chivon (pseudonym) and another worker, factory 23, Phnom Penh, date withheld.

²⁰⁹ Human Rights Watch group interview with two union leaders, factory 24, Phnom Penh, date withheld.

elected representatives and presented them with the option of giving up their union positions for promotions and a hike in wages. The secretary resigned from the union, but the president and vice president refused to accept the offer. They were dismissed. CCAWDU supported the two workers in raising a dispute and the Arbitration Council ruled in December 2013 that the union representatives should be reinstated. But as of mid-January 2015, the factory had not complied with the arbitral award.²¹⁰

Soon after workers notified the management of factory 25 about the names of newly elected union leaders, the management allegedly threatened the union president and vice president. After months of work setting up the union, both suddenly quit working in the factory in early 2013. Workers had to organize another round of elections to fill the vacant posts. However, in the meantime the Labor Ministry had instituted a de facto suspension of union registration, as described below.²¹¹

Efforts to establish an independent union in factory Q have been ongoing for two years. After a second round of union elections was held in early 2013, management called the newly elected leaders for a meeting with representatives of a pro-management union. NIFTUC officials told Human Rights Watch that they learned that the factory management and pro-management union representatives had pressured workers to resign from the new union if they wanted to continue working in the factory.²¹²

CUMW helped form a union in Factory D in September 2013. CUMW said that in October 2013, factory managers pressured the union leaders to join another union in the factory that was pro-management. They threatened to physically harm six workers, including office-bearers and other union organizers, who eventually resigned from the factory fearing for their lives.²¹³

As discussed above, union federations can approach the Arbitration Council and seek the reinstatement of workers dismissed for forming unions. Between 2011 and 2013, at least 84 cases related to anti-union discrimination were filed with the Arbitration Council.²¹⁴ A

²¹⁰ Human Rights Watch interview with a representative from CCAWDU (details withheld), Phnom Penh, April 9, 2014.

²¹¹ Human Rights Watch interview with union secretary (name withheld), factory 25, Phnom Penh, date withheld.

²¹² Human Rights Watch interview with Minea, secretary, NIFTUC, Phnom Penh, April 2, 2014.

²¹³ Human Rights Watch email correspondence with Pav Sina, president, CUMW, Phnom Penh, January 24, 2014.

²¹⁴ Human Rights Watch email correspondence with Arbitration Council staff, Phnom Penh, May 26, 2014.

union's successful formation can depend on factory compliance with arbitral awards.²¹⁵ Based on data collected between August and October 2012, the Worker Rights Consortium found that at least 13 factories had not complied with arbitral awards pertaining to union leaders' dismissals.²¹⁶

Compliance with an arbitral award can be superficial. In factory 24, at least two workers were dismissed soon after they notified the factory about their election as office-bearers. The Arbitration Council ordered the workers be reinstated. The factory complied with the arbitral award but posted the workers to a different division far away from the rest of the workers, where they could interact freely and were closely watched.²¹⁷ One of them said,

Since reinstatement I feel like I have lost all my freedom. I have been assigned to do heavy work. Doing OT is important for us because we earn more money. Only the four of us are not allowed to do OT. All others in my division are given OT. Earlier I was earning about \$170 a month. Now I earn at most \$130.²¹⁸

Workers recounted other strategies that factory managers used to discourage unionization or participation in independent unions' activities. For example, two workers from factory 26 reported that managers allowed only workers unaffiliated with independent unions to earn extra money through overtime work.²¹⁹ In factory 57, managers allegedly told the

²¹⁵ Human Rights Watch interview with a representative from CCAWDU (details withheld), December 5, 2014 (citing an example of a factory that appeared to comply with an arbitral award but had punitive transfers); Human Rights email correspondence with Pav Sina, president, CUMW, Phnom Penh, January 24, 2014. CUMW shared cases from Quicksew and Cambo Kotop where, despite arbitral awards in favor of reinstating union leaders who were dismissed, the factories were yet to comply at that time.

²¹⁶ See Worker Rights Consortium, "Update on Ongoing Abuse of Temporary Employment Contracts in the Cambodian Garment Industry," 2014, Appendix E, pp. 34-45. The report lists the following cases where awards related to anti-union discrimination were not implemented by factories. M&V International vs. C.CAWDU, Arbitral Award 11/05; Gold Kamvimex Garment Factory Ltd. vs. C.CAWDU, Arbitral Award 11/013; JRB Action Textile and Clothing Ltd. vs. C.CAWDU, 11/017; South Bay Enterprise Co. Ltd. vs. KWPU, 11/030; Lim Line International (Cambodia) Garment Co. Ltd. vs. C.CAWDU, 11/034; Gold Gear Garment Ltd. vs. KYFTU, 11/035; United Apparel Cambodia Inc. vs. C.CAWDU, 11/058; Ming Jian (Cambodia) Co. Ltd. vs. C.CAWDU, Kennetex Int'l (Cambodia) Co. vs. C.CAWDU, 11/087; Zongtex Garment (Branch) vs. KYFTU, 11/092; Ying Dong Shoes Co. Ltd. vs. CUF, 11/155; Goldfame Enterprise Knitters vs. C.CAWDU, 11/156; Huy Chuen (Branch 1) vs. FUKDW, 11/160

²¹⁷ Human Rights Watch group interview with two union leaders, factory 24, Phnom Penh, date withheld.

²¹⁸ Ibid.

²¹⁹ Human Rights Watch group interview with two workers, factory 26, Phnom Penh, date withheld.

group leaders of the sewing divisions that they could not be part of the factory's union that was affiliated with an independent federation.²²⁰

The Government's Role

Government authorities have made it more difficult for workers to freely create and operate independent unions. They have also revived efforts to pass a new law governing trade unions that would severely curb workers' freedom to form unions and federations.

De Facto Suspension of Union Registration

Following the authorities' violent suppression of widespread worker protests for higher minimum wages in December 2013 and early January 2014, independent union federations raised concerns about what they characterized as a de facto government suspension of union registration.

Government officials denied any such suspension in their discussions with Human Rights Watch in March and April 2014. One official said: "The ministry has not suspended union registration. We are looking into existing [union registration] procedures and making them better. We are changing Prakas 21."²²¹ They said that they were aiming to begin the process of revising Prakas 21 after the Khmer New Year in mid-April.²²² But an official notification with revised procedures had yet to be issued as of January 2015.

Local groups said they were not consulted on the development of a new prakas or change in procedures. During interviews with Human Rights Watch in November and December 2013, and April 2014, independent union federation representatives from CATU, NIFTUC, CCAWDU, and CUMW all said that the Labor Ministry was refusing to accept new registration applications.

²²⁰ Human Rights Watch interview with Vong Kannha (pseudonym), worker, factory 57, location withheld, April 5, 2014.

²²¹ Human Rights Watch group interview with H. E. Oum Mean, deputy minister, Ministry of Labor and Vocational Training; H. E. Prak Chanthoum, deputy secretary of state; H. E. Heng Sour, chief of cabinet, labor ministry; Seng Sakda, director general of labour; In Khemara, director, Department of Labor Inspection; Koy Tepdaravuth, director, Department of Dispute Resolution, Phnom Penh, March 27, 2014.

²²² Human Rights Watch group interview with Seng Sakda, director general of labor, and two other officers, Phnom Penh, April 11, 2014.

For example, officials from CATU had attempted to submit 13 new applications but were turned away. “We were told to wait because they were changing union registration procedures,” a union official told Human Rights Watch.²²³ An official from the union federation CCAWDU said that they had at least four applications pending with the ministry since November and December 2013. In April 2014 he said, “I recently went to check on what has happened to the applications and found out that the ministry has not yet started processing [them].”²²⁴ In January 2015, he reported that some of the 2013 registration applications which they had filed before the wage protests in December 2013 were granted in July and August 2014, but later applications were rejected citing inadequate documentation.²²⁵

Labor Ministry data suggests a reduction in union registrations since December 2013.²²⁶ When Human Rights Watch met with officials from the ministry in March and April 2014, they said between 50 and 60 applications were pending at that time.²²⁷ Union federation officials told us that registration for most independent unions in the garment industry remained effectively stalled as of January 2015, largely due to the certificate requirement described in the subsection below.²²⁸

Government officials noted that the law says that a union is considered registered within two months if organizers do not hear back from officials.²²⁹ However, union leaders said this notional registration was of little practical use,²³⁰ particularly because in practice, the absence of an official license severely limits the union’s ability to collectively bargain and represent workers in factories.²³¹

²²³ Human Rights Watch interview with an official from CATU (name withheld), Phnom Penh, April 11, 2014.

²²⁴ Human Rights Watch interview with an official from CCAWDU (name withheld), Phnom Penh, April 9, 2014.

²²⁵ Human Rights Watch phone interview with an official from CCAWDU (name withheld), Phnom Penh, January 16, 2015; phone interview with Yang Sophorn, president, CATU, Phnom Penh, January 20, 2015 confirmed that her federation was also facing similar problems and applications were not accepted until elected union representatives produced “no criminal record” certificates from the Ministry of Justice.

²²⁶ Ministry of Labor and Vocational Training, List of union licenses issued from 2011 to the first quarter of 2014, on file with Human Rights Watch.

²²⁷ Human Rights Watch group interview with six labor ministry officials, Phnom Penh, March 27, 2014.

²²⁸ Human Rights Watch phone interview with David Welsh, Cambodia director, Solidarity Center, Phnom Penh, August 15, 2014; phone interview with local union federation officials, Phnom Penh, January 2015.

²²⁹ Human Rights Watch group interview with six labor ministry officials, Phnom Penh, March 27, 2014.

²³⁰ Human Rights Watch interviews with representatives in CCAWDU, NIFTUC, CATU, and CUMW, Phnom Penh, April 2014.

²³¹ Ibid.

Burdensome Procedures and Delays

Cambodia's Labor Ministry has placed unnecessarily burdensome requirements on workers trying to unionize. Among these is the requirement that they obtain a certificate from the Ministry of Justice proving that each union representative has no criminal record.²³² In practice, the Ministry of Justice takes a month or two to issue such certificates.²³³

Independent unions told Human Rights Watch that union representatives awaiting these certificates risk further retaliation from factory management because it extends the waiting period for union registration.²³⁴

Several representatives of independent union federations said that government authorities repeatedly rejected applications even on minor grounds like spelling mistakes, making union representatives file applications afresh. They alleged these tactics were used in a discriminatory manner, targeting applications filed by independent unions but not those filed by pro-government or pro-management unions.²³⁵ V.S., a representative from an independent union federation told Human Rights Watch:

In practice the government will check each application and tell us if there are any errors.... For example, there will be a spelling mistake in the word "provincial," and they will return the application. Or we won't know that they have reclassified a province as a city—and they won't change it, they will tell us to make the change ourselves and file again. Sometimes they do this repeatedly and we lose three or four months just in this cycle of changing and refiling the application again and again. One independent union has had this happen for eight months.²³⁶

²³² The qualification that a union office-bearer cannot be convicted of any offense is not a new provision of the Labor Law. But earlier union office-bearers could provide a signed declaration stating that they were not convicted of any offense. The total processing fee to issue the Justice Ministry certificate within 20 days was 35,000 riels (\$8.75) and an expedited request for a certificate within 10 days was 65,000 riels (\$16.25). Human Rights Watch interview with applicant 1 who was applying for a government scholarship and needed the certificate (name withheld), Phnom Penh, April 9, 2014; and with applicant 2 who had made a request for a certificate for visa purposes (name withheld), Phnom Penh, March 26, 2014.

²³³ Human Rights Watch interview with an applicant 1 who was applying for a government scholarship and needed the certificate (name withheld), Phnom Penh, April 9, 2014.

²³⁴ Human Rights Watch interviews with representatives from CCAWDU, NIFTUC, CATU, and CUMW, Phnom Penh, April 2014.

²³⁵ Human Rights Watch interviews with representatives from CCAWDU, NIFTUC, and CATU, Phnom Penh, November 2013 and April 2014.

²³⁶ Human Rights Watch interview with V.S. (name withheld) an official from an independent union federation (name and other details withheld), Phnom Penh, November 2013.

In response to Human Rights Watch concerns about a lack of transparency in the union registration process, government officials offered a limited solution in the future. They said they would create a website providing more information about registered unions to the public.²³⁷

Proposed Law Reform

Cambodian authorities are considering adopting a new trade union law first proposed a few years ago. At the time it was introduced, independent unions and labor rights activists expressed concerns about the draft law, formed a Trade Union Support Group, and provided critical feedback.²³⁸ The government shelved the draft. It was suddenly revived following the December 2013 and January 2014 minimum wage protests and crackdown.

In May 2014, the government held a workshop to discuss the draft law with independent trade unions and other experts but many of their recommendations were not accepted in a later draft.

Human Rights Watch obtained a copy of an October 2014 draft. The version we saw seeks to limit the freedom to form unions and introduces bureaucratic procedures that, in practice, would interfere with the operational freedom of unions. For example, it introduces a minimum threshold of 20 percent workers to form a factory-level union, 15 unions to form a federation, and 10 federations to form a confederation.²³⁹

The draft law imposes a minimum union membership fee, which labor rights groups say will be burdensome for poor workers.²⁴⁰ It also restricts the ability of minority unions to represent workers and gives overarching powers to the Labor Ministry to suspend union registration without any judicial process. This includes for overbroad and vague reasons such as the

²³⁷ Human Rights Watch group interview with In Khemara, director, Department of Labor Inspection; Koy Tepdaravuth, director, Department of Dispute Resolution, Phnom Penh, April 3, 2014. Labor Ministry officials said information about all unions registered would be made public and that the website project would take three years.

²³⁸ Solidarity Center, “Cambodia: Vocal Coalition Makes Legal History,” *Catalysts for Change*, http://www.solidaritycenter.org/wp-content/uploads/2014/11/Cambodia.English-Final.bug_.pdf (accessed January 20, 2015); “Joint Statement of the Trade Union Support Group on Proposed Cambodian Trade Union Law,” March 15, 2011, <http://www.clec.org.kh/web/images/Resources/RE94Fo~1.PDF> (accessed January 20, 2015).

²³⁹ Draft Law on Enterprise Unions, October 2014, on file with Human Rights Watch, art. 10. (“Draft TU Law”).

²⁴⁰ See LICADHO and CLEC, “Cambodia’s Draft Law on Unions of Enterprises: Legal Analysis,” September 2014, <http://www.licadho-cambodia.org/reports/files/199JointBriefAnalysisDraftTradeUnionLaw2014-English.pdf> (accessed January 20, 2015), p. 2. These provisions regarding membership fees remained the same in the May and October 2014 drafts.

“union...continues to cooperate or carry out joint activities with any organizations or institutions... considered by the Royal Government of Cambodia to have caused economic sabotage or committed acts damaging to the interests of the Kingdom of Cambodia.”²⁴¹

In discussions with Human Rights Watch, government officials raised the multiplicity of unions as a hindrance to industry relations.²⁴² They also said they wanted to curb what they characterized as “fake unions” formed by workers who anticipated dismissal and sought to take advantage of legal protection through union formation.²⁴³

While there are legitimate concerns about multiple unions in a factory, the actions by employers and government officials to support “yellow unions” has in part contributed to the need for multiple unions in a factory. Workers, lawyers, independent unions, and labor rights activists raised concerns about pro-management unions that were not representing worker interests.

