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Cambodian Center for Human Rights

January 2014

“Workers’ Rights are Human Rights” Policy Brief: The Garment Industry in Cambodia



Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”) is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s economic development. CCHR promotes the rule of law over impunity, strong institutions over strong men, and a pluralistic society in which variety is welcomed and celebrated rather than ignored and punished. CCHR’s logo – a dove flying in a circle of blue sky – represents the twin principles of peace and freedom.

This report – “Policy Brief: The Garment Industry in Cambodia” (the “Policy Brief”) – is an output of CCHR’s Business and Human Rights Project (the “BHR Project”). The Project is funded by the Embassy of the United Kingdom in Cambodia (the “UK Embassy”). The purpose of the BHR Project is to work constructively with the Royal Government of Cambodia (the “RGC”), other NGOs and civil society in general, as well as with all kinds of businesses – but with an emphasis on the garment industry – from the private sector, in order to improve respect for human rights within businesses’ day-to-day operations and policies.

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Cover photo: Workers from the SL Garment Factory in Meanchey District, Phnom Penh, Cambodia, hold a demonstration on 27 August 2013. © Omar Havana.

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Acronyms & Definitions

AC	Arbitration Council
BFC	Better Factories Cambodia
BHR Project	CCHR's Business and Human Rights Project
Cambodia	The Kingdom of Cambodia
CCAWDU	Coalition of Cambodian Apparel Workers' Democratic Union
CCHR	The Cambodian Center for Human Rights
CCNU	Cambodian Council of National Unions
Constitution	The Constitution of the Kingdom of Cambodia
CRC	Convention on the Rights of the Child
FDC	Fixed Duration Contract
FTUWKC	Free Trade Union of Workers of the Kingdom of Cambodia
GMAC	Garment Manufacturers Association in Cambodia
GPs	Guiding Principles on Business and Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
ILO Conventions	The eight fundamental Conventions of the ILO
LAC	Labor Advisory Committee
MLVT	The Ministry of Labor and Vocational Training
MoU	Memorandum of Understanding on Improving Industrial Relations in the Garment Industry
MRS	Most Representative Status
NSDP III	National Strategic Development Plan Update 2009 – 2013
NSLDPS	National Strategy on Labour Dispute Prevention and Settlement
NSSF	National Social Security Fund
Policy Brief	Policy Brief: The Garment Industry in Cambodia
Rectangular Strategy III	Rectangular Strategy for Growth, Employment, Equity and Efficiency, Phase III
RGC	The Royal Government of Cambodia
RS	Representative Status
TATA	US-Cambodia Textile and Apparel Trade Agreement
UDC	Undetermined/Unspecified Duration Contract
UDHR	Universal Declaration of Human Rights
UN	United Nations
US	United States

Executive Summary

“When we were inside the factory and trying to rush out, the armed forces who were dressed in black locked us inside and said if we left the factory to join the protest, they would shoot us dead. They opened fire on us when we had gotten about 10 metres from the factory.” – Prum Phearum, 22, a Cambodian garment worker who was shot by security forces in January 2014¹

Over the past two decades, the garment industry in Cambodia has grown exponentially and is now one of the most important industries in Cambodia, representing a large share of the country’s GDP and employing over 475,000 people. Although the early years of the industry saw substantial improvements in the respect for labor rights and working conditions in the factories, placing Cambodia as a leader in the garment manufacturing industry, these trends seem to have reversed in the past several years and the human rights situation with regards to the garment industry is showing signs of decline. This Policy Brief aims to outline the current state of human rights in relation to the garment industry in Cambodia and offers recommendations for reforms that would substantially improve the situation.

Chapter 1 (Introduction) provides a background to the Cambodian garment industry, including an overview of the history of the sector and of its significance in the context of the contemporary Cambodian economy. Moreover, this section includes basic information regarding the scope of the industry in Cambodia and the different stakeholders relevant to this topic.

Chapter 2 (Purpose, Scope and Methodology) offers an overview of the methodology that was used to research and draft this Policy Brief.

Chapter 3 (Legal and Policy Framework) examines the domestic and international legal framework relating to labor and collective bargaining rights, including the dispute resolution mechanisms that are available in Cambodia. Moreover, the Chapter summarizes the policies developed by the RGC aimed at implementing the legal framework and the relevant international human rights guidelines which apply to employer-employee relations.

Chapter 4 (The Garment Industry) provides an overview of the human rights concerns related to the garment industry in Cambodia, including workplace conditions, wages and living conditions, contracts and job security, reproductive and maternal health, gender-based violence and freedom of association.

The Policy Brief concludes, in **Chapter 5 (Conclusion and Recommendations)**, with recommendations addressed to the RGC, garment factories, companies and unions that would help address the human rights concerns and legislative inconsistencies and gaps highlighted throughout the Policy Brief.

¹ Kouth Sophak Chakrya, ‘Ven Sreng’s voices’ *The Phnom Penh Post* (6 January 2014) <http://bit.ly/1evkQN5>.

1 Introduction

The garment industry in Cambodia saw its start in the mid-1990s, with the passage of the 1993 Constitution of the Kingdom of Cambodia (the “Constitution”) – which established a free-market economy in Cambodia – and the 1994 Law on Investment, which provided significant incentives for investors in the garment industry.² In 1999, Cambodia signed the Textile and Apparel Trade Agreement (“TATA”) with the United States (“US”), under which the US imposed quotas to imports from Cambodia. Under TATA, Cambodia’s import quotas were to be increased annually in exchange for a gradual improvement in working conditions in the factories, in compliance with domestic and international labor laws and standards. In 2001, in order to monitor compliance with TATA, the International Labour Organization (the “ILO”) created Better Factories Cambodia (“BFC”) to monitor garment factories in Cambodia. Under this scheme, garment factories requiring an export license were mandated to accept unannounced exhaustive inspections by BFC inspectors.³

These factors led to a rapid expansion of the Cambodian garment industry, with Cambodia quickly standing out among other Asian countries with large garment manufacturing sectors, such as China, Bangladesh and Sri Lanka. As Cambodia’s reputation for having a socially responsible manufacturing sector grew, an increasing number of international brands began to source from Cambodian factories, and soon the country and the industry became a model for other developing countries in Asia. After TATA expired in 2004, the RGC continued to use the ILO’s BFC program for monitoring compliance with labor laws and standards within the garment industry. As such, although factories no longer enjoyed the TATA-derived benefits of complying with labor standards, working conditions nevertheless continued to improve in the immediate years following the expiration of TATA.