Many workers told Human Rights Watch that they did not want to be part of the pro-management union established in their factories. For example, a worker from factory 66 said:

We have Chun Mun Thal’s [pro-CPP Cambodian Union Federation] union in our factory. There is no other union. We don’t want to be part of this union but still they [management] cut 1,000 riels from our salary every month as membership fees.²⁴⁴

Phy Saron from factory 52 said she was not part of the union because it was set up by the owner:

²⁴¹ Ibid., p. 3. Draft TU law, October 2014, art. 18.

²⁴² Human Rights Watch group interview with H. E. Oum Mean, deputy minister, Ministry of Labor and Vocational Training; H. E. Prak Chantheoum, deputy secretary of state; H. E. Heng Sour, chief of cabinet, labor ministry; Seng Sakda, director general of labour; In Khemara, director, Department of Labor Inspection; Koy Tepdaravuth, director, Department of Dispute Resolution, Phnom Penh, March 27, 2014.

²⁴³ Ibid.

²⁴⁴ Human Rights Watch group interview with 10 workers (who chose to remain anonymous), factory 66, Phnom Penh, April 1, 2014.

Before we used to have another union but the factory got rid of the previous union and started this one. They didn't renew the contracts of the previous union leaders.²⁴⁵

Child Labor

Human Rights Watch documented child labor²⁴⁶ in violation of local and international labor laws in at least 11 factories.²⁴⁷ Workers, including children, reported working excessively long hours. Some children reported being paid less than minimum wage. For child workers, factory work came at the expense of their education.

Under Cambodian labor law, garment factories can employ children aged 15 and above.²⁴⁸ However, all children below age 18 should only be engaged in light work and are prohibited from working for more than 8 hours a day. They should be given at least 13 consecutive hours off between shifts.²⁴⁹ Children are banned from night work.²⁵⁰ Factories are required to keep a register of all children employed in the factory with their ages and proof of age.²⁵¹

Human Rights Watch spoke with four children who stated that they began working in garment factories that supply to international brands before turning 15, three of whom said they had started working at age 14 and another at age 12.

²⁴⁵ Human Rights Watch interview with Phy Saron (pseudonym), factory 52, Phnom Penh, November 16, 2013.

²⁴⁶ In this report, "child" and "children" are used to refer to anyone under the age of 18, consistent with usage under international law. The term "child labor," consistent with International Labour Organization standards, is used to refer to work performed by children below the minimum age of employment or children under age 18 engaged in hazardous work.

²⁴⁷ Human Rights Watch group interviews with workers from factories 5, 10, 15, 30, 35, 40, 46, 47, 48, 57, 58, November and December 2013, and April 2014; group interviews with workers from factories 43 and 60, Phnom Penh, December 2013 and April 2014. Workers from factories 43 and 60 reported that the factories underwent inspections following which the managers dismissed the children. It was unclear whether the children in these factories had access to any remediation.

²⁴⁸ Labor Law, art. 177.

²⁴⁹ Prakas 144/02 as cited in the ILO-BFC, Labor Law Guide, 2014, p. 16.

²⁵⁰ Ibid., p. 17. According to the ILO-BFC Labor Law Guide, the only exception to the ban on night work for children is where children between the ages of 16 and 18 may be asked to work at night to prevent an accident or to repair equipment following an accident.

²⁵¹ Labor Law, art. 179.

Poverty and lack of access to secondary education, combined with idle vacation time, were key reasons why children eventually dropped out of school and took up factory work.²⁵² Meas Chakrya, a 17-year-old garment worker, said her mother was severely indebted and that she dropped out of school to help support her mother and her four siblings. She said, “There are many children like me in the factory. Some are even younger. I have been working for more than a year. If I were in school I would be in class 9 now. More than 10 children from my class joined the factory first.”²⁵³

When she quit school, her 15-year-old sister also left school and joined her at the factory.

Huon Ith, 16, explained why she dropped out of school after class 7 and joined a factory: “We didn’t have enough food to eat at home and I couldn’t afford school.”²⁵⁴ When Houn Ith’s mother was asked what she would do if the factory dismissed all children, she said: “We are poor. If they don’t give us any [monetary] support, I will make her work in a cassava farm.”²⁵⁵

Heng Dara, 18, dropped out of grade 8 in 2011 and Song Lim, 17, dropped out of grade 7 in 2012 to work in factory 47, a subcontractor factory. They had initially started working during school vacation to supplement their families’ incomes.²⁵⁶ When they tried to leave factory 47, the manager refused to part with their birth certificates.²⁵⁷

Eventually, Song Lim and Heng Dara left factory 47 and joined factory 48. They earned less than the minimum wage. Their monthly incomes fluctuated between \$50 and the statutory minimum wage of \$80 at that time. They received a maximum of \$100 a month when they did overtime on weekdays. When they had overtime work, they often started work at 7 a.m.

²⁵² The Convention on the Rights of the Child, to which Cambodia is party, provides in article 28 that states have an obligation to progressively and on the basis of equal opportunity make primary education compulsory and available free to all, and encourage the development of secondary education.

²⁵³ Human Rights Watch interview with Meas Chakrya (pseudonym), all details withheld. Meas Chakrya said the principal of her secondary school demanded that children bring money citing different reasons—planting cassava in the school fields, buying chicken and so on. She was periodically asked to bring amounts ranging from 2,000 riels (\$0.25) to 4,000 riels (\$1).

²⁵⁴ Human Rights Watch group interview with Houn Ith (pseudonym) and her mother, all details withheld.

²⁵⁵ Ibid.

²⁵⁶ Human Rights Watch group interview with Song Lim (pseudonym), Heng Dara (pseudonym) and two other workers, former workers from factory 47 now working in other factories, all other details withheld.

²⁵⁷ Ibid.

and finished at 9:30 p.m., in violation of Labor Law restrictions on children’s working hours.²⁵⁸

Another group of six children said they earned the minimum wage only if they met their production quota.²⁵⁹

All the children and adult workers with whom Human Rights Watch spoke said that children in their factories were made to work alongside adults with equal pressure to meet targets and do work overtime. In at least two factories, workers reported that children did night-work when they had rush orders.²⁶⁰

Hiding Child Workers

All workers who reported seeing children in their factories consistently recounted how managers told children to hide or leave the factory on days when “visitors” came. Meas Chakrya, 17, described what happened in her factory in early 2014:

A day before they were about to have visitors in the factory, the factory called a meeting of all the younger children who worked in the factory and told them not to come...And then the Chinese manager asked me my age and when I told him, he told me to go home for that day.²⁶¹

Lun Lea, 15, had been working for a year. She described to Human Rights Watch how her factory managers made her conceal herself when there were visitors:

They told me to hide under the table and had put a pile of clothes on us. I sat there for so long. We were giggling with the pile of clothes on us. We were also scared that we would be fired. So we tried to keep very quiet when the visitors were there.²⁶²

²⁵⁸ Ibid.

²⁵⁹ Human Rights Watch group interview with six children (names and location withheld), April 6, 2014.

²⁶⁰ Human Rights Watch group interviews with workers from factories 47, 10, Kandal and Phnom Penh provinces, November 2013.

²⁶¹ Human Rights Watch interview with Meas Chakrya (pseudonym), all details withheld.

²⁶² Human Rights Watch interview with Lun Lea (pseudonym), all details withheld.

Addressing Child Labor

Labor activists and union leaders told Human Rights Watch that dealing with the issue of child labor was one of the most complex problems they grappled with. Children from poor families came to garment factories to supplement family incomes. In some cases the families themselves pleaded to allow children to work citing poverty. The challenge associated with reporting child labor was when it resulted in dismissal and the child sought work in another factory or sector instead of meaningful remediation.

Cambodian Labor Ministry officials said they have begun to take the issue of child labor seriously. Following the launch of BFC's Transparency Database in March 2014, a team of officials conducted monitoring visits in six factories and imposed financial penalties on factories.²⁶³

Independent union federation officials and union leaders said that imposing the financial burden entirely on factories could result in factories escaping their liability by mass dismissals of children from factories rather than remediation.²⁶⁴ Such dismissal they worried would just increase the risks for vulnerable children from poor communities.²⁶⁵

In December 2014, GMAC signed an agreement with ILO-BFC to address child labor. According to this agreement, workers under age 15 will be given access to suitable vocational training institutes and paid the equivalent of their average monthly factory pay until they reach age 15. GMAC has undertaken to ensure financial support for age confirmation and remediation costs from its member factories.²⁶⁶

Sexual Harassment at the Workplace

Workers, independent union representatives, and labor rights activists said that sexual harassment in garment factories was common.²⁶⁷ A 2012 ILO report on Cambodian garment

²⁶³ Human Rights Watch interview with H.E. Heng Sour, chief of cabinet, MoLVT, Phnom Penh, April 4, 2014.

²⁶⁴ Human Rights Watch interviews with union leaders from 5 factories and independent union representatives from NIFTUC and CCAWDU, November and December 2013, and April 2014.

²⁶⁵ *Ibid.*

²⁶⁶ "ILO-BFC and GMAC Working hand-in-hand to Eradicate Child Labour in Cambodia's Garment Industry," December 16, 2014, <http://betterfactories.org/wp-content/uploads/2014/12/Joint-Press-Release-ILO-BFC-and-GMAC-Working-hand-in-hand-to-Eradicate-Child-Labour-EN.pdf> (accessed January 20, 2015).

²⁶⁷ Human Rights Watch group interview with Nov Vanny (pseudonym) and Keu Sophorn (pseudonym) from factory 18, Kum Chanthy (pseudonym) from factory 20 and Cheoun Thea (pseudonym) from factory 19, Phnom Penh, December 5, 2013;

factories found that one in five women workers surveyed reported that sexual harassment led to a threatening work environment.²⁶⁸

The forms of sexual harassment that women recounted to Human Rights Watch include sexual comments and advances, inappropriate touching, pinching, and bodily contact. Female workers complained about both managers and male co-workers.

The Labor Law forbids sexual harassment.²⁶⁹ Cambodia does not have a law that elaborates rules against sexual harassment at the workplace more broadly, outlines complaints procedures, or promotes safe working environments.

One common complaint from workers at some factories was that their managers used sexually charged words such as “prostitute” and “slut” to demean them at the workplace, especially when they were perceived as “slow.”²⁷⁰ Workers who complained about this were visibly unhappy and said they found this treatment humiliating and unacceptable. However, they felt powerless and unable to report such behavior.

Reflecting on her experience of working for six years in factory 53, Pung Mom said:

The managers say things with sexual connotations—“I want to kiss you. I want to sleep with you for just one night.” Sometimes even male workers at our level speak to us like this. They will touch our hair, hands, or other parts of our body. If we say anything they will laugh and say “Oh, we just touched you a little bit—why do you mind?” I have seen this happen many times

interviews with independent union federation representatives from CCAWDU, NIFTUC, CATU, and CUMW, Phnom Penh, November and December 2013.

²⁶⁸ ILO Report on Gender Equality in Cambodia’s Garment Sector, 2012, p. 4.

²⁶⁹ Labor Law, art. 172.

²⁷⁰ Human Rights Watch interviews and group interviews with workers from factories 15, 18, 21, Phnom Penh and Kandal provinces, November and December 2013. This is an indicative and not exhaustive list of factories.

Jennifer Makin et al., Study Commissioned by the World Bank and Better Factories Cambodia, “Cambodia: Women and Work in the Garment Industry,” 2006,

<http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/WomenandWorkinthefactory.pdf> (accessed January 20, 2015), p. 18. 29 percent of managers who participated in the study admitted that managers or supervisors used sexually derogative words but said it was occasional.

with other workers. I walk around since I am the head of the division so get to see a lot of things that go on.²⁷¹

An oft-repeated complaint from workers against male co-workers was that they addressed women as “oun sam lanh” (which literally means “love” but is used in conversation as “darling” or “honey”) and whistled or winked at them. One worker said,

It’s terrible. Women don’t really like it. We are never seen as equals. They target young and pretty girls. It’s just seen as normal. We can’t even keep track of the number of times they whistle or wink at us.²⁷²

BFC offers training programs for workers on specific issues, including gender awareness, as part of its Training and Advisory Services. However, these programs are voluntary.²⁷³ The government has not introduced any mechanism, such as training or mandatory complaint procedures, to prevent and respond to sexual harassment in garment factories. Sum Chinda said she had worked in 8 garment factories over 12 years and she had not received any training related to prevention or response to sexual harassment at the workplace.²⁷⁴

Women union leaders and labor rights activists emphasized the importance of increased women’s participation in union leadership to help workers to deal more effectively with gender-based concerns, including sexual harassment. They felt that having more women in the unions at all levels—factory, federation, and confederation—would mainstream concerns like sexual harassment at the workplace. According to a 2012 ILO report, nearly 75 percent of workers who participated in a survey reported that their factories had male union leaders.²⁷⁵

Workers said they had no access to independent complaint mechanisms in factories where they could safely complain and seek redress for workplace sexual harassment.²⁷⁶ While a

²⁷¹ Human Rights Watch interview with Pung Mom (pseudonym), worker, factory 53, Phnom Penh, November 18, 2013.

²⁷² Human Rights Watch interview with Chan Vanna (pseudonym), factory 39, Phnom Penh, December 2, 2014.

²⁷³ BFC, “Training and Advisory Services,” December 16, 2013, <http://betterfactories.org/wp-content/uploads/2014/08/2014-08-07-Training.pdf> (accessed January 20, 2015).

²⁷⁴ Human Rights Watch interview with Sum Chinda (pseudonym), worker, factory 70, Phnom Penh, December 2, 2013.

²⁷⁵ ILO Report on Gender Equality in Cambodia’s Garment Sector, 2012, p. 60.

²⁷⁶ Human Rights Watch group interview with Nov Vanny (pseudonym) and Keu Sophorn (pseudonym) from factory 18, Kum Chanthy (pseudonym) from factory 20 and Cheoun Thea (pseudonym) from factory 19, Phnom Penh, December 5, 2013.

detailed analysis of the internal regulations of factories is beyond the scope of this report, one expert who studied the government’s model factory internal regulations and other factories’ internal regulations said that they do not mention sexual harassment or create any prevention and complaints mechanisms.²⁷⁷

In a widely publicized 2012 case, women workers whose manager sexually harassed them went on strike to seek redress, and their union, CUMW, wrote to international brands demanding to have the manager removed. There was no clear process to deal with the complaint and the union negotiations with the factory’s lawyers did not yield any results.²⁷⁸ The 2012 ILO report found that there were no clear processes to deal with complaints of sexual harassment.²⁷⁹

In the few instances where workers said they considered complaining, they did not know how to file a complaint and seek redress, or feared retaliation. The fear was two-fold—that if they complained against a manager, they would lose their job or it would be more difficult to seek permission to refuse overtime or sick leave. Alternatively, if they complained against co-workers like mechanics, then these male workers would retaliate by tampering with the worker’s machine, or not repairing the machine on time.

Keu Sophorn worked in factory 18, which supplies to international brands. She said:

There is one male worker who harasses me a lot. Each day it’s something different. One day he says “Oh your breasts look larger than usual today.” On another day, he says, “You look beautiful in this dress—you should wear this more often so I can watch you.” There are others who purposely brush past us or pinch our buttocks while walking. Sometimes I feel like complaining. I don’t like it at all. But who do I complain to?²⁸⁰

²⁷⁷ Human Rights Watch interview with an expert who has reviewed the internal regulations of a number of companies, Phnom Penh, December 6, 2013.

²⁷⁸ CUMW, “Letter to Gap Inc. Management Team,” August 21, 2012, on file with Human Rights Watch.