However, the initial trend of improvement in working conditions and adherence to labor standards has begun to reverse in recent years. The sector is now plagued with a myriad of human rights concerns – which are explained in detail in Chapter 4 of this Policy Brief. For instance, factories are reported as regularly disregarding fire safety mechanisms and other health and safety standards, and employing child labor.⁴ The latest BFC monitoring report demonstrates that, in 2012, only 12% of the factories monitored by BFC complied with legal overtime policies, and that pregnant women, who constitute 90% of the workforce,⁵ were regularly threatened with dismissal, leading many to terminate pregnancies in order to keep their jobs. On 31 December 2013, the RGC agreed to increase the minimum wage from \$75 to \$100 per month, with the addition of \$5 for health care benefits, which will come into effect as of February 2014.⁶ However, the amended minimum wage for garment factory workers remains insufficient for the workers to cover basic expenses, which contributes to poor health

² Yoko Asuyama & Seiha Neou, ‘How Has the Cambodian Garment Industry Evolved?’ in *Dynamics of the Garment Industry in Low-Income Countries* (Fukunishi ed., 2012).

³ Yoko Asuyama & Seiha Neou, ‘How Has the Cambodian Garment Industry Evolved?’ in *Dynamics of the Garment Industry in Low-Income Countries* (Fukunishi ed., 2012).

⁴ BFC, ‘Thirtieth synthesis report on working conditions in Cambodia Garment Sector’ (18 July 2013)

⁵ Veasna Nuon et al, ‘Women and Gender Issues in Trade Unions in the Cambodian Garment Industry’ (Report) (2011) <http://bit.ly/19cSd40>.

⁶ Sun Narin and Chun Han Wong ‘Cambodian garment Workers Return to Streets’, *The Wall Street Journal* (2 January 2014) <http://on.wsj.com/19Ugl1C>

and other human rights concerns and workers and unions continue to demand an immediate increase to \$160 per month.

Today, the garment industry remains a key pillar of Cambodia's economy. There are approximately 558 garment factories operating in Cambodia, employing over 475,000 people.⁷ The garments are almost all destined for export, accounting for almost 80% of Cambodia's merchandise exports, with the US, the European Union and Hong Kong as the main markets.⁸ Statistics released by the Ministry of Commerce for the first half of 2013 showed that garment and textile exports amounted to \$1.558 billion – or 32% more than the same period in 2012.⁹

Many of the factories produce garments for large international brands, such as Adidas, Calvin Klein, Clarks, H&M, Levi Strauss, Macy, Nike, Old Navy, Puma, Reebok, The Gap and Wal-Mart.¹⁰ While the garment industry in Cambodia has traditionally focused on rather simple manufacturing, new sewing and stitching techniques have recently been introduced in the factories, thus allowing the manufacture of more complex and intricate products in order to meet the demands of international buyers and to compete with other exporting countries in Asia.¹¹

Most factories in Cambodia are unified under the Garment Manufacturers Association in Cambodia ("GMAC"), which was established in 1999 with the purpose of increasing collaboration between all stakeholders, including the RGC, to create a better business environment. GMAC currently counts 593 different garment and footwear factories operating across Cambodia as members.¹² In practice, GMAC acts as a powerful lobby for garment manufacturers to influence the RGC to implement business-friendly policies and legislation.

Although union membership is significantly higher in the garment industry than in other industries in Cambodia, with at least 37 garment union federations in existence, many garment workers remain unrepresented. Of the 152 garment factories monitored by BFC between November 2012 and April 2013, 31% had no union presence at all.¹³ Moreover, as will be examined in greater detail in Section 4.5 below, there are some concerns with regards to the union landscape in Cambodia, including a lack of adequate cooperation and communication channels between unions and a lack of understanding of the legal framework concerning unions and collective bargaining. Furthermore, union leaders are often targeted by factory owners, and violently beaten by law enforcement when striking outside the workplace. In addition, many of them face dismissal, or have been fired because of their activities.¹⁴

⁷ CCHR, 'Map of Garment Factories and Supply Chains', data gathered from GMAC and local media (May, 2013) <www.sithi.org/temp.php?url=bhr/bhr_list.php>.

⁸ Yoko Asuyama & Seiha Neou, 'How Has the Cambodian Garment Industry Evolved?' in Dynamics of the Garment Industry in Low-Income Countries (Fukunishi ed., 2012).

⁹ Simon Lewis and Hul Reaksmeay, 'Garment Exports Booming Despite Concerns' *The Cambodia Daily* (9 July 2013) <http://bit.ly/1c8B3p1>

¹⁰ CCHR, 'Map of Garment Factories and Supply Chains' (2013)

¹¹ Dene-Hern Chen, 'Cambodia's Manufacturers Shift to Higher-Value Clothing' *Cambodia Daily* (10 October 2013) <http://bit.ly/13L4vX>.

¹² Garment Manufacturers Association of Cambodia (GMAC) member list (2013) <http://bit.ly/1eYeg3a>.

¹³ BFC 'Thirtieth synthesis report on working conditions in Cambodia's Garment Sector' (18 July 2013).

¹⁴ CCHR Roundtable Discussion on 'Business and Human Rights in Garment Factories in Cambodia' (Phnom Penh, 27 February 2013).

2 Purpose, Scope & Methodology

The purpose of this Policy Brief is to collate the data collected from CCHR's research into the current situation of human rights in the context of the garment industry in Cambodia, through the BHR Project, and to offer concrete policy and legislative recommendations to all stakeholders. Much of the content of this Policy Brief was informed by consultations with stakeholders held throughout the course of CCHR's ongoing BHR Project, including roundtable discussions, ad hoc interviews, meetings and discussions, field and desk research, and more.

From December 2012 to February 2013, the BHR Project team conducted five roundtable discussions with representatives from approximately 20 garment factories, 19 unions, the Arbitration Council (the "AC"), the RGC, and NGOs. While the majority of the discussions contained a mix of participants, one roundtable discussion was held only for union representatives and one roundtable discussion was only for garment factory representatives. Several common concerns were raised in all five of the roundtable discussions. These concerns – which are examined in depth in Chapters 3 and 4 of this Policy Brief – shed light on gaps in the existing legal and policy frameworks in Cambodia regarding garment factories and their awareness of and respect for their employees' human rights.

The review of the legal and policy frameworks was supplemented by an analysis of key international and domestic laws that are relevant to the situation of business and human rights in Cambodia, as well as policy documents and strategies outlined by the RGC in this sector. The analysis of the human rights situation in the garment factories was also supplemented by a review of recent developments in relation to the garment industry as reported in the news and reports by NGOs and the ILO, as well as by regular communication between CCHR and various stakeholders, including other NGOs, trade unions and garment factories.

The Policy Brief concludes by offering recommendations to the relevant stakeholders: the RGC, garment factories operating in Cambodia, companies buying garments from those factories, unions and civil society. These recommendations, which encompass various strategies and mechanisms for increasing the legal protections for garment workers and for ensuring that Cambodia remains at the forefront of the garment producing industry, stem from both CCHR's own analysis of the legal and policy frameworks and of the current situation, as well as from the roundtable discussions, during which participants were given the opportunity to put forth recommendations to all stakeholders.

3 Legal and Policy Framework

Cambodian domestic law contains substantial protections for workers, protections that are supplemented by international conventions and guidelines to which Cambodia has pledged to adhere, in addition to domestic policies that are aimed at fully implementing these legal protections. Nevertheless, there are some gaps in both the legal and policy frameworks that allow for violations of workers' rights.

This Chapter provides background on the current legislative framework in Cambodia in relation to labor rights. The first two sections of this Chapter examine and analyze domestic laws and policies, with a focus on the Constitution and the Labor Law, while the last two sections review international conventions, treaties and guidelines that have been incorporated by the RGC.

3.1 Domestic law

3.1.1 *The Constitution*

Article 36 of the Constitution provides the basis for labor rights in Cambodia:

Constitution, Article 36

- Khmer citizens of either sex shall enjoy the right to choose any employment according to their ability and the needs of the society.
- Khmer citizens of either sex shall receive equal pay for the same work.
 - Housework shall have the same value as work outside the home.
- Khmer citizens of either sex shall have the right to obtain social security and other social benefits as determined by law.
- Khmer citizens of either sex shall have the right to form and to be members of trade unions.

Article 37 of the Constitution also guarantees the right to strike and engage in non-violent demonstrations, and Article 46 provides additional protection to women by prohibiting discrimination against pregnant women and guarantees the right to maternity leave.

3.1.2 *The Labor Law*

Building on the basic rights protected in the Constitution, the Labor Law 1997¹⁵ covers all situations where there is an employer-employee relationship, and further cements labor rights for workers. Of note, the Labor Law:

- Prohibits discrimination based on race, gender, ethnicity, religion, union membership, or other characteristics (including political opinion), when making professional decisions such as hiring, advancement, promotion, remuneration, discipline, or termination (except as provided by law) (Article 12);

¹⁵ Amended 2007; available at <http://bit.ly/leGNpC>.

- Guarantees a minimum wage that will ensure workers a “decent standard of living compatible with human dignity” (Article 104);
- Guarantees equal pay for equal work, irrespective of age, gender, or ethnicity (Article 106);
- Incorporates standards of workplace safety, hygiene, and cleanliness, with criminal sanctions for failing to implement health and safety measures in the workplace (Articles 229-30 and Article 80);
- Establishes a maximum of 48 hours per week that an employee can work, with no more than eight hours worked per day, six days per week, and with increased pay for required overtime work (Articles 137, 139 and 146);
- Guarantees minimum paid annual leave (equal to one and a half days of paid leave per month worked) (Article 166); and
- Establishes a minimum working age of 15 years old (although it can be lowered to 12 years old and increased to 18 years old depending on the nature of the work) (Article 177).

Union rights

Chapter V of the Labor Law protects the right to establish collective labor agreements to determine working conditions and relations between employers and employees, including guarantees against social risks. Moreover, Chapter XI covers the freedom of trade unions and worker representation, while Chapter XIII covers the legal framework regarding strikes and lockouts.

Labor Law, Article 266

Workers and employers have, without distinction whatsoever and prior authorisation, the right to form professional organisations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organisation’s statutes.

Article 277 of the Labor Law defines the “representativeness” of a union in cases where more than one union is in operation in a single business. Of the 152 garment factories monitored by BFC between November 2012 and April 2013, 40 factories had two or more active unions representing the workers. In these cases, in accordance with Article 277 of the Labor Law and with Prakas No. 305 (2001),¹⁶ a union that can prove that over 51% of the workers are members of that union can be certified as having the Most Representative Status (“MRS”) and thus represent all of the workers. If no union has more than 51% of the total number of workers as members, the first and second unions with the most members will be considered unions with Representative Status (“RS”). On 3 October 2012, GMAC and eight union federations signed a Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (the “MoU”), which re-asserted the signatories of the MoU’s commitment to supporting the binding nature of collective bargaining agreements and the role of MRS unions.

¹⁶ Also see MLVT, No. 033/08 KB/SCN, Notification on Procedures for Certifying the representative status and the most representative status and Organizing Election to determine the Most Representative of Professional Organisations of Workers at the Enterprise/Establishment Level.