²⁷⁹ ILO Report on Gender Equality in Cambodia’s Garment Sector, 2012, p. 55. Of the 32 women in the survey who said they experienced sexual harassment, 10 women filed complaints—6 with factory management and 4 with unions. Nine cases had some kind of a hearing resulting in warnings to the perpetrator.

²⁸⁰ Human Rights Watch group interview with Nov Vanny (pseudonym) and Keu Sophorn (pseudonym) from factory 18, Kum Chanthy (pseudonym) from factory 20 and Cheoun Thea (pseudonym) from factory 19, Phnom Penh, December 5, 2013.

Another worker described how the mechanic in her factory harassed her:

The mechanic comes to look at my machine. The guy just stands there, he's standing over me and I'm sitting and he's staring into my blouse to look at my cleavage and says something. I don't like it. But if I complain against him then he won't repair my machine. I need to work and earn money.²⁸¹

²⁸¹ Human Rights Watch interview with Heng Sophy (pseudonym), worker, factory 44, Phnom Penh, November 28, 2013.

V. Subcontracting

Direct suppliers of international brands in Cambodia who hold export licenses often outsource parts of their production, largely “cut-make-trim” functions, to smaller garment factories without export licenses.

In this report, Human Rights Watch uses the term subcontracting to describe the outsourcing of cut-make-trim and any other functions from one production site to another. Where an apparel brand has approved such outsourcing before it takes place, the subcontracting or outsourcing is authorized. Human Rights Watch uses the phrase “supplier list” to describe the database of all authorized production units—whether direct or outsourced. Where production is outsourced without the prior permission of the brand, Human Rights Watch uses the phrase unauthorized subcontracting.

Workers from 11 factories supplying to international apparel brands said their factories subcontract to other factories; workers from another 25 factories said they did work on a subcontracting basis for other factories.²⁸² Human Rights Watch gathered information about at least another nine small, unmarked subcontractor factories but it was not clear whether these nine factories produced for international apparel brands.²⁸³

Factories without export licenses do not have to submit to BFC monitoring. At least 15 of the 25 factories that did work on a subcontracting basis reviewed by Human Rights Watch

²⁸² Human Rights Watch interviews and group interviews with workers from factories 1, 2, 4, 8, 14, 29, 31, 32, 33, 38, 61 that supply to international brands and subcontract to other factories; factories 5, 10, 15, 17, 21, 23, 26, 30, 40, 42, 46, 47, 48, 49, 52, 57, 58, 59, 60, 62, 65, 68, 69, 72, 73 that work on a subcontract basis for other factories.

²⁸³ Human Rights Watch group interview with four workers and former workers from Worker Information Center (names withheld), Phnom Penh, December 5, 2013; Human Rights Watch discussion with a representative from an independent union federation (names withheld for security reasons), Phnom Penh, April 1, 2014. The discussion with the union federation representative took place during a drive in Phnom Penh where we observed five small, unmarked subcontractor factories, two of which looked like residential buildings.

did not appear to be monitored by BFC in July 2014; ²⁸⁴ 14 factories did not appear to be monitored by BFC according to its latest January 2015 list of factories²⁸⁵

Working conditions were typically worse in subcontractor factories than in larger export-oriented factories. They were more prone to casual hiring and employees found it harder to unionize. Because many of these factories were small and unmarked (with literally no signs to indicate the building was a factory), some union representatives said it was easy for factory owners to suspend operations, shut down for a period, and restart operations—hurting workers’ livelihoods. Many subcontractor factories denied women workers benefits such as maternity leave or maternity pay.²⁸⁶

A 2011 government regulation outlines a set of permissions and notifications that direct suppliers should follow before subcontracting.²⁸⁷ The government also set up an inter-ministerial commission comprising members drawn from the Labor, Commerce, and Interior Ministries, tasking it with tracing unregistered subcontractor factories and ensuring labor compliance.²⁸⁸ Factories with export licenses subcontracting to unregistered factories can face temporary suspension of their export licenses; repeat offenders can have their licenses revoked.²⁸⁹ But an expert familiar with these mechanisms said they were ineffective.²⁹⁰ In November 2014, Human Rights Watch wrote to the Ministry of Commerce requesting information on the implementation of the 2011 government guidelines, but received no response.²⁹¹

²⁸⁴ Human Rights Watch found that at least 7 factories (factories 69, 62, 60, 59, 58, 57, and 5) do not appear on the July 2014 BFC List of Factories; workers from another 8 subcontractor factories were only able to identify their factories by a nickname and had no worker IDs. But from discussions with workers and independent unions, Human Rights Watch learned that these factories are not monitored by BFC.

²⁸⁵ BFC, “Active Factories Registered with Better Factories Cambodia,” January 15, 2015, <http://betterfactories.org/wp-content/uploads/2015/01/2015-01-15-Factory-list-update-on-BFC-website.pdf> (accessed January 20, 2015). BFC’s January 2015 list of factories includes factory 69.

²⁸⁶ Human Rights Watch group interviews with 10 workers, factory 60, Phnom Penh, December 7, 2013; two workers, factory 46; five workers, factory 47; and four workers, factory 48, Kandal province, November 2013.

²⁸⁷ Ministry of Commerce, Prakas on Subcontract Management in Garment and Textile Industry, No. 3896 MOC/SM 2011, September 5, 2011, on file with Human Rights Watch.

²⁸⁸ Ministry of Labor and Vocation Training, Ministry of Commerce, and Ministry of Interior, Inter-Ministerial Prakas on Subcontract Management in Garment, Textile, and Footwear Industry, June 27, 2011, on file with Human Rights Watch.

²⁸⁹ Ministry of Commerce, Prakas on Subcontract Management in Garment and Textile Industry, No. 3896 MOC/SM 2011, September 5, 2011, on file with Human Rights Watch.

²⁹⁰ Human Rights Watch email correspondence with a labor expert familiar with the status of implementation of the prakas (name withheld), September 8, 2014.

²⁹¹ Human Rights Watch letter to H.E. Sun Chanthol, Minister of Commerce, Royal Government of Cambodia, November 20, 2014.

Brand Approach to Subcontracting

Brands have a critical role in promoting respect for workers' rights throughout the supply chain. But a combination of poor supply chain transparency, absence of whistleblower protection, and no information on available support mechanisms—together with a lack of support for remedial measures to protect worker interests in unauthorized subcontractor factories—hamper brand accountability.

Human Rights Watch asked six international apparel brands about their policies and practices around unauthorized subcontracting. Armani did not provide any information to Human Rights Watch. In its written responses, Marks and Spencer and Loblaw did not include information on whether there is any whistleblower protection or support for remediation in unauthorized subcontractor factories that are brought to its attention, where such remediation is feasible. Marks and Spencer said, “In M&S the word subcontracting is only applied to ‘processing’ such as laundry or embroidery, not to fully made garment factories....so we do not have subcontracted sites as defined in your letters.”²⁹² Loblaw said they “make efforts to prevent suppliers from subcontracting work to unapproved factories. Notably all Joe Fresh suppliers have signed our Standard Terms and Conditions (STCs) which expressly state that unauthorized subcontracting will not be tolerated and is in fact cause for termination.”²⁹³

H&M, Gap, and Adidas were the only brands Human Rights Watch contacted that acknowledged the concerns raised about subcontracting and reiterated their commitment to protecting and promoting worker rights throughout their supply chain.

Disclosing Suppliers' List

Only a few brands publicly disclose their global suppliers' list (a list of all authorized production sites) and update them regularly.²⁹⁴ Disclosing this information improves accountability by allowing labor rights groups, the government, and other parties to monitor labor rights in their direct supplier and subcontractor factories.

²⁹² Letter from Marks and Spencer to Human Rights Watch, September 16, 2014, on file with Human Rights Watch, p. 3.

²⁹³ Letter from Loblaw Cos. Ltd. to Human Rights Watch, November 11, 2014, on file with Human Rights Watch.

²⁹⁴ Adidas, Nike, Levi's, Puma, Timberland, and H&M are among leading international brands that publicly disclose their suppliers.

Brands including Gap, Armani, and Joe Fresh have not disclosed their suppliers' list publicly.²⁹⁵ Loblaw did not provide any information in response to a number of questions, including the names and locations of their suppliers and subcontractors. They wrote that “[t]he questionnaire you have asked us to complete requires us to disclose confidential and competitive information which we are not comfortable doing.”²⁹⁶ Gap provided a written response on other issues but not on supplier list disclosure. Speaking to Human Rights Watch by phone in October 2014, a Gap representative said,

We currently do not disclose our supplier lists. There are commercial reasons—we feel that we have invested a lot in our supply chain—some are our strategic partners and we don't know the implication of disclosing. And we are still understanding the supplier side of this—how can we manage and update the list? How can we maintain an accurate and current list? I'm not saying we will never disclose but we don't disclose now. We are not a brand that says one thing and doesn't follow through. So before we make a commitment we want to understand the implications more.²⁹⁷

Other international apparel brands are collecting, publishing, and updating supplier information. For example, H&M, which produces fashion apparel, publicly disclosed its supplier list for the first time in 2013 and annually updates its suppliers and subcontractors lists.²⁹⁸

A Marks and Spencer representative wrote to Human Rights Watch stating that the company had launched new transparency commitments in 2014 and the brand “will publish an annual list of all...active clothing manufacturers” by 2016. However, no information was provided about how frequently the database would be updated to keep the information current.²⁹⁹

²⁹⁵ Marks and Spencer, Gap, and Loblaw (which owns the Joe Fresh brand) did not provide information requested by Human Rights Watch about their suppliers and subcontractors.

²⁹⁶ Letter from Loblaw Cos. Ltd. to Human Right Watch, November 11, 2014, on file with Human Rights Watch.

²⁹⁷ Human Rights Watch phone discussion with Jose Arguedas, senior manager, Global Partnerships, Gap Inc., San Francisco, October 7, 2014.

²⁹⁸ Letter from H&M to Human Rights Watch, April 2014, on file with Human Rights Watch.

²⁹⁹ Letter from Marks and Spencer to Human Rights Watch, September 16, 2014, on file with Human Rights Watch.

Adidas, which produces sports apparel, told Human Rights Watch that it first started privately disclosing its supplier list in 2001 to academics and NGOs and moved to a public disclosure system in 2007. Starting in 2014, Adidas moved to a system of disclosing their suppliers and licensees' lists twice a year.³⁰⁰

Whistleblower Protection

Whistleblower protection for workers involved in uncovering an unauthorized subcontract is important since they risk retaliation from factory management for reporting it.

Unauthorized subcontracting constitutes a breach of contract with business implications for both the factory that outsourced production and the subcontractor.³⁰¹ Workers who knowingly, or unknowingly, reveal the names of apparel brands being produced in their factory and report on working conditions there are at significant risk because of the commercial interests involved.

For example, Human Rights Watch received information from one factory where workers reported retaliation for having told external monitors in 2012 that their factory outsourced production to other manufacturing sites.³⁰² Workers told Human Rights Watch that the managers filed false complaints of theft against one worker and compelled others to testify against the “accused,” threatening dismissal if they did not obey. Several workers were dismissed.³⁰³

In practice, brands sometimes depend on unions to alert them to unauthorized subcontracts. For example, H&M acknowledged that workers who report subcontracting arrangements play a whistleblower role. It has distributed a translated copy of its suppliers' list to local unions and labor rights groups to encourage such whistle-blowing.³⁰⁴

³⁰⁰ Letter from adidas Group to Human Rights Watch, April 2014, on file with Human Rights Watch.

³⁰¹ For example, Adidas representatives told Human Rights Watch that three repeated unauthorized subcontracts will result in a termination of the business arrangement with a supplier who engages in authorized outsourcing of production. H&M said that two repeated unauthorized subcontracts would result in phased out termination of the business relationship, where the brand policy was to give a supplier 18-months advance notice that H&M's business with the supplier would be terminated.

³⁰² Human Rights Watch group interview with two workers (names and other details withheld), November 11, 2013.

³⁰³ Ibid.

³⁰⁴ Letter from H&M to Human Rights Watch, April 2014, on file with Human Rights Watch. In its letter H&M states, “One example of our stakeholder engagement in Cambodia is that we during 2013 set up a whistle -blowing system concerning

Except for Adidas, none of the brands that provided information to Human Rights Watch had clearly articulated whistleblower protections for workers.³⁰⁵ Three brands—H&M, Adidas, and Gap—stated that they took confidentiality seriously and took measures to ensure that their suppliers did not learn about the source of the complaint. But there were no minimum guarantees for workers and unions who took risks while reporting an undeclared manufacturing site. Except for Adidas, which clarified its process in October 2014, the other two brands presented no clear picture of what current protections exist and how brand representatives inform workers of how to avail themselves of any existing protections.

A Gap representative told Human Rights Watch that the company dealt with reports of unauthorized subcontracting, including complaints about retaliation, on a case-by-case basis, but did not specify what steps Gap takes to protect whistle-blowers or how these mechanisms were accessible to workers.³⁰⁶

Adidas wrote saying that they do not “actively encourage workers to act as whistle-blowers to report subcontracting and outsourcing production activities,” but explained that when people come forward, their identity is protected. Adidas added that “if by some other means a supplier comes to know the identity of a complainant, and this leads to intimidation or harassment, then we would take immediate and direct action to remedy this situation, invoking the non-retaliation clause in our manufacturing agreements.”³⁰⁷ Adidas representatives explained that retaliation against workers for providing information to the brand is treated as a “threshold issue” in their code of conduct enforcement guideline.³⁰⁸ They said that they would examine the facts of each case and decide about the nature of protection needed but emphasized early intervention to prevent retaliation.³⁰⁹

unauthorized production. We distributed a detailed supplier lists in Khmer to the trade unions so that they can contact our office in Phnom Penh if they find any production performed by their members in a factory not mentioned in the lists.”

³⁰⁵ Human Rights Watch received no information from Armani. Marks and Spencer and Joe Fresh did not provide answers to Human Rights Watch questions about whistleblower protection.

³⁰⁶ Human Rights Watch phone discussion with Jose Arguedas, senior manager, Global Partnerships, San Francisco, October 7, 2013.

³⁰⁷ Letter from adidas Group to Human Rights Watch, “Response to Additional Questions Raised by HRW on Cambodia,” September 17, 2014, on file with Human Rights Watch.

³⁰⁸ adidas Group, “Enforcement Guideline,” November 2013, http://www.adidas-group.com/media/filer_public/2013/11/25/enforcement_guideline_nov_2013_en.pdf (accessed October 1, 2014), para 8.2(7)(m).

³⁰⁹ Human Rights Watch group discussion with William Anderson, vice president, Social and Environment Affairs, Asia Pacific, and Akkaphan Rammanee, senior manager, Field Operations, South East Asia, Adidas, Bangkok, September 26, 2014. Adidas representatives said that they were not aware of any retaliation against workers in Cambodia but cited examples

In October 2014, Adidas introduced a new clause in its grievance redress reporting format stating that Adidas takes retaliation seriously, will investigate complaints of retaliation, and will “find tailored solutions” where there is evidence of retaliation. At this writing, Adidas was also translating this into local languages to upload on its website to make such information more accessible to workers.³¹⁰

Remediation

Brands draw a distinction between authorized and unauthorized subcontracts and their liability for each. While international apparel buyers understandably seek to avoid unauthorized subcontracts, their response to the discovery of unauthorized subcontractor factories should be consistent with the principle of improving human rights for all workers involved in manufacturing their products.

Human Rights Watch acknowledges the complexities involved in tackling unauthorized subcontracting and international apparel brands’ need to balance multiple concerns. For example, brands’ need to consolidate orders with long-term partners as part of their business strategy, and create business incentives for factories complying with their code of conduct and operating transparently. Preventing unauthorized subcontracting by tackling the underlying causes and supporting remediation for affected workers in undeclared units should also be a central concern.

Human Rights Watch believes that where feasible and appropriate, brands should give factories a reasonable opportunity to take remedial measures before severing business ties. When brands terminate contracts with suppliers because of unauthorized subcontracts without any commitment to monitor remediation in the undeclared unit, the workers in the undeclared units who reported the problems face the loss of their livelihoods instead of seeing a tangible improvement in their working conditions. This is an outcome brands should work assiduously to avoid.

where Adidas had intervened on behalf of workers where factories in another country were threatened with defamation against workers.

³¹⁰ Human Rights Watch email correspondence with William Anderson, Singapore, October 28, 2014. “Third Party Complaint Process for Breaches to the adidas Group Workplace Standards or Violations of International Human Rights Norms,” http://www.adidas-group.com/media/filer_public/3a/a8/3aa87bcf-9af9-477b-a2a5-100530e46b19/adidas_group_complaint_process_october_2014.pdf (accessed October 28, 2014), p. 11.

Brands may well encounter scenarios where abuses associated with unauthorized subcontracting are so egregious or pervasive, or where the likelihood of remedy is so remote, that they are in fact warranted in severing business relationships. In such cases, however, brands should take steps to provide some form of remediation to workers whose livelihoods are impacted as a result of that decision. The presence of unauthorized subcontracting in a brand's supply chain may reflect a failing by the brand itself. The brand should therefore accept some responsibility to help workers transition out of employment that is eliminated because of corrective actions taken by the brand. Similarly, if brands temporarily halt production while remedial measures are underway, they should endeavor to help offset the financial harm caused to workers in the undeclared units during this period.

Marks and Spencer provided no information about remediation when unauthorized subcontracts are brought to the brand's attention. A representative wrote to Human Rights Watch in September 2014 saying:

We will not under any circumstances accept production from non-approved factories or goods supplied from sites that differ from our contracts system for each specific contract. In order for us to maintain the highest level of our integrity of our [sic] corporate social responsibility commitments, our contracts system must be up to date and accurate. Any changes made to the proposed manufacturing site that has been previously approved must be communicated and agreed by the buying department prior to any production starting. We will impose strict penalties on any supplier in breach of these conditions.³¹¹

Gap wrote to Human Rights Watch in April 2014 saying:

If we find a case of unauthorized subcontracting (UAS), the Monitoring and Remediation Specialist (MRS) escalates the incident to the Vendor Engagement & Monitoring manager and director in accordance with our Issue Escalation Policy for High Risk Incidents. The local MRS advises the factory to immediately stop production and ensures all goods (finished or unfinished) are returned to an approved Gap Inc. factory, segregated and

³¹¹ Letter from Marks and Spencer to Human Rights Watch, September 16, 2014, on file with Human Rights Watch, p. 1.

held until the issue is resolved. An investigation is conducted at the factory to determine whether there are any critical issues.³¹²

When Human Rights Watch raised concerns with Gap about the impact of interim stop production orders without a clear commitment to supporting remediation in the subcontractor factory, Gap responded in September 2014 that they “investigate and take appropriate action to resolve the situation in a manner that protects workers' rights and well-being.” Furthermore, “[w]here possible, we engage management to take corrective actions and meet our requirements for approved suppliers.” They also stated that, “in cases where factories close or are no longer able to employ workers, we ensure that any appropriate wages or severance are paid by the vendor to the factory employees.”³¹³

H&M stated that it “requires that the suppliers presents [sic] an action plan which shall include a management system with a clear policy, well documented and fully implemented and communicated routines, designated responsible staff, and a control and follow up mechanism to prevent repeated violation.”³¹⁴ It further stated that “[i]f the supplier cannot present a sustainable action plan or is not willing to do so it can lead to a termination of the business relation.”³¹⁵ A repeat violation “can lead to a termination of the business relation” but in such circumstances “a detailed phase out plan is worked out in order not to jeopardize the well-being of the workforce (the supplier is given time to find new buyers to avoid layoffs of workers).”³¹⁶

The accounts of workers in subcontractor factories who spoke to Human Rights Watch, however, suggest that they were concerned about bringing their working conditions to the brand’s notice.

For example, soon after workers and unions alerted H&M in 2013 that its clothes were being produced in factory 40, a factory that did not appear on H&M’s supplier and subcontractor list, they witnessed a spate of inspections. The factory management

³¹² Letter from Gap to Human Rights Watch, April 2014, on file with Human Rights Watch, p. 4.

³¹³ Letter from Gap to Human Rights Watch, September 2014, on file with Human Rights Watch, p. 3.

³¹⁴ Letter from H&M to Human Rights Watch, April 2014, on file with Human Rights Watch, p. 3.

³¹⁵ Ibid.

³¹⁶ Ibid.

suspended workers; while they still received half their regular monthly wages, the reduction hurt their livelihoods.³¹⁷

In factory 57, another factory not on H&M's list, workers reported that H&M labels stopped appearing in their factory soon after the subcontract was reported to H&M in 2013, but the factory's working conditions remained largely unchanged. These included the repeated use of short-term contracts, casual contracts, child labor, anti-union discrimination, forced overtime, and discrimination against pregnant workers. None of these problems had been resolved in April 2014 when we checked to see if reporting of factory conditions to H&M had benefited workers.³¹⁸

H&M confirmed that it had severed business relationships with suppliers because of unauthorized subcontracts and other reasons, but said that it could not furnish additional information because of its confidentiality policy.³¹⁹ Human Rights Watch wrote to H&M sharing the above examples of how workers in subcontractor factories had actually suffered instead of experiencing a tangible improvement in their working conditions after subcontracting arrangements were brought to H&M's attention.

In September 2014, H&M representatives told Human Rights Watch that its remediation plans were focused on preventing a repeat occurrence of unauthorized outsourcing, and that the workers in subcontractor factories that produced H&M goods without authorization were not part of the remediation plan. They said that they could not incorporate all undeclared units into their supply chain because that approach diluted their overall strategy to build a sustainable business that rewarded suppliers who operated transparently and in accordance with their code of conduct. But they recognized the problems faced by workers in undeclared units and revisited their approach to subcontracting. In November 2014, H&M wrote to Human Rights Watch stating that:

The approach we are looking at is to work closely with the subcontracting supplier, in securing that they take ownership of any improvement work

³¹⁷ Human Rights Watch group interview with group interview with Nov Aem (pseudonym) and four other workers, factory 40, Phnom Penh, December 6, 2013.

³¹⁸ Human Rights Watch group interview with seven workers, factory 57, location withheld, December 3, 2014 and April 5, 2014.

³¹⁹ Letter from H&M to Human Rights Watch, April 2014, on file with Human Rights Watch, p.3.

needed at the subcontractor. H&M can support with our technical expertise in ensuring that an action plan sufficiently addresses all areas needed, and does so in a qualitative manner (addressing systems and root causes, not solving issues through quick fixes). We are also discussing asking the supplier to enroll the subcontractor in BFC’s program.³²⁰

H&M’s letter also stated that, at the Buyers Forum in Ho Chi Minh City in October 2014, H&M shared with other international apparel brands the Human Rights Watch view that brands should first try remediation when unauthorized subcontractor factories are brought to their attention, and the response of the brands had been positive. H&M said: “We asked our peers to indicate their position on roughly the same questions we have discussed, and found that there is consensus on the need and willingness to extend our responsibility towards unauthorized subcontractors.”³²¹ In a later communication, H&M stated that “[w]hilst a majority of brands agreed on the difficulty of committing business to unauthorized subcontractors, on the other, we were positive about involving BFC in any remediation plans to improve working conditions.”³²²

H&M also stated that it severed business relationships with the supplier if there was a repeat violation and that it had a one-and-a-half year phase-out plan to enable the affected factory time to find other business.³²³

H&M officials also explained that in May 2013 they held a workshop on undeclared production units for all of their Cambodian suppliers. At that time, H&M gave suppliers a two-week grace period to reveal any undeclared production units they had used the previous year. H&M said,

Throughout the two week grace period following the workshop, there would be no consequences as per our normal policy and routine for unauthorized subcontractors. A number of subcontractors were subsequently reported

³²⁰Human Rights Watch email correspondence with Jonah Wigerhall, Anna Palmqvist, and Lars-Ake Bergqvist, November 7, 2014.

³²¹ Ibid.

³²² Human Rights Watch email correspondence with Jonah Wigerhall, Anna Palmqvist, and Lars-Arke Bergqvist, December 3, 2014.

³²³ Letter from H&M to Human Rights Watch, April 2014, on file with Human Rights Watch.

back to us, and where feasible our auditors followed up with on-site inspections after which a number of these factories were approved for H&M production.³²⁴

Adidas representatives provided detailed information about their approach to subcontracting. In a written communication to Human Rights Watch, they said that in the past 10 years only one case of unauthorized subcontract was brought to their attention and the business relationship was not severed. Human Rights Watch informed Adidas of at least one past licensee factory that was periodically subcontracting to three other factories likely missed by Adidas' monitoring systems.

The company reiterated a commitment to “safeguarding worker’s rights, including livelihoods” in subcontractor factories. Where unauthorized subcontracts are reported to Adidas, “[n]ormally existing committed orders can be completed, but no further orders can be placed with the facility until approval has been received from SEA [Social and Environment Affairs team].”³²⁵ According to Adidas, once it confirms that an undeclared production unit is being used, then the business entity that placed the orders must report the factory to the Fair Factories Clearinghouse, an international online platform for collecting and exchanging information for businesses. An initial assessment is then carried out to verify working conditions and approve its use as a supplier.³²⁶ The approval process, may take about four or five months, including a two or three month period for remediation where required.³²⁷

Subcontracting Case Studies

Human Rights Watch contacted the brands concerned in each of these cases below. Because of concerns for the job security of the workers involved, however, we do not provide the names of the factories implicated. We recognize that this makes it more

³²⁴ Human Rights Watch email correspondence with Jonah Wigerhall, Anna Palmqvist and Lars-Ake Bergqvist, December 3, 2014.

³²⁵ Letter from Adidas to Human Rights Watch, April 2014, on file with Human Rights Watch. “Our internal database system does not record the reasons why factories are discontinued by a sourcing unit. This can be for a variety of reasons related to factory performance (quality, on-time delivery, available capacity, etc.) or product or market requirements, or may relate to the consolidation of orders in another supplier. We can confirm that none of these factories were discontinued due to enforcement action under our Workplace Standards.”

³²⁶ *Ibid.*, p. 18.

³²⁷ *Ibid.*, p. 4.

difficult for the brands to respond to specific cases, but hope that this will encourage them to address the broader issues.

H&M Case Study

Factory 1 subcontracts work to many other smaller factories.³²⁸ In November 2013, Human Rights Watch visited a subcontracting factory whose workers said that H&M was one of the brands they produced for, work that was ongoing as of April 2014. The factory had no visibly displayed name board. Workers identified the factory using a nickname. The subcontractor factory managers did not issue workers identity cards or written contracts.

In one case, team leaders in the factory 1 told workers that they should work Sundays at an unauthorized subcontractor to help meet production targets. Workers were not paid any special overtime rates for work on Sundays and public holidays. This allowed factory 1 to bypass labor laws governing overtime wages and a compensatory day off for night shifts or Sunday work.³²⁹

Human Rights Watch spoke to five workers from one subcontractor factory who said they were supplying to factory 1 or one of its branches. They knew they were producing for H&M because the managers had discussed the brand name and designs with workers. The factory also subcontracted with other large factories in the Svay Rolum and Sethbau areas in Kandal province that produce for international brands. The workers were paid on a piece-rate basis and when the factory received many orders, workers said they were forced to work overtime on Sundays and public holidays. On some days they were also forced to do overtime until 9 p.m. and sometimes overnight until 6 a.m. The workers said they were not given any overtime wages.³³⁰

Workers said they were fearful of forming a union and that eligible workers did not receive maternity leave or pay. From employee accounts, some workers were children younger than 15, the legally permissible age in Cambodia. One woman estimated that 20 of the 60 workers

³²⁸ Human Rights Watch interviews and group interviews with more than 20 workers in separate groups on different days in November and December 2013, and April 2014. We believe none of the subcontractor factories appear on H&M's 2013 and 2014 lists but cannot confirm because in most subcontractor factories, workers were only able to identify their factory by a nickname.

³²⁹ Labor Law, arts. 147 and 148.

³³⁰ See ILO-BFC Guide on Labor Law, p. 19. Workers on piece-rate wages are subject to the same rules regarding overtime wage rates.

in her group were children. Children worked as hard as the adults, they said, including on Sundays, nights for overtime work, and public holidays when there were rush orders.³³¹

H&M acknowledged that it could take more responsibility for remediation in unauthorized subcontractor factories, including seeking to register the subcontractor factory with BFC and providing technical expertise for remediation.³³²

Marks and Spencer Case Study

Factory 5 is a small subcontractor factory that produced for Marks and Spencer and received regular orders from one or two direct suppliers at least until November 2013, when we met with workers from the factory.

Workers received three-month fixed term contracts. In order to renew, they affixed their thumbprints on standard form printed contracts whose terms were left blank.³³³ The managers repeatedly extended such short-term contracts beyond the permissible two-year period set out in Cambodian law. The factory management did not pay its workers the mandatory 5 percent wage benefit at the time of contract renewal.

Factory managers allegedly dismissed or chose not to renew the contracts of workers who raised concerns about working conditions. Issues raised by workers that we interviewed included discrimination against pregnant workers, lack of sick leave, forced overtime, and threats against unionizing. For example, Chhum Nary, a male worker, said, “We cannot even speak of a union. Anyone who is slightly brave and challenges the factory is dismissed.”³³⁴

Women workers we interviewed said the contracts of visibly pregnant women were not renewed. Pregnant workers and other workers who fell sick were not permitted to take any sick leave without having their entire attendance bonus deducted.

³³¹ Human Rights Watch group interview with five workers, factory 47, location withheld, November 27, 2013.

³³² Human Rights Watch email correspondence with Jonah Wigerhall, Anna Palmqvist and Lars-Ake Bergqvist, December 3, 2014.

³³³ Human Rights Watch has a copy of the contract on file.

³³⁴ Human Rights Watch group interview with Chhum Nary (pseudonym), Lay Thida (pseudonym) and four other workers, factory 5, Kandal province, November 23, 2013.

Overtime work and wage rules were flouted in factory 5 and did not follow Cambodian labor law. Workers said they often worked beyond the permissible 12 hours of overtime work per working week. On some occasions, workers in the ironing department worked all night, until 5:30 a.m. Non-renewal of fixed-term contracts was used as a threat to make workers stay and do overtime work.

The factory signed contracts with parents to employ their children. While workers guessed that these children were above the legally permissible minimum age for work in factories, they said the children were forced to work overtime alongside adults. Factory management allegedly maintained two sets of attendance records for children: one set that recorded the actual number of working hours to calculate wages; another to cover up overtime work for children.³³⁵

Marks and Spencer did not provide any information about its approach to remediation for workers in unauthorized subcontractor factories brought to its attention.³³⁶

Joe Fresh Case Study

In 2013, factory 4 produced for Marks and Spencer, Joe Fresh, and other international brands and periodically subcontracted work to other factories.