Contracts

The Labor Law prescribes two different categories of contracts that employers can choose from when hiring: fixed duration contracts (“FDCs”) and undetermined (or unspecified) duration contracts (“UDCs”). An FDC is a written contract that cannot be longer than two years, and that has precise starting and end dates. If a contract does not meet these standards, it is a UDC.¹⁷ An FDC may be renewed one or more times but only if the total length of the employment relationship does not exceed two years. If an FDC is extended so the total period of the contract is more than two years, then the contract will automatically turn into a UDC.¹⁸ An FDC terminates on its specific ending date, or earlier with the agreement of both parties, or in cases of “serious misconduct or acts of God.” If an employer prematurely terminates an FDC for any other reason, the employee is entitled to remuneration equal to the wages he or she would have received until the natural end of the contract. If the period of an FDC is more than six months, employees are entitled to notice prior to termination of the contract.¹⁹

UDCs can be terminated at will by the employer or the employee, subject to specified notice periods based on the length of time the employee worked.²⁰ During the notice period, the worker is entitled to two days of leave per week, with full payment, to search for new employment.²¹ If a UDC is terminated without notice or without compliance with the specified notice periods, the employer must compensate the employee for an amount equal to the wages and benefits the employee would have received during the notice period.²²

The Labor Administration and the Labor Advisory Committee

The Labor Law provides for the establishment of several supervisory and monitoring mechanisms. The Labor Administration,²³ which operates under the umbrella of the Ministry of Labor and Vocational Training (the “MLVT”), fulfills monitoring and advisory roles, while also offering conciliation services to employers, employees, and unions to help settle individual or collective labor disputes. Labor Inspectors are tasked with: (1) ensuring enforcement of the Labor Law and other related laws; (2) providing information and advice to employers and workers on the legal provisions; (3) raising any “improprieties or abuses” not covered by the legal framework to the relevant authorities; (4) giving advice related to the “arrangement or restructuring of enterprises and organisms”; and (5) monitoring the “enforcement of the legal provisions regarding the living conditions of workers and their families.”²⁴

Furthermore, the Labor Law provides for the establishment of the Labor Advisory Committee (the “LAC”),²⁵ which also operates under the MLVT and is composed of the Minister in charge of Labor (or a representative) as the chairperson, an unspecified number of representatives from “relevant ministries,” and an equally unspecified number of representatives from workers’ unions and employers’ organizations, both of which must be operating at the national level.²⁶ The LAC’s main

¹⁷ Art. 67 Labor Law.

¹⁸ Art. 86 Labor Law.

¹⁹ Art. 73 Labor Law.

²⁰ Arts. 74-75 Labor Law.

²¹ Art. 79 Labor Law.

²² Art. 77 Labor Law.

²³ Chapter XIV, Labor Law.

²⁴ Art. 344, Labor Law.

²⁵ Chapter XV, Labor Law.

²⁶ Art. 351, Labor Law.

responsibilities are to (1) “formulate recommendations on the guaranteed minimum wage”; and to (2) “render advice beforehand in order to extend the scope of a collective agreement or, if there is no collective agreement, give advice eventually on any regulation concerning the conditions of employment in a given profession or in a certain sector of activity.”²⁷

Dispute resolution – individual cases and Labor Courts

Complainants in individual labor disputes must first refer the case to a Labor Inspector at the capital, provincial or municipal level. Agreements resulting from these hearings are legally binding on both parties. Meanwhile, in the case of non-conciliation, the complainant may file a complaint in court, pending the establishment of Labor Courts; although Article 387 of the Labor Law calls for the establishment of Labor Courts with jurisdiction over individual disputes between workers and employers, such Courts have yet to be established. This is a particular problem, given the lack of resources and capacity within the regular domestic court system to handle such cases, which is exacerbated by a well-documented lack of independence of the judicial system.

Dispute resolution – collective cases and the Arbitration Council

Similarly to individual disputes, collective disputes (where there is no collective agreement in place establishing a specific process for dispute resolution) are first referred to a capital, provincial or municipal Labor Inspector. Where conciliation with a Labor Inspector results in an agreement, that agreement is legally binding. In cases of non-conciliation, Article 309 of the Labor Law outlines the process for arbitration. The majority of cases are then referred to the Arbitration Council (the “AC”).

Established in 2003,²⁸ the AC is an independent institution with quasi-judicial authority that seeks to conciliate or arbitrate between various stakeholder groups engaged in collective labor disputes (i.e., employers’ associations, trade unions and the MLVT). The AC receives cases that could not first be resolved by the MLVT through negotiation or conciliation, and is the principal dispute resolution mechanism utilized by garment factories and unions. The AC hears several hundred cases a year – as of 4 December 2013, the AC had made decisions in 238 cases in 2013.²⁹ 70% of the cases involve garment factories.³⁰ The issues that the AC deals with include wage disputes, contract terminations and dismissals, and rights and benefits for pregnant women.³¹

Although the AC is a significant step forward in addressing labor disputes in Cambodia, there are nevertheless some concerns, especially regarding the non-binding nature of AC decisions and the fact that the AC lacks any monitoring and enforcement capabilities. Unless the parties to a case decide that the AC’s decision will be binding upon the parties, there are no real means of ensuring that the decision will be implemented. Although arbitral awards become binding if neither party objects to it within eight days of the decision, in practice there are no enforcement mechanisms for the decisions. Participants in CCHR roundtable discussions noted that, although the AC was a trusted institution, the fact that its decisions were non-binding meant that factories and workers simply ignored the decisions, which subsequently led to strikes when the disputes were not resolved. Garment factory

²⁷ Art. 357, Labor Law.

²⁸ Prakas (Ministerial decree) No. 99 KKBV/PrK

²⁹ <http://www.arbitrationcouncil.org/awards/2013.html>.

³⁰ CCHR Roundtable Discussion on ‘Business and Human Rights in Garment Factories in Cambodia’ (Phnom Penh, 27 February 2013).

³¹ *ibid.*

representatives also claimed that the AC sometimes issues arbitral awards without understanding the nature of the facts behind the dispute, thereby making their decisions unenforceable in practice at the factories, and that the AC was biased in favor of workers, particularly in cases involving strikes, and the factories had to meet a greater burden of proof than employees or unions did.