Workers from two subcontractor factories with the same owner told Human Rights Watch that they were hired on three-month fixed duration contracts that were repeatedly renewed for more than two years. Many workers were paid wages below the stipulated minimum wages of US\$80. For example, one worker who was earning \$71 per month said, “When we ask the boss for the minimum wage, they start cursing us. They say: ‘If you want to work here you work. Otherwise you don’t need to.’”³³⁷

Workers were assigned daily production targets and were forced to work overtime to meet the targets, and were not paid overtime wages. Women workers who worked beyond one

³³⁵ Ibid.

³³⁶ Letter from Marks and Spencer to Human Rights Watch, September 16, 2014, on file with Human Rights Watch. More details on Marks and Spencer’s definition of subcontracting and approach to unauthorized production are discussed elsewhere in this chapter.

³³⁷ Human Rights Watch group interview with Chhau San (pseudonym) and eight others, factory 15, location withheld, November 24, 2013.

year did not get maternity pay. Workers had their entire monthly attendance bonus deducted if they took even a single day of approved sick leave.

The factories did not have a legally-mandated infirmary even though there were more than 50 workers in each factory.³³⁸

Workers said the factories employed children and made them do overtime work.³³⁹ Others said they had seen factory managers make the children hide when there were “visitors.”³⁴⁰

Joe Fresh did not provide information on its approach to remediation for workers in an unauthorized production unit when the existence of such a unit was brought to its attention. They reiterated that their suppliers were aware that unauthorized subcontracting would lead to a termination of the business relationship. They provided information on measures they took to prevent unauthorized subcontracting, including implementing the “Green Light Project,” an initiative with DHL’s International Supply Chain Management. As part of this initiative, DHL was supposed to verify the supplier name, and the manufacturing-factory name and address, against Joe Fresh’s list of approved factories.³⁴¹

Gap Case Study

Factory 60 is a small subcontractor factory that was periodically producing for Gap when we spoke to workers there in December 2013.

The workers in this factory had worked there for more than two years but did not have written contracts. Instead, managers would periodically issue them new worker identity cards with a new start date each time. The workers had no information about the terms of their employment and were scared of forming a union or openly organizing within factory premises because the managers had previously run another factory known for being hostile to workers.

³³⁸ Labor Law, arts. 242-244.

³³⁹ Despite attempts to contact children who worked in the factory, Human Rights Watch was not able to meet them.

³⁴⁰ Human Rights Watch group interview with Chhau San (pseudonym) and eight other workers, factory 15; group interview with eight workers, factories 15 and 30, location withheld, November 24, 2013.

³⁴¹ Letter from Loblaw Cos. Ltd. to Human Rights Watch, November 11, 2014, on file with Human Rights Watch.

The factory discriminated against pregnant workers at the time of hiring and did not give maternity pay even to workers employed at the factory for more than a year. Workers were forced to do overtime work, and those we interviewed had seen a colleague dismissed for refusing such work. Workers said they had to work continuously from 12:30 p.m. until closing time without a break. Even though the factory had more than 300 workers, there was no infirmary or nurse in the factory. The factory management kept some bandages in the factory office, but that was all.³⁴²

Gap's overall approach to remediation in unauthorized subcontractor factories is outlined above. In addition, Gap wrote to Human Rights Watch saying that it had partnered with BFC to provide training on "Prevention of Unauthorized Subcontracting (UAS)" in all of Gap's approved factories in Cambodia, with the most recent round of trainings in July 2014.³⁴³

³⁴² Human Rights Watch group interview with 10 workers, factory 60, Phnom Penh, December 7, 2013.

³⁴³ Letter from Gap Inc. to Human Rights Watch, September 16, 2014, on file with Human Rights Watch.

VI. The Role of the Government Labor Inspectorate

Labor inspections, corrective action, and accountability are critical to upholding worker rights in Cambodia's garment factories. In 2014, the Cambodian Labor Ministry took some positive steps to revamp its monitoring, creating integrated labor inspectorate teams to inspect factories. These teams, ministry officials told Human Rights Watch, would work closely with the ILO and receive training to conduct thorough inspections. Labor Ministry officials also have responded with joint inspections with BFC of 10 low-compliance factories identified in BFC's Transparency Database.³⁴⁴

These steps are encouraging and overdue. The creation of integrated labor inspection teams was recommended in 2004 as part of the National Strategy on Labour Dispute Prevention and Settlement in Cambodia.³⁴⁵

But the Labor Ministry's efforts continue to be weak in several critical respects—tackling government corruption and collusion with garment factory management, lack of transparency about its inspections and outcomes, and poor accountability.

Corruption and Collusion

Allegations of corruption and collusion between government inspectors and factory management have reduced the credibility of the labor inspectorate system and local authorities.

Perceptions of public sector corruption in Cambodia are high. Transparency International's 2014 Corruption Perceptions Index ranked Cambodia behind North Korea, Afghanistan, and Burma in the Asia-Pacific region, at 156 of the 175 countries surveyed.³⁴⁶ It also found that Cambodia was the most corrupt among top exporters of clothing.³⁴⁷ The Asian

³⁴⁴ For more information, see chapter titled, "Strengthening Better Factories Cambodia."

³⁴⁵ Robert Heron and Hugo van Noord, "National Strategy on Labour Dispute Prevention and Settlement in Cambodia," 2004, <http://betterwork.com/cambodia/wp-content/uploads/2013/05/National-Strategy-on-Labour-Dispute-Prevention-and-Settlement.pdf> (accessed May 4, 2014), p. 20.

³⁴⁶ Transparency International, "Corruption Perceptions Index 2014: Asia Pacific," <http://www.transparency.org/cpi2014/results> (accessed January 12, 2015).

³⁴⁷ Transparency International, "Call on Clothing Companies to Tackle Corruption, Factory Safety," June 2013, http://www.transparency.org/news/pressrelease/clothing_companies_to_tackle_corruption (accessed January 20, 2015).

Development Bank found that corruption was one of the key problems hampering Cambodia’s governance systems.³⁴⁸ Most recently, an English-language Cambodian newspaper reported that GMAC made donations to government funds and the Ministry of Commerce, raising questions about the GMAC-government nexus and lack of transparency around the extent of such donations.³⁴⁹

Human Rights Watch gathered numerous accounts showing that Cambodia’s labor inspectorate system has been seriously undermined by corruption and abuse of power. Two former labor inspectors independently told Human Rights Watch about the “envelope system” where factory managers sought favorable reports by thrusting an envelope with money to inspectors when they visited factories.³⁵⁰ The two long-time inspectors said they had routinely been offered bribes. One said,

We went as a group—three or four people. Sometimes even five people went. No one in my group demanded money in front of me. But they were called out separately [by factory managers] The factory used to give us US\$100 or 200. Whatever amount they gave us in the envelope we were expected to take it and give it to our boss [supervisor]. He would split it among us. We would consult with the boss and see what we could write in the report.³⁵¹

Because Human Rights Watch had very limited access to labor inspection reports,³⁵² it was difficult to independently determine how corruption or other process-related concerns actually influenced such reports. However, the labor inspectorate report for factory 36, which Human Rights Watch was provided, did not note any labor rights violations.³⁵³ To the contrary, workers at the factory told Human Rights Watch of repeated use of three-month

³⁴⁸ Asian Development Bank, “Cambodia: Country Governance Risk Assessment and Risk Management Plan,” 2012, <http://www.adb.org/sites/default/files/institutional-document/33292/files/cgra-cam.pdf> (accessed January 20, 2015).

³⁴⁹ Daniel de Carteret and Vincent Maclsaac, “GMAC paid for gov’t officials’ perks,” *Phnom Penh Post*, October 18, 2014, <http://www.phnompenhpost.com/post-weekend/gmac-paid-gov%E2%80%99t-officials-perks> (accessed January 20, 2015).

³⁵⁰ Human Rights Watch interviews with two former government labor inspectors AN1 and AN2 (names withheld), location withheld, April 2014.

³⁵¹ Human Rights Watch interview with a former government labor inspector AN1, *ibid*.

³⁵² Human Rights Watch made a written request to the Labor Ministry to share labor reports, but the ministry refused access, citing confidentiality.

³⁵³ Labor Inspectorate Reports for 2012 and 2013 for factory 36, on file with Human Rights Watch. One of the reports from 2012 records irregularities in some paperwork on enterprises, but subsequent reports say that everything in the factory was in accordance with regulations.

fixed-duration contracts, forced and excessive overtime without the ability to take breaks, workers being forced to cut their lunch breaks short to work and meet production targets, denial of sick leave, and a disproportionate deduction of the monthly attendance bonus when workers were granted sick leave.³⁵⁴

Workers from several factories gave other examples of corruption. For example, the workers at one large factory that subcontracted work to smaller factories told us that a translator employed at the factory used her personal connections as the wife of a local district police chief to silence worker concerns from subcontractor factories.³⁵⁵ A worker from a subcontractor factory with poor working conditions told Human Rights Watch that she had seen the local police come to the factory and take money from the managers: “I used to sit right in front of the owner’s table and could see that he gave the police money.”³⁵⁶ Even though the police do not have a legally mandated role to monitor working conditions in factories, they remain influential at the local level.

In December 2014, Labor Ministry officials responded to a list of concerns Human Rights Watch had sent to the ministry regarding the Cambodian labor inspection system. They wrote that problems that hampered labor inspection include limited human resources and “cooperation from factory, enterprise and location owners that is not yet good,” and noted that “a clear-cut list of questions to evaluate work conditions (checklist) is not yet available for officials going down to do inspections.”³⁵⁷ Ministry officials acknowledged that “[t]he result is that the quality and effectiveness of on-the-spot work inspection and resolution of labor disputes remains limited.”³⁵⁸

With a view to improving the quality of inspections, labor officials said they created a single (integrated) inspection mechanism and also collaborated with BFC to identify questions for a consolidated checklist. However, officials did not specify how they proposed to address the problems of corruption, lack of transparency around the enforcement actions they initiate, and lack of timely Labor Law enforcement measures.

³⁵⁴ Human Rights Watch group interview with three workers, factory 36, Phnom Penh, November 28, 2013.

³⁵⁵ Human Rights Watch group interview with two workers, location and other details withheld, November 24, 2014.

³⁵⁶ Human Rights Watch interview with a worker (name withheld), former worker from factory 47, Kandal province, April 9, 2014.

³⁵⁷ Letter from H.E. Ith Samheng, Minister of Labor and Vocational Training to Human Rights Watch, December 19, 2014 (translated from Khmer to English by Human Rights Watch).

³⁵⁸ Ibid.

Lack of Transparency and Accountability

The labor inspectorate has damaged its credibility through lack of transparency about its functions, the remedial steps it has ordered, and the measures it has taken against factories to compel compliance. The little government data (from 2009 to 2013) that was shared with Human Rights Watch shows that the government has failed to hold errant factories accountable for labor rights violations and take enforcement actions as outlined in the Labor Law in those years.

The law empowers labor inspectors to conduct unannounced factory inspections, write reports, provide technical advice to ensure labor law compliance, give an opportunity to factories to take remedial measures within specified time periods, and impose penalties on factories that refuse to take such measures.³⁵⁹ Labor Law chapter XVI on “Penalties” sets out a detailed scheme of fines, imprisonment, or both for factories that do not comply with the Labor Law.³⁶⁰

The labor inspectorate perpetuates an opaque system by insisting on blanket confidentiality without any legal basis. For example, in March 2014, BFC made public the names of 10 low-compliance factories through its Transparency Database.³⁶¹ Each of these factories had received at least three BFC assessments before their names were published. In theory, these factories should have also been subject to multiple government labor inspections and enforcement actions. Labor Ministry officials refused to release information about the outcome of these labor inspections, however, incorrectly citing article 348 of the Labor Law, which protects sources of complaints but not the outcome of labor inspections.³⁶²

³⁵⁹ Labor Law, arts. 344-347.

³⁶⁰ Labor Law, Chapter XVI, arts. 359-386.

³⁶¹ ILO-BFC, “Transparency Database: Low Compliance Factory List,” <http://betterfactories.org/transparency/> (accessed March 20, 2014). The first 10 factories that were listed in the database in March 2014 are: Best Tan Garment Ltd., Cambodian Hoi Fu Garments & Knitting Fty. Co. Ltd., Chang Tai International Corp., Chea Sinat Garment Co. Ltd., Ever-Glory (Cambodia) Garment Manufacturing Co. Ltd., Juan Shi Garment Co. Ltd (formerly Chean Ping Garment), Lixing Knitting Factory Limited, Phong Wan Enterprise Co. Ltd., Yubin Service Co. Ltd., USA Fully Field Garments Co. Ltd.

³⁶² Human Rights Watch requested labor ministry officials to share their labor inspection reports for the 10 low compliance factories on the BFC Transparency Database listed in March 2014.

Labor Law, article 348 states: “They [labor inspectors] must keep the source of any complaint, referred to them, about any default in the facility or a violation of the law strictly confidential and must not reveal to the employer or his representative that the inspection was the result of a complaint.”

While unwilling to share any copies of labor inspection reports, Labor Ministry officials admitted that their inspectorate reports had found similar problems in the factories named in the BFC Transparency Database. However, they asserted that it was wrong for the ministry to be perceived as having done little, contending that the ministry lacked a platform for disseminating information.³⁶³

The government is in the process of creating a website for the Labor Ministry—but the website alone will not improve accountability and transparency. While this will permit the dissemination of more information, it is unclear how much will actually be disclosed. A senior Labor Ministry official told Human Rights Watch:

We don't want to become BFC. If we publicize the government labor inspectorate's reports, we will have two different sets of reports [BFC report and government labor inspector's report] and don't want to challenge each other's reports.³⁶⁴

The Labor Ministry's own data suggests a very low number of penalties given the size of the garment industry and the types of abuses that Human Rights Watch, unions, BFC, and other civil society groups have documented. For example, between 2009 and December 2013, labor authorities imposed fines on only 10 factories.³⁶⁵ In 2011 the ministry collected 4,989,600 riels (\$1247) in fines but did not collect any fines in 2012 and 2013.³⁶⁶ In the same period, they said they had initiated court proceedings against seven factories but did not furnish additional information.³⁶⁷

³⁶³ Human Rights Watch group interview with H. E. Oum Mean, deputy minister, Ministry of Labor and Vocational Training; H. E. Prak Chantheoum, deputy secretary of state; H. E. Heng Sour, chief of cabinet, labor ministry; Seng Sakda, director general of labour; In Khemara, director, Department of Labor Inspection; Koy Tepdaravuth, director, Department of Dispute Resolution, Phnom Penh, March 27, 2014.

³⁶⁴ Human Rights Watch interview with senior labor ministry official (name withheld), Phnom Penh, April 3, 2014.

³⁶⁵ Human Rights Watch interview with labor ministry officials (names withheld), Phnom Penh, April 11, 2013. Labor ministry officials shared official data with Human Rights Watch. See table in the following pages.

³⁶⁶ Human Rights Watch group interview with three labor ministry officials (names withheld), Phnom Penh, April 11, 2013.

³⁶⁷ Ibid.

Labor ministry officials also said that in 2013 labor inspectors conducted 2,214 inspections in 960 businesses and found violations in 295 of them.³⁶⁸ Of these, a “majority... were garment and footwear factories.”³⁶⁹ In April 2014, Labor Ministry officials were unable to provide an overview of enforcement measures taken against the 295 factories and enterprises that committed violations.³⁷⁰ In December 2014, however, Labor Ministry officials said that “in the first 11 months of 2014, a total of 1686 inspections were carried out... and that arrangements were made to fine 25 factories and enterprises found to not be in compliance with the Labor Law.”³⁷¹ In February 2015, Khmer-language media reported that in 2014 the labor inspectorate had taken action against 50 factories without specifying details.³⁷²

³⁶⁸ Human Rights Watch group interview with Seng Sakada, Director General of Labor, Ouk Chantou, deputy director in the Department of Labor Inspection, and Sim Hong, Deputy Director of the Department of Employment and Manpower, Phnom Penh, April 4, 2014.

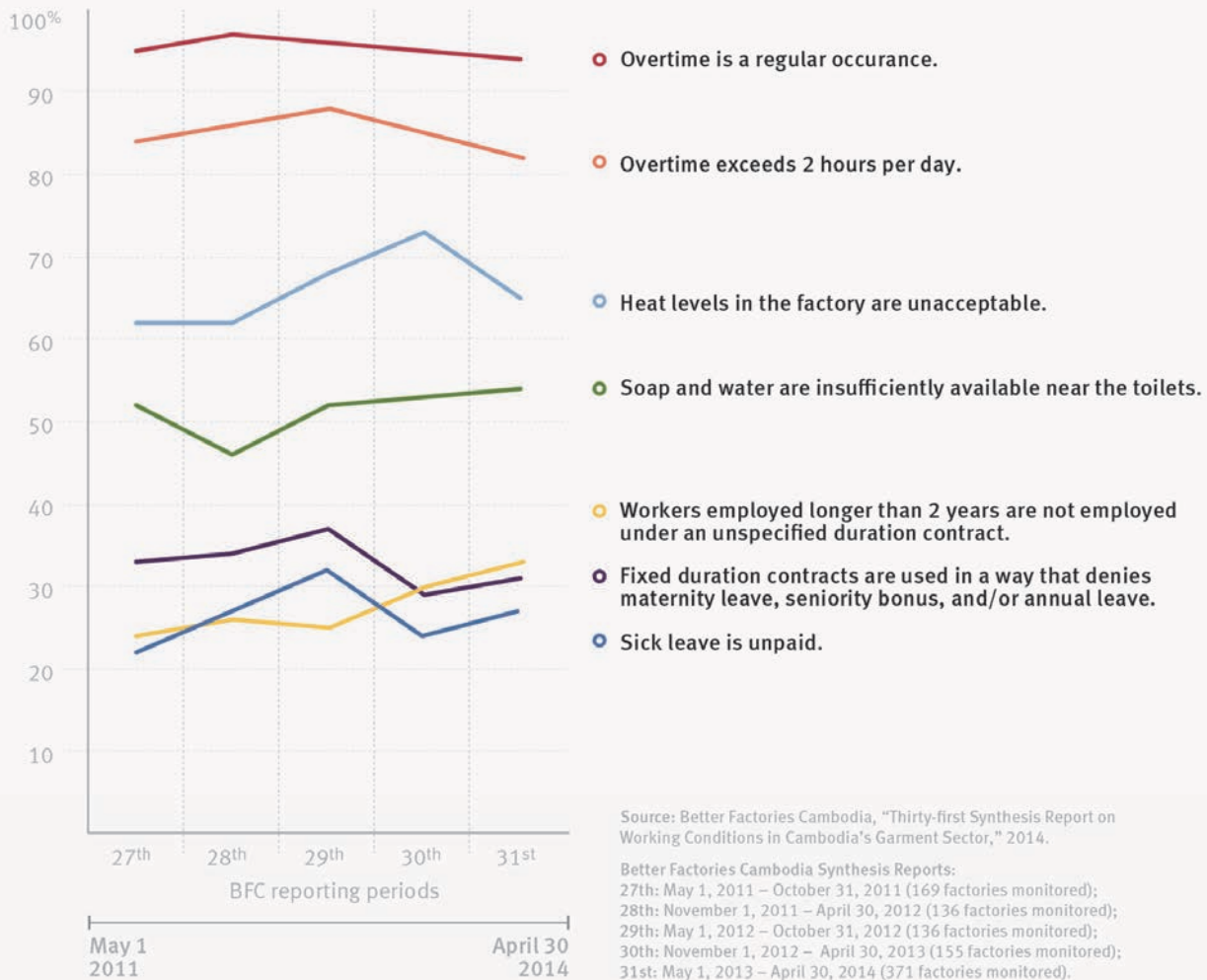
³⁶⁹ Ibid.

³⁷⁰ Ibid.

³⁷¹ Letter from H.E. Ith Samheng, Minister of Labor and Vocational Training to Human Rights Watch, December 19, 2014 (translated from Khmer to English by Human Rights Watch).

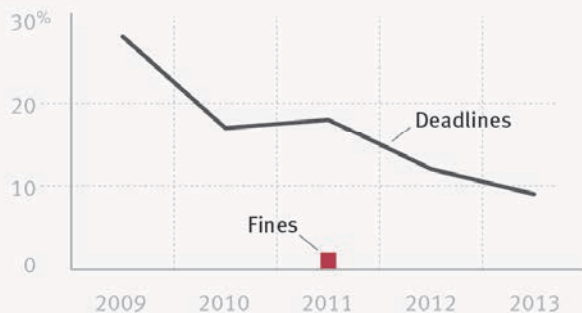
³⁷² “The Minister of Labour Warns of Taking of Serious Measures Against Any Factory Violating the Labour Law” (roathamontrey krasuong kar-ngear promean chat witheanakar thngun thgnun loe rong-chak na del rumlop chhbap kar-ngear), *Kampuchea Thmey webnews*, <http://kpt-news.com/local-news/general-news/24883-2015-02-11-08-41-56.html>, (accessed February 11, 2015.)

PERCENTAGE OF FACTORIES VIOLATING SELECTED LABOR REGULATIONS



PERCENTAGE OF INSPECTIONS RESULTING IN DEADLINES* OR FINES

Between January 2009 and December 2013, only **10 fines** (all in 2011) were imposed on factories violating labor regulations of thousands of inspections conducted annually.



*Deadlines for factories to take corrective action to comply with the Labor Law.



Source: Department of Labor Inspectorate, Ministry of Labor and Vocational Training, April 2014. Total number of inspections and fines are not available for 2014.

VII. Better Factories Cambodia

Better Factories Cambodia (BFC) plays an important role in monitoring working conditions in export-oriented factories in Cambodia. It produces factory reports and provides technical guidance and support for remediation of labor rights violations when factories pay for its advisory services.³⁷³

Workers and labor rights activists who acknowledge BFC's contributions nonetheless have raised concerns about its factory monitoring methods, coverage of factories, and transparency. Given that BFC's role is limited to monitoring and advisory services without enforcement powers, labor rights activists have also raised concerns about BFC's lack of transparency about the brands whose factories it monitors, saying its failure to reveal brand names weakens pressure for brands to be accountable for labor law compliance in their supply chains.

Worker Concerns Regarding BFC Factory Monitoring

Workers we spoke with had multiple concerns about BFC's monitoring, especially about worker ability to participate effectively in on-site monitoring. Irrespective of who was visiting—whether brand representatives, other external monitors, government officials, or BFC monitors—workers complained that they were coached by factory management and could not have a frank discussion about their working conditions.

Many workers emphasized the need for a stronger mechanism for reporting concerns about factory working conditions to BFC monitors off site, without fear of surveillance by management or retaliation. Union representatives and labor rights activists also complained that BFC's detailed factory inspection reports were available to managers and brands but were inaccessible to workers.³⁷⁴ Factory reports are behind a paywall and unions cannot even pay to access them without prior authorization by the concerned

³⁷³ A detailed analysis and evaluation of BFC is beyond the scope of this report. For more detailed analysis of BFC monitoring, see Worker Rights Consortium, *Monitoring in the Dark*, 2013; Clean Clothes Campaign and Community Legal Education Centre, "10 Years of the Better Factories Cambodia Project: A Critical Evaluation," August 2012. See BFC, "Advisory Services."

³⁷⁴ Human Rights Watch interviews with representatives from CATU, CCAWDU, NIFTUC, and CUMW, November and December 2013, and April 2014. According to BFC, the purchase of inspection reports is part of its revenue generation model. One proposal is that workers could negotiate access through collective bargaining agreements.

factories. However, as part of its Transparency Database, in addition to the list of low-compliance factories, BFC makes public a database of factories assessed against what BFC identified as 21 “critical issues.”³⁷⁵

Coaching and Preparation to Receive “Visitors”

About two hours in advance we were told they were going to come. We were all told that we should not look at the visitors and should not speak to them. We were also warned that the factory would lose business if we told them what happened. And that we will lose our jobs and would also be responsible for other people losing their jobs.

— Chou Samaoun, male worker who participated in a group discussion with a BFC monitor during a monitoring visit to his factory in 2014, all identifying details withheld.

Workers from a number of factories—large and small—repeatedly told Human Rights Watch that managers strongly discouraged any interaction with visitors.³⁷⁶ When interaction could not be avoided—as with BFC monitors—managers coached or threatened workers ahead of external visits.³⁷⁷

Some factory managers made announcements using the public announcement system, sent messages through team leaders, or called workers and warned them that they should not report their working conditions to visitors.³⁷⁸ Teal Chakriya from factory 12 described how the managers, through group leaders, told workers to say that they work until 4 p.m. with occasional overtime until 7:30 p.m. or 10 p.m. She said,

Most workers are afraid of losing their jobs. We are all on short-term contracts. They will call and threaten group leaders. Once they said they will give \$5 if we say good things about the factory. I have seen workers get

³⁷⁵ BFC, “Critical Issues Factory List,” http://betterfactories.org/transparency/critical_issues/view (accessed January 20, 2015).

³⁷⁶ Human Rights Watch group interviews with workers from factories 1, 2, 3, 6, 7, 12, 18, 32, 35, 38, 53, Phnom Penh and other locations, November and December 2013.

³⁷⁷ Ibid.

³⁷⁸ Ibid.

\$5 after they finished a meeting with visitors—I cannot be sure but I think it was BFC—they were Khmer visitors.³⁷⁹

Workers also reported the different ways factories prepared to receive “visitors.” These included: telling workers to clean their desks and remove piles of clothes from their sewing machines and hide them, receiving gloves and masks just before visitors arrived; switching on additional lights and fans that were normally switched off to save electricity; providing cups for drinking and refilling the drinking water container; and hiding children under desks with large piles of clothes in front of them or asking children to leave the factory premises.³⁸⁰

Three workers from factory 32 described a “light system” by which the factory managers warned them about visitors:

Our factory started using the lights this year. As soon as the security guard finds out there are visitors and tells the factory managers, the long light near the roof will come on.... And the group leaders will start telling all the workers to clean our desks; we have to wear our masks, put on our ID cards, and cannot talk to visitors. Everyone knows this is a signal.³⁸¹

Pung Mom recalled what happened before inspections in her factory:

The factory already knows in advance before visitors come. All the heads of every division will be called and told that visitors will be coming so the entire factory should be organized well. So they start distributing ear plugs so we don’t suffer because of the noise. They will make us tie our hair up, and give us masks and gloves. Before visitors come they will also ask the workers to make sure there is water in the place that is assigned. Normally for every workstation we have three lights—they will only switch on one light. But when visitors come, all the lights will be switched on.³⁸²

³⁷⁹ Human Rights Watch group interview with Teal Chakriya (pseudonym) from factory 12 and nine others (names withheld) from other factories, Phnom Penh, November 29, 2013.

³⁸⁰ Human Rights Watch group interviews with workers from factories 1, 2, 3, 6, 7, 12, 18, 32, 35, 38, 53, Phnom Penh and other locations, November and December 2013.

³⁸¹ Human Rights Watch group interview with Leng Chhaya (pseudonym) and two other workers, factory 32, Phnom Penh, November 29, 2013.

³⁸² Human Rights Watch interview with Pung Mom (pseudonym), worker, factory 53, Phnom Penh, November 18, 2013.

Nov Vanny and Keu Sophorn from factory 18 told Human Rights Watch:

Before ILO comes to check, the factory arranges everything. They reduce the quota for us so there are fewer pieces on our desks. ILO came in the afternoon and we all found out in the morning they were coming. They told us to take all the materials and hide it in the stock room. We are told not to tell them the factory makes us do overtime work for so long. They also tell us that if [we] say anything we will lose business.³⁸³

Workers from some factories said that BFC's selection of workers from different factory divisions for group discussions meant they could not speak openly.³⁸⁴ For example, one union leader who had participated in BFC monitoring discussions said:

BFC invites workers from different divisions and we sit together. These workers are not always known to each other. If a worker doesn't know another worker—then they will not trust them. So people don't speak out in the meeting with the BFC team—everyone is scared that someone will leak what we say in the meeting to the management. What will happen to us after that? BFC won't protect us.³⁸⁵

BFC experts told Human Rights Watch that their monitors were aware of factories' coaching workers. They provided information on procedures aimed at mitigating the impact of coaching on BFC's monitoring and reporting.³⁸⁶ These include unannounced inspections over 2 consecutive days and a maximum waiting time of 30 minutes to enter the factory, after which BFC monitors record the delay as effective refusal to allow entry. They report this effective refusal to the Ministry of Commerce and brands sourcing from the factory.³⁸⁷ Jill Tucker, BFC's then-chief technical advisor, told Human Rights Watch that BFC was planning to expand its transparency database of 21 critical issues to include factory

³⁸³ Human Rights Watch group interview with Nov Vanny (pseudonym) and Keu Sophorn (pseudonym) from factory 18, Kum Chanthy (pseudonym) from factory 20 and Cheoun Thea (pseudonym) from factory 19, Phnom Penh, December 5, 2013.

³⁸⁴ Ibid.

³⁸⁵ Human Rights Watch interview with union leader (name withheld), factory 2, Phnom Penh, November 12, 2013.

³⁸⁶ Human Rights Watch phone discussions with Jason Judd, former technical specialist, BFC, Washington D.C., October 7, 2014 and Jill Tucker, former chief technical advisor, Better Factories Cambodia, Phnom Penh, October 13, 2014.

³⁸⁷ Ibid.

refusals or delays beyond 30 minutes in admitting monitors.³⁸⁸ Proposed changes will reflect the indicators being developed by the global Better Work program.³⁸⁹

Other measures aimed at mitigating the impact of coaching include monitors' power to end group discussions where they suspect workers have been coached and are afraid to share information freely, and to convene fresh groups of workers.³⁹⁰ Worker reluctance to speak freely can also be recorded in the factory monitoring report.³⁹¹

BFC monitors also supplement their onsite monitoring with discussions with workers outside factory premises during lunch hour. Because it is impossible to get accurate information on all of BFC's indicators during a one-hour lunch break, BFC monitors typically focus on a few issues where offsite information would most help them, such as forced and excessive overtime.³⁹² Tucker also cited at least one recent example where workers contacted BFC monitors and reported anti-union practices, which BFC monitors followed-up through home visits and then negotiated with the factory to have the workers reinstated.³⁹³

Tucker said that any monitoring—not just BFC monitoring—is imperfect and should be supplemented by other mechanisms. She reiterated that compiling and following up on individual grievances from over a half a million workers is beyond the mandate and capacity of BFC.³⁹⁴ However, in order to ensure better and more systemic collection of information, BFC, consistent with the revisions being introduced by the global Better Work program, was improving its monitoring assessment tool to examine factory-level grievance redress mechanisms not just on paper, but in practice.³⁹⁵

Because unions and workers do not have access to factory monitoring reports, they have no way of knowing whether their concerns were being accurately recorded and reflected in the reports. Combined with the coaching, this reduces worker confidence in BFC

³⁸⁸ Human Rights Watch phone discussion with Jill Tucker, October 13, 2014.