During CCHR's roundtable discussions, it was noted that there were some significant shortcomings with regards to the MLVT's dispute resolution process. Participants noted, for instance, that the MLVT often fails to refer to the law in its decisions, and mishandles or ignores complaints. Some garment factory representatives commented that the MLVT is not properly equipped to resolve labor disputes and often merely forwards cases to the AC for adjudication. The representatives claimed that, when the MLVT did take cases, it mediated the issues without properly differentiating between interest disputes and rights disputes. Others noted that the MLVT rarely penalizes companies that failed to comply with its warnings, and, instead, simply forwarded cases to the AC for resolution.

Participants in CCHR's roundtable discussions also noted a disconnection between the law applied by the AC – which mirrors ILO standards – and the Labor Law applied by the MLVT.³² In other words, the AC and the MLVT do not speak with one voice when it comes to interpretation of the laws, which hinders factories' ability to respond to union petitions, comply with decisions or enforce awards.³³ This disconnection also impacts the unions' ability to know which legal standards apply in a dispute.

The AC is a laudable institution, but without the ability to ensure implementation of its decisions, it is ultimately a “toothless” mechanism for enforcing the Labor Law and protecting labor rights. The non-binding nature and lack of any enforcement mechanism of AC decisions, which are the primary vehicles for resolving labor disputes in the absence of a Labor Court, effectively mean that neither the factories nor the unions have access to a thoroughly effective remedy. While the AC is more trusted than the MLVT, without an enforcement mechanism for its decisions, there is little incentive for factories to change their business practices to comply with the law or ILO labor standards.

3.1.3 The Social Security Law

In addition to the Labor Law, the 2002 Social Security Law provides a social security scheme that is applicable to all workers covered under the Labor Law. It provides for the creation of the National Social Security Fund (“NSSF”) to which all beneficiaries (employers and workers) shall pay a contribution. The benefits of the pension scheme include old age pension and allowance for people older than 55, and invalidity pension or survivors' pension and allowance for all victims of employment injury and occupational disease.

According to Article 12 of the Social Security Law, an accident will be considered an employment injury when it occurs at the workplace, during working hours, and when commuting for work, causing physical lesions to the worker regardless of workers' direct responsibility. Article 13 defines occupational disease as any disease caused by physical work, exposure to toxic substances or employment performed in insalubrious conditions. The Social Security Law entitles the victims to take advantage of a variety of medical care services, a daily allowance for temporary disability, or an invalidity

³² CCHR Roundtable Discussion on ‘Business & Human Rights in the Garment Sector in Cambodia’ (Phnom Penh, 12 December 2012).

³³ *ibid*; CCHR Roundtable Discussion on ‘Perspectives on Arbitral Award of the Arbitration Council’ (Phnom Penh, 14 February 2013).

pension when permanently disabled (based on the diagnosis of a doctor designated by the NSSF), as well as funeral benefits and survivors' pension for families affected by fatal accidents.

3.2 Domestic policy

3.2.1 National Strategy on Labour Dispute Prevention and Settlement

In order to address the lack of implementation of the domestic legal provisions regarding labor rights, the ILO, on behalf of the MLVT, developed the National Strategy on Labour Dispute Prevention and Settlement in Cambodia³⁴ (the “NSLDPS”) in 2004, which provides a foundation for dispute resolution that relies on enterprise-level institutions, without the need for government intervention. The MLVT is responsible for delivering the NSLDPS, which forms part of the ILO’s wider BFC program.

The NSLDPS, which was the outcome of consultation with RGC representatives, employers’ associations, union federations and the ILO’s Labour Dispute Resolution Project, provides a detailed analysis of Cambodia’s current legal framework for dispute prevention and settlement and identifies shortcomings in procedures. From this analysis, eleven strategic interventions were outlined: 1) Awareness Raising; 2) Workplace Cooperation; 3) Collective Bargaining; 4) Institution Strengthening and Capacity Building for Social Partners and other Stakeholders; 5) Institution Strengthening and Capacity Building for the Ministry; 6) Statistical Information; 7) Labor Inspection; 8) Conciliation; 9) Arbitration; 10) Adjudication; and 11) Labor Law Review.

Through these strategic interventions, the NSLDPS provides a list of requirements that are targeted at improving employer-employee relations. Under each strategic intervention, there is an objective and a number of activities necessary to meet this objective. The NSLDPS notes that, to be effective, all activities under each strategic intervention will require a specific and detailed action plan which indicates each step of the plan, a realistic time frame, the parties/persons responsible for each step, and the resource requirements. While the NSLDPS description of activities is comprehensive, such action plans are not included within the NSLDPS, and there is no indication of when and how these will be developed and who is responsible.

3.2.2 Rectangular Strategy for Growth, Employment, Equity and Efficiency, Phase III

On 25 September 2013, the RGC announced its new five-year policy agenda for socio-economic development in the fifth mandate, the Rectangular Strategy for Growth, Employment, Equity and Efficiency III (“Rectangular Strategy III”). Rectangular Strategy III builds upon Rectangular Strategies I and II by proposing a number of reforms to support Cambodia’s vision of becoming an upper-middle income country by 2030 and a high-income country by 2050.

Rectangle 3 – Private Sector Development and Employment – of the Rectangular Strategy III (which is divided into four thematic “Rectangles”), and in particular Side 3 (“Development of Labor Market”), has high relevance for business and human rights in Cambodia, with the objective “[...] to ensure all the components of labor market are collectively consistent, responsive and reinforcing each other so they can effectively contribute to boosting economic growth, creating jobs and promoting livelihoods.” Priorities for achieving this objective include the following: improving education and training opportunities; improving labor conditions through updating and strengthening the implementation of

³⁴ Available at <http://bit.ly/1cZ3Dul>.

the Labor Law; supporting the BFC program; adopting the Law on Trade Unions;³⁵ institutional strengthening and coordination for implementation of labor dispute prevention and resolution mechanism as well as the mechanism to prevent and address labor protests; strengthening the capacity and role of the labor inspectorate in dispute mediation and resolution; the establishment of labor courts, mechanisms to protect workers in cases of factory bankruptcy and a mechanism to regularly review the national minimum wage.

While Rectangular Strategy III provides a comprehensive list of what steps must be taken to achieve better working conditions for factory employees, the National Strategic Development Plan Update 2009 – 2013 operationalizes these steps (see Section 3.2.3). In addition, Rectangular Strategy III asserts that the RGC will develop an “Industrial Development Policy” to help achieve the objectives cited in Rectangle 3, although there is no indication of who will be responsible for developing this policy or timeframe given for when it will be operational.

3.2.3 National Strategy Development Plan, Update 2009 – 2013

The RGC’s National Strategic Development Plan Update 2009 – 2013 (“NSDP III”) builds upon previous NSDPs in an effort to combine and harmonize various policy documents that aim at socio-economic growth, namely the Rectangular Strategy and Sectoral Development Strategies. Importantly, NSDP III operationalizes Rectangular Strategy III by serving as an implementation tool for the priorities highlighted in the latter.

With regards to Rectangle 3, the NSDP III indicates how the Ministry of Commerce has been maintaining the competitiveness of the garment industry in the world market through implementing the BFC Program to ensure that “[...] *better working conditions in the sector meet international standards, as well as providing trainings to workers and unions on Labor Law and fashion design.*”³⁶

The RGC views the private sector as “the engine for economic growth and poverty reduction.” Key priorities for Rectangle 3 include creating administrative procedures to improve training for employees, improving working conditions, enforcement of the Labor Law and strengthening the dispute settlement mechanism. The NSDP III holds the MLVT responsible for ensuring the priorities of Rectangle 3 that relate to improving working conditions are reached and sets out a number of planned actions:

- *“Enhancing the awareness of and requirements of occupational safety and health by working with employer and employee organizations, in particular in regards to under 15 year olds and under 18 year old children.”*
- *“Implementing a program focusing on hazardous work.”*

³⁵ A first draft of a Law on Trade Unions was introduced by the MLVT in early 2011. After concerns were raised by civil society groups and trade unions regarding some of the language and provisions in the draft law (see for instance, <http://bit.ly/1bIDQP1>), the draft law was shelved. However, it appears the law was submitted for review by the Council of Ministers in late 2013 and may be passed by the National Assembly in early 2014.

³⁶ RGC, ‘NSDP III’ (2013) 48.

- *“Implementing measures to reduce worker management conflicts in work places. To facilitate the resolution of worker-management conflicts, the Ministry of Commerce will also establish an Arbitration Centre [...]”³⁷*

Some planned actions are more detailed than others, such as the third action above which, uniquely, provides a definitive time frame. Overall, while effort has been made to set out comprehensive planned actions for operationalizing Rectangular Strategy III, the majority remains vague at best and fail to establish concrete, time-bound steps which include an analysis of resources required.

3.3 International Law

Article 31 of the Constitution states that *“[T]he Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women’s rights and children’s rights.”* These covenants and conventions – which include the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and the Convention on the Rights of the Child (“CRC”) – have been directly incorporated into Cambodian domestic law by virtue of being ratified by Cambodia in 1992, with such incorporation confirmed by a decision of the Constitutional Council dated 10 July 2007, which stated that *“international conventions that Cambodia has recognized”* form part of Cambodian law.³⁸ The human rights and principles most relevant to the daily operations of garment factories that are protected by these international instruments include:

- The right to freedom of assembly and association, including the right to form and join trade unions;
- The right to freedom of expression;
- The abolition of slavery and forced labor;
- The abolition of child labor;
- The right to equal pay for equal work;
- The right to equality at work;
- The right to non-discrimination; and
- The right to just and favorable remuneration.

3.3.1 ILO Conventions

Further protection is provided by the eight fundamental Conventions of the International Labour Organization (“ILO”) (the “ILO Conventions”). The ILO is the oldest of the specialized agencies of the UN system. The ILO’s mandate includes developing and establishing international labor standards to improve the living and working conditions of people around the world. These standards take the form of Conventions and Recommendations that establish minimum international standards on a range of work-related issues. Once ratified by a government, the ILO Conventions create legally binding

³⁷ RGC, ‘NSDP III’ (2013) 147.

³⁸ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007).

obligations for that government. The RGC has ratified and is thus legally bound by all of the eight so-called fundamental ILO Conventions³⁹:

1. Forced Labour Convention (1930, No. 29);
2. Freedom of Association and Protection of the Right to Organize Conventions (1948, No. 87);
3. Right to Organize and Collective Bargaining Convention (1949, No. 98);
4. Equal Remuneration Convention (1951, No. 100);
5. Abolition of Forced Labour Convention (1957, No. 105);
6. Discrimination (Employment and Occupation) Convention (1958, No. 111);
7. Minimum Age Convention (1973, No. 138); and
8. Worst Forms of Child Labour Convention (1999, No. 182).

As a party to the ICCPR, ICESCR, CRC, and the eight fundamental ILO conventions, the RGC is obligated to respect and promote the labor rights guaranteed in these covenants and conventions, take steps to prevent violations of labor rights by State agents and third parties, and ensure access to effective remedies for victims of labor violations. Moreover, Cambodia must recognize and ensure the rights to enjoy just and favorable working conditions⁴⁰ and to form trade unions.⁴¹

3.4 International Guidelines

3.4.1 The Three Pillars Framework for State and Corporate Social Responsibility⁴²

In 2008, John Ruggie, the UN Special Representative to the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, introduced the Three Pillars framework for State and corporate social responsibility, which are:

- 1) The State's duty to **protect** against human rights abuses by third parties;
- 2) The corporate responsibility to **respect** human rights; and
- 3) The need for more effective access to **remedies**.

This framework has become the focal point for the debate surrounding businesses and human rights. In June 2011, the UN Human Rights Council formally endorsed this framework, paving the way for its implementation by States and businesses around the world.

3.4.2 Guiding Principles on Business and Human Rights⁴³

The Guiding Principles (the "GPs") are 31 principles that expand upon the Three Pillars framework and further define and guide how States and corporations can protect and promote a respect for human rights in daily business operations. Although not legally binding, the GPs were unanimously endorsed by the UN Human Rights Council in June 2011 in Resolution 17/4 and are intended to apply to all States and business enterprises, transnational and otherwise, regardless of their size, sector, location, ownership or structure.