³⁸⁹ Ibid.

³⁹⁰ Human Rights Watch phone interviews with Jason Judd, October 7, 2014 and Jill Tucker, *ibid*.

³⁹¹ Human Rights Watch phone discussion with Jill Tucker, October 13, 2014.

³⁹² Human Rights Watch phone discussion with Jason Judd, October 10, 2014.

³⁹³ Human Rights Watch phone discussion with Jill Tucker, October 13, 2014.

³⁹⁴ Ibid.

³⁹⁵ Ibid.

monitoring and reporting. Jason Judd, the former technical specialist with BFC, acknowledged that BFC could take more measures to improve worker confidence:

Workers want to tell their stories and BFC monitors do a very good job on the whole of capturing them in reports. The problem is that workers do not have access to the factory reports and don't know that their stories have made it into the report. Others expect, despite caveats from monitors, that BFC has the power to force improvements in their factories. Taken together, this can undermine confidence.³⁹⁶

Human Rights Watch was unable to obtain BFC reports to independently verify whether BFC monitors accurately identified and reflected coaching in the factories where workers reported such practices to Human Rights Watch.

Monitoring Subcontractor Factories and Facilitating Supply Chain Transparency

Mandatory BFC monitoring is restricted to factories that have an export license.³⁹⁷ However, subcontractors who do not have an export license may be referred to BFC for monitoring and advisory services, including through brand pressure. According to January 2015 data, BFC monitoring extended to 536 garment factories and 12 footwear factories.³⁹⁸ About 25 to 30 of these factories were subcontractors without export permits.³⁹⁹

Monitoring subcontractor factories is critical for two key reasons. Workers in subcontractor factories often experience worse working conditions than workers in the large export factories. Workers have fewer options to report violations and seek remediation.

Additionally, export-oriented factories may appear labor law compliant even when they are not due to the practices of their subcontractors. For example, in factory 1 where workers were not required to do overtime, the factory managers and team leaders were

³⁹⁶ Human Rights Watch phone discussion with Jason Judd, October 10, 2014.

³⁹⁷ Human Rights Watch interviews with experts familiar with the working of BFC (names withheld), March 2014.

³⁹⁸ BFC, "Active Factories Registered with Better Factories Cambodia," January 15, 2015, <http://betterfactories.org/wp-content/uploads/2015/01/2015-01-15-Factory-list-update-on-BFC-website.pdf> (accessed January 20, 2015).

³⁹⁹ Human Rights Watch interviews and email correspondence with experts familiar with the working of BFC (names withheld), April 2014 and September 2014.

encouraging workers to work at nights, Sundays, and public holidays in subcontractor factories, including on products of the same design. Workers said trucks were arranged to transport them to subcontractor factories outside the gates of factory 1. Workers were paid on an hourly basis without any compensatory time off or overtime wage rates for the additional work on those days in the subcontractor factories.⁴⁰⁰

Currently BFC does not have the resources or a Cambodian government mandate to expand its operations.⁴⁰¹

Another way in which BFC could help improve supply chain transparency and the accountability of international apparel brands is by reporting on the labels being produced in the factories it has visited. An official from GMAC told Human Rights Watch that they had urged BFC to publicly report on brands that source from factories that BFC monitors.⁴⁰² David Welsh, from the international labor rights group Solidarity Center, said that this was one of the few points on which labor advocates and GMAC agreed.⁴⁰³

Grappling with the Enforcement Problem

A key challenge for workers and labor rights advocates is that BFC lacks enforcement powers. Its effectiveness primarily depends on the government's commitment to follow-up on BFC findings and take appropriate enforcement actions.

According to a 2005 circular issued by Prime Minister Hun Sen, the Labor Ministry should verify BFC findings and issue its own report. If the Labor Ministry corroborates what BFC finds, the Ministry of Commerce should issue a warning letter to the concerned factory, giving it a week to initiate corrective action. If the factory takes no action within a week, the ministry imposes a week-long ban on exports; this grows to a three-month ban if no corrective action is initiated within two weeks of the warning letter. Ultimately, the Ministry of Commerce can revoke the export license if the factory continues to violate labor laws.⁴⁰⁴

⁴⁰⁰ Human Rights Watch interviews with four workers, factory 1, Phnom Penh, April 5, 2014.

⁴⁰¹ BFC, "Monitoring Services," updated July 22, 2013, <http://betterfactories.org/wp-content/uploads/2014/08/2014-08-07-Monitoring.pdf> (accessed January 20, 2015).

⁴⁰² Human Rights Watch interview with GMAC official (name withheld), Phnom Penh, April 8, 2014.

⁴⁰³ Human Rights Watch phone interview with David Welsh, Cambodia director for the Solidarity Center, Phnom Penh, August 15, 2014.

⁴⁰⁴ Office of the Prime Minister Hun Sen, Circular No. 305, 2005, on file with Human Rights Watch.

In 2014, after BFC issued a list of low-compliance factories, Labor Ministry officials formed joint inspection teams with the BFC and warned some of the factories on the list.⁴⁰⁵ In December 2014, Labor Ministry officials told Human Rights Watch that they had only imposed fines on low compliance factories that had not taken remedial measures.⁴⁰⁶ Information gathered by Human Rights Watch after BFC's launch of its Transparency Database indicated that as of December 2014 the government was yet to revoke a single factory's export license even where the factory had failed to take remedial measures.⁴⁰⁷

Facilitating Brand Accountability

Another method of helping ensure compliance with labor law is engaging brands about labor rights violations in their supply chains. The Clean Clothes Campaign, the Community Legal Education Centre, and the Worker Rights Consortium have recommended that BFC report publicly on the level of brand engagement, that is, which brands have purchased factory-level reports and advisory services, and which brands are “free riders.”⁴⁰⁸ Brand representatives from H&M and Adidas who spoke to Human Rights Watch acknowledged the “free rider” problem.

Such reporting is essential to evaluate brands' commitment to labor rights in their supply chains. Human Rights Watch asked key international brands about their purchase and use of BFC factory monitoring reports.

Human Rights Watch did not receive any response to these questions from Joe Fresh and Armani.

Marks and Spencer wrote, “all of our factories are in the Better Factories Cambodia monitoring programme and have their audits carried out by the Better Work auditors.”⁴⁰⁹

⁴⁰⁵ Human Rights Watch group interview with six Labor Ministry officials, Phnom Penh, March 27, 2014. Labor Ministry officials claimed not all the names of low compliance factories were made available to the labor ministry even though these were publicly posted on the BFC website as part of its Transparency Database.

⁴⁰⁶ Letter from H.E. Ith Samheng, Minister of Labor and Vocational Training to Human Rights Watch, December 19, 2014 (translated from Khmer).

⁴⁰⁷ Ibid. In November 2014, Human Rights Watch wrote to the Cambodian labor and commerce ministries outlining concerns that the ministries had not initiated action in accordance with the 2005 circular and did not outline steps they had initiated to implement the 2005 circular. Human Rights Watch did not receive any response from the commerce ministry.

⁴⁰⁸ CCC and CLEC, 10 Years of the Better Factories Cambodia Project, 2012, p. 29; WRC, *Monitoring in the Dark*, 2013, pp. 73-4.

⁴⁰⁹ Letter from Marks and Spencer to Human Rights Watch, September 16, 2014, on file with Human Rights Watch, p. 2.

Because all export-oriented factories are required to undergo BFC monitoring, this response did not disclose anything new about the company’s approach to BFC engagement.

H&M representatives told Human Rights Watch that the brand conducts a “full audit” roughly every two years in every factory that produces for the brand, at which time H&M purchases relevant BFC factory monitoring reports and feeds the findings into its audits.⁴¹⁰

Similarly, in September 2014, Adidas representatives told Human Rights Watch that they had purchased BFC reports for their suppliers where recent ones were available and coincided with their auditing cycles. But they did not purchase BFC reports for their licensee-factories. Adidas representatives told Human Rights Watch that they were reexamining their monitoring mechanism to extend purchase of BFC reports to licensee factories and to purchase more BFC factory monitoring reports in general.⁴¹¹

Gap told Human Rights Watch that it subscribes to BFC reports for all of its authorized factories in Cambodia.⁴¹²

Another important way in which BFC can promote compliance is through its “Advisory Services.” Labor rights advocates argue that BFC should disclose which brands and suppliers pay for its advisory services as well as for its monitoring. The program allows factories to sign up for BFC Advisory Service at a cost.⁴¹³ BFC provides technical guidance to factories to facilitate compliance with labor laws through a remediation plan that is developed in consultation with a committee, the Performance Improvement Joint Consultative Committee, comprising factory managers and worker representatives. The program is voluntary.⁴¹⁴ Only about 10 percent of the factories registered with BFC use its advisory services.⁴¹⁵

⁴¹⁰ Human Rights Watch group discussion with three officials from H&M, Bangkok, September 26, 2014. Letter from H&M to Human Rights Watch, April 1, 2014, on file with Human Rights Watch.

⁴¹¹ Human Rights Watch group discussion with William Anderson, vice president, Social and Environment Affairs, Asia Pacific, and Akkaphan Rammanee, senior manager, Field Operations, South East Asia, Adidas, Bangkok, September 26, 2014.

⁴¹² Letter from Gap to Human Rights Watch, September 2014, on file with Human Rights Watch, p. 1.

⁴¹³ See BFC, “Advisory Services,” http://betterfactories.org/?page_id=246 (accessed August 29, 2014). See also, BFC, “Training and Advisory Services,” August 2014, http://betterfactories.org/wp-content/uploads/2014/08/Training_revised-Aug-25-14.pdf (accessed January 20, 2015). Advisory services for a factory in Phnom Penh that has fewer than 500 workers cost \$2,000; for a factory with fewer than 500 workers outside Phnom Penh the cost is \$4,000. The costs increase with the number of workers in a factory.

⁴¹⁴ Ibid.

⁴¹⁵ Human Rights Watch discussions with experts familiar with the working of BFC (details withheld), September 2014.

VIII. International Legal Standards

Cambodia is party to several international legal conventions governing the rights of women in the workplace and other worker rights.⁴¹⁶ Cambodia has also ratified 13 International Labour Organization (ILO) conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Cambodian government has a duty to respect, protect, and fulfill workers' rights to "safe and healthy conditions" without discrimination and with "rest, leisure...reasonable limitation on working hours," and "to form trade unions and join the trade union" of their choice.⁴¹⁷

Women Workers

Creating a Violence-Free, Non-Discriminatory Workplace with Maternity Protection

Cambodia's international obligations include promoting equality at the workplace and prohibiting discrimination on the basis of sex or pregnancy. Women have a right to a workplace free of sexual harassment and states are duty-bound to take preventive steps and ensure access to redress.⁴¹⁸

Protection against pregnancy-based discrimination includes but is not limited to dismissal.⁴¹⁹ ILO Convention No. 111 on Discrimination defines discrimination as "any distinction, exclusion or preference made on the basis of ... sex... which has the effect of

⁴¹⁶ These include the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol, the Convention on the Rights of the Child (CRC) and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR).

⁴¹⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, arts. 7 and 8.

⁴¹⁸ CEDAW Committee, General Recommendation No. 19, 1992, 11th session, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (accessed September 9, 2014), paras. 17, 18, and 24.

⁴¹⁹ CEDAW, adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, art. 11(2) (prohibiting discrimination, including dismissal, on the basis of pregnancy).

nullifying or impairing equality of opportunity or treatment in employment or occupation.”⁴²⁰ States should modify practices that are inconsistent with a policy of anti-discrimination.⁴²¹ Therefore, the Cambodian government should take measures to eliminate discrimination in hiring, regularizing contracts beyond probation, promotions, and termination, and end the repeated use of FDCs beyond seasonal and temporary needs.

According to the 2000 ILO Convention No. 183 on Maternity Protection, which Cambodia has not ratified, and Recommendation No. 191, the onus of proving that the reasons for terminating a pregnant worker were unrelated to pregnancy lies on the employer.⁴²² Cambodia’s Arbitration Council has instead held that pregnant women workers have the onus of proving such discrimination.

Women are entitled to special protection during pregnancy to avoid work harmful to them. States should also encourage the provision of social services, especially through developing childcare services, to enable parents to balance caregiving with work responsibilities.⁴²³

Reasonable Accommodation

Laws should ensure that a workplace accommodates pregnant women’s special health needs, including leaving for medical checks after notifying the employer.⁴²⁴ After assessing health and safety risks for pregnant women at the workplace, states should put in place systems to minimize such risks, including alternative work or transfers without loss of pay.⁴²⁵ Cambodian authorities have not studied the occupational and health risks for workers in garment factories, especially for pregnant workers, including risks from sitting

⁴²⁰ ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (Discrimination (Employment and Occupation) Convention), adopted June 25, 1958, entered into force June 15, 1960, ratified by Cambodia on August 23, 1999, http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C111 (accessed January 20, 2015), art. 1.

⁴²¹ ILO Convention No. 111, art. 3(c).

⁴²² ILO Convention No. 183 concerning the revision of the Maternity Protection Convention (Revised), 1952 (Maternity Protection Convention), adopted June 15, 2000, entered into force February 7, 2002, not ratified by Cambodia, www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312328:NO (accessed January 20, 2015), art. 8.

⁴²³ See CEDAW, art. 11(2)(states should take appropriate measures to “provide special protection to women during pregnancy in types of work proved to be harmful to them” and “promot[e] the establishment and development of a network of child-care facilities”).

⁴²⁴ ILO Recommendation No. 191 on Maternity Protection, 2000, art. 6(6).

⁴²⁵ ILO Recommendation No. 191, art. 6(2).

for prolonged hours. The government has not issued any directive to reasonably accommodate pregnant workers without resulting in income loss.⁴²⁶

Short-Term Contracts and Casual Hiring

ILO Convention No. 158 on Termination of Employment together with Recommendation No. 166 governs the use of short-term contracts. Cambodia has not ratified this convention but it provides useful guidance.⁴²⁷

States should create “adequate safeguards” to ensure that contracts for specified periods are not used to avoid worker protection against unfair termination.⁴²⁸ Fixed-term contracts should be limited to situations where the “nature of work,” the “circumstances under which it is to be effected,” or “the interests of the worker” requires them.⁴²⁹ Where short-term contracts are renewed one or more times, or when they are not limited to the situations described above, states should deem them as contracts of indeterminate duration.⁴³⁰

Cambodian labor law deems short-term contracts that are renewed one or more times beyond two years as contracts of indeterminate duration. But it does not specify that short-term contracts not necessitated by the “nature of the work” or circumstances of the task are indeterminate. In any event, even the two-year outer limit for repeated renewal of FDCs is flouted by many factories. Authorities should protect both male and female workers from being discriminated against using shorter-term FDCs.

States should curb arbitrary dismissals for “unsatisfactory performance” with adequate safeguards such as a written warning, followed by a “reasonable period” for

⁴²⁶ The New York City Pregnant Workers Fairness Act, 2014, provides an example of the nature of legal protection that pregnant workers should enjoy. For examples of “reasonable accommodation” at the workplace, see A Better Balance, “New York City Pregnant Workers Fairness Act: Know Your Rights,” <http://www.abetterbalance.org/web/ourissues/fairnessworkplace/286-nycpwfa> (accessed October 11, 2014).

⁴²⁷ ILO Convention No. 158 concerning Termination of Employment at the Initiative of the Employer (Termination of Employment Convention), 1982, adopted June 22, 1982, entered into force November 23, 1995, not ratified by Cambodia, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158 (accessed July 23, 2014); ILO Recommendation No. 166 on the Termination of Employment Convention, 1982, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R166 (accessed July 23, 2014), art. 3(2)(a).