³⁹ All ILO conventions ratified by Cambodia can be found at <http://bit.ly/1dnlkc7>.

⁴⁰ Art. 7 ICESCR.

⁴¹ Art. 8 ICESCR.

⁴² Also see CCHR, 'Business and Human Rights in Cambodia: Constructing the Three Pillars' (November 2010)

<http://bit.ly/JcTJ0c>.

⁴³ Available at <http://bit.ly/JdtXZG>.

For each of the Three Pillars, the GPs provide specific guidance to both States and corporations to implement the “Protect, Respect and Remedy” framework. For instance, the GPs instruct States to implement substantive regulations and policies to ensure their duty to protect, to exercise adequate oversight over business practices, to mainstream human rights throughout government agencies and State-based institutions dealing with the private sector, and more. Moreover, the GPs delineate the ways in which the private sector should respect and protect human rights, including putting in place specific policies and processes to that end. Finally, the GPs envision the establishment of State-based or non-State-based non-judicial grievance mechanisms that are: legitimate, accessible, predictable, equitable, transparent, and rights-compatible sources of continuous learning, which are based on engagement and dialogue. Mechanisms that do not meet these criteria may not ultimately be effective tools for resolving labor disputes.

4 The Garment Industry

Despite a relatively protective legal and policy framework, the reality of the garment sector in Cambodia shows that there is still a long way to go before it meets international labor standards. This is in part due to a lack of proper monitoring and enforcement of the Labor Law by the RGC, which relies extensively on the ILO's BFC program to monitor, report on, and improve the industry. As a result, it is relatively easy for employers to ignore or violate the provisions in the legal framework, resulting in widespread and systematic human rights violations. For instance, a 2013 ILO report on the labor situation (across all sectors) in Cambodia found that approximately 90% of all regular employees in Cambodia were denied both paid annual leave and sick leave.⁴⁴ While the garment industry tends to comply with the Labor Law more than other sectors, a general disregard for the law and for labor rights continues to be a problem in Cambodia.

Moreover, there is a general lack of adequate knowledge and understanding of the law on the part of garment factory workers, including of the rights to which they are entitled and the protections provided by the law. Workers' lack of knowledge about their rights evolves into an over-abundant, and consequently redundant, number of individual grievances and requests from workers that did not actually pertain to any legal right.⁴⁵ This diminishes the efficiency of the dispute resolution mechanisms, which are often overloaded with cases containing little if any legal merit. As a result, many workers end up accepting abusive and discriminatory conditions. Moreover, many are also quick to go on strike when negotiations fail, rather than trying to resolve the dispute in other ways.⁴⁶

4.1 Workplace conditions

The working conditions in garment factories, and their impacts on the health of garment workers, continue to be some of the most pressing concerns with regards to the garment industry in Cambodia, and an area where urgent reform is needed. BFC's 'Thirtieth synthesis report on working conditions in Cambodia's garment sector,' which covers 1 November 2012 to 30 April 2013, exposes some worrying statistics with regards to workplace conditions and specifically health and safety concerns. For instance, the report states that the 15% of the factories they monitored kept emergency doors locked during working hours, putting workers at risk of death in the event of a fire, while 45% failed to conduct emergency fire drills every six months and 53% had obstructed access paths.⁴⁷

Furthermore, workers are consistently exposed to high temperatures and to high levels of chemical substances for very long hours, which are exacerbated by poor ventilation systems, all of which directly harm workers' health. Episodes of mass fainting are a regular occurrence in Cambodian garment

⁴⁴ Shane Worrell and Mom Kunthear, 'Majority of workers denied annual leave' *The Phnom Penh Post* (2 December 2013) <http://bit.ly/18EfPSd>.

⁴⁵ CCHR Roundtable Discussion on 'Business & Human Rights in the Garment Sector in Cambodia' (Phnom Penh, 12 December 2012).

⁴⁶ CCHR Workshop on 'Business and Human Rights in Garment Industry' (Phnom Penh, 18 January 2013); CCHR Roundtable Discussion on 'Perspectives on Arbitral Award of the Arbitration Council' (Phnom Penh, 14 February 2013); CCHR Roundtable Discussion on 'Business and Human Rights in Garment Factories in Cambodia' (Phnom Penh, 27 February 2013).

⁴⁷ BFC, 'Thirtieth synthesis report on working conditions in Cambodia's Garment Sector' (18 July 2013).

factories,⁴⁸ resulting from poor hygiene, insufficient nutrition, overheating and exposure to chemicals, which are made worse by poor ventilation, exhaustion, and mass hysteria.⁴⁹ According to the Free Trade Union of Workers of the Kingdom of Cambodia (“FTUWKC”), as of November 2013, more than 700 garment workers have reportedly fainted while on the factory premises throughout the year.⁵⁰

There are also concerns regarding the sturdiness of buildings used for factories. In May 2013, collapsing structures at two separate factories – the Wing Star shoe factory and the Top World Factory – resulted in three deaths and multiple injuries. The incidents led BFC and GMAC to issue a joint open letter to factory managers calling on a “structural review of *all* buildings in *all* garment and footwear factories in Cambodia.”⁵¹ Yet, in late November 2013, workers at the Siu Quinh Garment factory in Dangkor district, Phnom Penh, fled the premises after feeling the building shaking as if there was an earthquake. Inspectors from the Ministry of Land Management, Urban Planning and Construction found that an additional floor had been added to the factory without prior approval by competent authorities,⁵² which indicates little has been done to ensure more oversight of the situation.