⁴²⁸ Recommendation No. 166, art. 3(1).

⁴²⁹ Ibid, art. 3(2)(a).

⁴³⁰ Ibid., art. 3(2)(b) and (c).

improvement.⁴³¹ Where the employer needs to terminate workers due to reasons of “economic, technological, structural or similar nature,” these should be made according to pre-defined criteria that factor in the interest of the workers as well as the factory.⁴³²

Freedom of Association

The International Covenant on Civil and Political Rights (ICCPR) protects the right to freedom of association. Both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR), along with the relevant ILO conventions, guarantee the right to join trade unions.⁴³³ These, together with the authoritative interpretation of the ILO core conventions by the ILO Committee on Freedom of Association (CFA),⁴³⁴ impose an obligation on the Cambodian government to ensure that employers do not thwart union formation and participation.

Workers have the right to join organizations “of their choosing without prior authorization” and authorities should refrain from any interference that would restrict this right or impede its enjoyment.⁴³⁵

Laws and regulations governing unions should not restrict union formation.⁴³⁶ States are free to prescribe legal formalities for establishing unions, but they cannot abuse this freedom by prescribing formalities that impair fundamental labor rights guarantees.⁴³⁷

The right to organize includes the right to official recognition through registration.⁴³⁸ But a registrar cannot have absolute discretion to refuse registration, even if the law guarantees workers the right to appeal the registrar’s decision. The law should clearly specify the conditions for union registration and the grounds on which the registrar may refuse or

⁴³¹ Ibid., art. 8.

⁴³² Ibid., art. 23(1).

⁴³³ ICESCR, art. 8; ICCPR, art. 22; ILO Convention No. 87 on Freedom of Association, *ibid.*, art. 3(2) and art. 2.

⁴³⁴ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949

⁴³⁵ ILO Convention No. 87 on Freedom of Association, *ibid.*, art. 3(2) and art. 2.

⁴³⁶ *Ibid.*, art. 7.

⁴³⁷ ILO Freedom of Association Decisions Digest, 2006 ed., http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf (accessed July 26, 2014), paras. 275-76.

⁴³⁸ *Ibid.*, para. 295.

cancel registration.⁴³⁹ Government procedures that result in undue delays to registration are an infringement of workers' right to organize.⁴⁴⁰

Union registration procedures requiring workers to notify factories about the names of office-bearers are an obstacle in practice, effectively prohibiting union formation. The Cambodian government's techniques of finding spelling and other minor errors and repeatedly rejecting or delaying union registration applications of independent unions creates barriers to unionizing. Cambodian Labor Ministry officials have also unnecessarily delayed and suspended union registration, violating international standards. Even though government regulations deem all unions registered within two months of the registration application, in practice unions say they are unable to exercise their full rights unless a license is issued.

The ILO Committee on Freedom of Association has repeatedly said that while it may be desirable to avoid a multiplicity of unions, that fact "does not appear sufficient to justify direct or indirect interference by the State, and especially intervention by the State by means of legislation."⁴⁴¹ The state cannot through legislation seek to impose a monopoly in trade union movement and take away workers' rights to join "organizations of their choosing."⁴⁴² Where laws governing minimum number of founder members can be introduced, authorities should not set the number so high that it effectively renders it impossible to set up a union.⁴⁴³

Children's Rights

Cambodia has ratified the Convention on the Rights of the Child (CRC), which states that children have a right "to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."⁴⁴⁴

⁴³⁹ Ibid., para. 302.

⁴⁴⁰ Ibid., para 279.

⁴⁴¹ Ibid., para. 319.

⁴⁴² Ibid., para.

⁴⁴³ Ibid., para. 284. In one case, the CFA observed that legislation that had set 50 as the threshold number of founder members was too high.

⁴⁴⁴ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Cambodia on October 15, 1992.

Cambodia has also ratified binding ILO Conventions, including the Worst Forms of Child Labor Convention (No. 182)⁴⁴⁵ and the Minimum Age Convention (No. 138).⁴⁴⁶

In compliance with these conventions, Cambodia has set a minimum age for admission to work at 15 and has other rules governing work by children. However, because of poor labor inspections and enforcement, Cambodian child labor provisions are frequently violated. As a party to the Minimum Age Convention, Cambodia is obligated to take all necessary measures to ensure the effective enforcement of the provisions of these conventions, including through monitoring of remediation efforts to ensure that factories do not skirt their obligations.

⁴⁴⁵ ILO Worst Forms of Child Labor Convention, 1999, (No. 182), The ILO Worst Forms of Child Labor Recommendation (No. 190) provides guidance to states in defining hazardous work, and suggests consideration be given to several areas of work, including “work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.” ILO Recommendation No. 190 Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor, adopted June 17, 1999, art. 3(e).

⁴⁴⁶ ILO Minimum Age Convention, 1973 (No. 138), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C138 (accessed July 23, 2014), arts. 2(3) and 3(1). Convention No. 138 says states should set a minimum wage for work corresponding with the age for completing compulsory schooling and cannot be below age 15. Where the work will jeopardize the health, safety of morals of young persons, the minimum age cannot be less than age 18. Children between ages 13 and 15 can engage in light work that does not harm their health, development, and does not adversely impact their school attendance. Children below the minimum age cannot engage in work.

IX. Key Responsibilities of International Apparel Brands

While the Cambodian government has the primary responsibility to respect, protect, and fulfill human rights under international human rights law, businesses, including international apparel brands, also have human rights responsibilities.⁴⁴⁷

The basic principle that businesses have a responsibility to respect worker rights has acquired widespread international recognition.⁴⁴⁸ The “Protect, Respect and Remedy” framework, articulated most notably in the UN Guiding Principles on Business and Human Rights, reflect the expectation that businesses should respect human rights, avoid complicity in abuses, and adequately remedy them when they occur. The Guiding Principles urge businesses to exercise due diligence to identify, prevent, mitigate, and account for the impact of their activities on human rights.⁴⁴⁹

The Organization for Economic Cooperation and Development (OECD) sets out norms for responsible social behavior by multinational firms, incorporating the concept of due diligence and the content of International Labour Organization (ILO) core labor standards. The OECD guidelines call on enterprises to respect human rights, “avoid infringing on the human rights,” and address adverse human rights impacts of their activities. This includes conducting “human rights due diligence” and working to remedy any negative fallout they have caused or contributed to.⁴⁵⁰

⁴⁴⁷ The preambles to key human rights treaties recognize that ensuring respect for human rights is a shared responsibility that extends to “every organ of society,” not only to states. In addition, the preambles of both the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights recognize that “individuals” have human rights responsibilities, a term that can encompass juridical persons (including businesses) as well as natural persons.

⁴⁴⁸ The Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, UN Human Rights Council resolutions on business and human rights, the UN Global Compact, other multi-stakeholder initiatives in different sectors, and many apparel buyers’ codes of conduct borrow from international human rights law and core labor standards in guiding businesses on how to uphold their human rights responsibilities.

⁴⁴⁹ UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” A/HRC/17/31, March 21, 2011, <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> (accessed August 5, 2014) (“Guiding Principles on Business and Human Rights”).

⁴⁵⁰ OECD, “OECD Guidelines for Multinational Enterprises,” 2011, <http://www.oecd.org/investment/mne/1922428.pdf> (accessed July 29, 2014), p. 31 (“OECD Guidelines”).

To meet their responsibility to respect human rights, businesses should have policies and processes appropriate to their size and circumstances.⁴⁵¹

Three key human rights responsibilities of brands are discussed below.

Disclosure

International apparel buyers should avoid contributing to adverse human rights impacts either through acts or omissions.⁴⁵² When they do not periodically disclose and update their supplier and subcontractor lists, along with estimates of the volume of garments sourced at each supplier, it is more difficult to identify and remedy labor rights abuses in their supply chain. The Guiding Principles on Business and Human Rights state that businesses should “seek to prevent or mitigate adverse human rights impacts” that are “directly linked to their operations, products or services.”⁴⁵³ Such business relationships include “entities in its value chain.”⁴⁵⁴

The OECD Guidelines for Multinational Enterprises state that businesses should disclose “material information... whose omission or misstatement could influence the economic decisions taken by users of information.”⁴⁵⁵ The guidelines note that such disclosure may also cover information about their subcontractors and suppliers or joint venture partners.⁴⁵⁶

Due Diligence

International apparel companies (brands and retailers) should carry out human rights due diligence.⁴⁵⁷ Such due diligence should identify potential adverse human rights impacts and ways to prevent them. Human rights due diligence activity should be ongoing and not a one-time survey.⁴⁵⁸

⁴⁵¹ Guiding Principles on Business and Human Rights, Principles 14 and 15.

⁴⁵² Guiding Principles on Business and Human Rights, Principle 13.

⁴⁵³ Ibid.

⁴⁵⁴ Ibid (commentary).

⁴⁵⁵ OECD Guidelines, p. 29, para. 30.

⁴⁵⁶ OECD Guidelines, p. 30, para. 33.

⁴⁵⁷ Guiding Principles on Business and Human Rights, Principle 17.

⁴⁵⁸ Ibid.

The responsibility to conduct due diligence in the garment sector is twofold. Under the Guiding Principles, where businesses have large value supply chains and it is unreasonably burdensome to conduct due diligence across them all, businesses should “identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers’ or clients’ operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.”⁴⁵⁹

In the Cambodian context, subcontracting may contribute to worker exploitation and subcontractor factories should be included in the purview of regular and ongoing due diligence by international apparel brands. Due diligence should also include an assessment of the human rights risks posed by potential unauthorized subcontracting, as well as any potential harm to workers that might follow from company efforts to address unauthorized subcontract arrangements when they are discovered.

Apparel brands should also periodically and regularly review their purchasing and pricing practices to analyze how they influence labor conditions in sourcing factories.

Remediation in Supplier and Subcontractor Factories

International apparel brands have a responsibility to ensure decent working conditions in supplier and subcontractor factories. They have a responsibility to prevent and mitigate adverse impacts in business relationships “even if they have not contributed to those impacts.”⁴⁶⁰ The Guiding Principles discuss the meaning of “complicity,” saying that it has both legal and non-legal meanings. Conducting appropriate due diligence to avoid involvement with human rights violations can limit legal claims. However, they “should not assume...that this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.”⁴⁶¹ So for example, brands should not seek to limit their human rights responsibilities simply by pointing to the distinction between unauthorized and authorized subcontracts and saying they have no responsibilities to the former.

⁴⁵⁹ Ibid., Principle 17 (commentary).

⁴⁶⁰ Ibid., Principle 13(b).

⁴⁶¹ Ibid., Principle 17 (commentary).

In the Cambodian context, international apparel brands should support remediation for substandard worker conditions in subcontractor factories by reporting the factories to BFC and consider contributing towards remediation, including costs.

Human Rights Watch believes that, where feasible and appropriate, brands should give factories that are unauthorized or violate workers' rights a reasonable opportunity to take remedial measures before severing business ties. When brands terminate contracts with factories because of unauthorized subcontracts, the workers who reported the problems in face loss of livelihood—an outcome brands should work to avoid.

In situations where abuses associated with unauthorized subcontracting are egregious or pervasive, or where the likelihood of remedy is remote, the severance of business relationships would be appropriate. In such cases, brands should take steps to provide some form of remediation to workers whose livelihoods are impacted as a result of that decision. The presence of unauthorized subcontracting in a brand's supply chain may ultimately be a failure of the brand itself. The brand should consider helping workers transition out of employment that is eliminated because of corrective actions taken by the brand. Similarly, if brands temporarily halt production while remedial measures are underway, they should endeavor to help offset the financial harm caused to workers during this period.

X. The Role of the Brands' Home Governments

The United States, European Union, Canada, and Japan are the top four markets for garments and textiles from Cambodia, but they are also where major international apparel brands are headquartered. The 2011 Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights, while non-binding, provide some guidance on state responsibility to regulate the global operations of home companies within their jurisdictions.

Extraterritorial obligations are defined as “acts or omissions” by states “within or beyond its territory,” that impact the enjoyment of human rights outside the state’s territory.⁴⁶² States should regulate those “transnational corporations or other business enterprises” that they “are in a position to regulate” in accordance with principle 25 of the Maastricht Principles in order to ensure that they do not nullify or impair the enjoyment of economic, social, and cultural rights. A state is said to be in a position to regulate a transnational corporation “where the corporation or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its place of business or substantial business activities, in the State concerned.”⁴⁶³ Regulation can take different forms including administrative, legislative, investigative, and judicial.

The US, EU, Canada, and Japan have not introduced regulations to provide incentives or require international apparel brands domiciled in their territories to make non-financial, human-rights related disclosures that would facilitate labor rights compliance throughout the supply chain. Such measures should include requiring international apparel brands to disclose the names of their suppliers and subcontractors.

In 2014, the EU revised its rules on financial statements by adopting a directive on “disclosure of non-financial and diversity information by certain large undertakings and groups” requiring some big EU companies to annually report on their respect for human

⁴⁶² Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 2011, <http://www.globalhealthrights.org/wp-content/uploads/2013/10/Maastricht-Principles-on-Extraterritorial-Obligations-of-States-in-the-area-of-Economic-Social-and-Cultural-Rights.pdf> (accessed August 29, 2014), para. 8(a).

⁴⁶³ *Ibid.*, para. 25(c).

rights, social and employee-related matters, anticorruption efforts, and environmental concerns.⁴⁶⁴ The directive should be adopted by EU-member states within two years.

⁴⁶⁴ Council of the European Union, “New transparency rules on social responsibility for big companies,” September 29, 2014, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2013606%202014%20INIT> (accessed October 25, 2014).

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“Work Faster or Get Out”

Labor Rights Abuses in Cambodia’s Garment Industry

The garment industry in Cambodia is central to the country’s economy, producing name-brand clothing sold mainly in the United States, the European Union, and Canada. The workers in Cambodia’s garment factories, about 90 percent of whom are women, often experience discriminatory and exploitative labor conditions.

“*Work Faster or Get Out*” describes common labor rights abuses in Cambodia’s garment factories and the failure of government labor inspectors to protect workers’ rights. Problems documented in the report include discrimination against pregnant workers, forced overtime and retaliation for refusing overtime, and unfair treatment of union members. The worst conditions are often in small factories that produce on a subcontract basis for larger factories with export licenses. In the past two years, there have been repeated protests for increased wages—often violently repressed—and episodes of workers fainting on the job in many factories.

This report is based on interviews with more than 340 people, including 270 garment workers from 73 factories in the capital, Phnom Penh, and nearby provinces, as well as union leaders, government officials, labor rights advocates, the Garment Manufacturers Association of Cambodia (GMAC), and international apparel brand representatives.

Cambodia’s labor law is strong in many respects. But the combination of short-term contracts that make it easier to fire and control workers, poor government labor inspection and enforcement, and aggressive tactics against independent unions make it difficult for workers to assert their rights.

The report calls on the Cambodian government to revamp its labor inspectorate to make it more transparent and accountable and remove burdensome union registration procedures. The report also calls on apparel brands to publicly disclose the names and addresses of their suppliers, to contribute toward ending poor working conditions throughout their supply chain, and adequately reflect the cost to suppliers of labor, health, and safety compliance in their contracts.

(above) Workers traveling home from a garment factory in Phnom Penh.

(front cover) Women in the sewing division of a factory in Phnom Penh, Cambodia’s capital. Women constitute about 90 percent of the workforce in Cambodia’s garment industry.

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