4.2 Wages and living conditions

The current minimum wage for garment industry workers, as adjusted in May 2013, is \$75USD per month, which is supplemented by a \$5 monthly health care benefit, amounting to a total of \$80 per month. However, even though the adjustment represented a \$14 raise, it has been argued that “when adjusted for inflation, the wages of Cambodian garment-sector workers are equal to what they were in 2000.”⁵³ As of February 2014 the minimum wage will be increased by 25% to \$100 per month with the addition of \$5 for healthcare benefits. The low salary received by garment workers has a significant impact on workers’ ability to live in humane conditions and to provide for basic needs. Workers are often unable to maintain a decent diet, live in adequate housing, or provide for their families and save for the future.⁵⁴ A 20 October 2013 article in the Toronto Star⁵⁵ describes the living conditions of an average garment factory worker:

“A cleated gangplank runs from the alleyway up to the raised dilapidated shelter that houses all 11 members of the immediate family. A covered area, opened on one side to the outside, provides a gathering space for cooking and washing. Behind, two adjoining rooms sleep eight in one room, three in the other. There is power, as the hysteria of wires running through one

⁴⁸ CCHR Roundtable Discussion on ‘Business & Human Rights in the Garment Sector in Cambodia’ (Phnom Penh, 12 December 2012).

⁴⁹ BFC, ‘Workers Perspectives on Fainting in Factories’ (7 February 2013) <http://bit.ly/19iqQFQ>; Labour Behind the Label and Community Legal Education Centre, ‘Shop ‘til they drop: Fainting and Malnutrition in Garment Workers in Cambodia’ (Report) (September 2013) <http://bit.ly/1aBC5sH>.

⁵⁰ Mom Kunthear, ‘Mass fainting at Kandal factory’ *The Phnom Penh Post* (21 November 2013) <http://bit.ly/18n1yG9>.

⁵¹ Available at <http://betterfactories.org/?p=6361>.

⁵² Mom Kunthear and Shane Worrell, ‘Factory inspection turns up unauthorised floor’ *The Phnom Penh Post* (3 December 2013) <http://bit.ly/1cCe89h>.

⁵³ Kate O’Keefe, ‘Cambodia Falls Short as Garment-Industry Model’ *The Wall Street Journal* (8 July 2013) <http://on.wsj.com/1biDLai>.

⁵⁴ International Human Rights and Conflict Resolution Clinic/Stanford Law School & Workers Rights Consortium, ‘Monitoring in the Dark: An Evaluation of the International Labour Organization’s Better Factories Cambodia monitoring and reporting program’ (Report) (February 2013) <http://stanford.io/ltuZ31>.

⁵⁵ Jennifer Wells, ‘Clothes on your back: Inside Cambodia’s garment industry’ *The Toronto Star* (20 October 2013) <http://bit.ly/18DJA87>.

room attests. There is no running water. A damp thickness of refuse carpets the ground below, nuzzled at the moment by an enormous rat.”⁵⁶

The wages have a particular impact on health and nutrition. As mentioned in Section 4.1, one of the leading causes of mass fainting in garment factories has been found to be poor or insufficient nutrition. A report by UK-based Labour Behind the Label and Cambodia-based Community Legal Education Centre released in September 2013 estimates the cost of a 3,000 calorie per day diet – which is recommended for women employed in the industry – at approximately \$75 per month, or 75% of the minimum wage for garment industry workers that will take effect in February 2014.⁵⁷ The same study found that workers, on average, consumed just under 1,600 calories per day, about half of the recommended amount.⁵⁸ It is undeniable that the minimum wage cannot cover the cost of proper nutrition and other basic needs without being significantly increased.

4.3 Contracts and job security

Insecurity over job tenure due to the contract scheme – described in Section 3.1.2 – continues to be a systematic problem. FDCs are widely implemented throughout the industry, which remains a major challenge when it comes to the realization of human rights in businesses in Cambodia. UDCs provide more protections for workers, as they require notice prior to termination or compensation when no notice is given, and grant the employee paid leave to search for new employment. FDCs, on the other hand, *only* require notice if contracts are more than six months in length, and only require a very limited severance pay if no amount is specified in the collective agreement. Most factories may opt not to set a severance amount for any collective agreements in which they enter, knowing that ultimately they would only have to pay workers 5% of their total wages.

For instance, during a CCHR roundtable discussion, Max View garment factory stated its preference for FDCs, which they only offered as contracts of two to three months in length,⁵⁹ as a means to avoid the Labor Law’s notice requirements. The job insecurity this creates leads the workers to work long hours when work is available and to a subsequent downward pressure on wages because workers are willing to take any job that is available. Additionally, FDCs allow factories to evade the Labor Law pertaining to annual leave and paid maternity leave, as annual leave can only be taken after an employee has worked for his employer for one year. Employers have shifted their workforces almost exclusively to employment on FDCs, and have used threats of nonrenewal of such agreements to pressure workers into non-voluntary overtime.⁶⁰

⁵⁶ Jennifer Wells, ‘Clothes on your back: Inside Cambodia’s garment industry’ *The Toronto Star* (20 October 2013) <http://bit.ly/18DJA87>.

⁵⁷ Labour Behind the Label and Community Legal Education Centre, ‘Shop ‘til they drop: Fainting and Malnutrition in Garment Workers in Cambodia’ (Report) (September 2013).

⁵⁸ Ibid.

⁵⁹ CCHR Roundtable Discussion on ‘Business & Human Rights in the Garment Sector in Cambodia’ (12 December 2012).

⁶⁰ International Human Rights and Conflict Resolution Clinic/Stanford Law School & Workers Rights Consortium, ‘Monitoring in the Dark: An Evaluation of the International Labour Organization’s Better Factories Cambodia monitoring and reporting program’ (Report) (February 2013) <http://stanford.io/ltuZ31>.

4.4 Reproductive and maternal health

As garment factory workers are predominantly women, the lack of access to adequate reproductive and maternal health services and protections is a significant issue. The Labor Law guarantees 90 calendar days⁶¹ paid maternity leave, taken either before and/or after delivery (Article 182). In addition, Article 183 of the Labor Law guarantees 50% of wages during maternity leave. However, this is only applicable to women who have worked continuously for a minimum of one year at the factory. This requirement of “uninterrupted service” results in a disadvantage for women hired under FDCs, whose employment has not been continuous.

In 2012, the ILO published a report⁶² based on a series of interviews conducted with 70 factory workers, which assessed the level of access to maternity leave and other maternal health benefits by Cambodian garment workers. The study found that many women force themselves to work until the very last day before the delivery,⁶³ often on dangerous and consequently better-paid jobs,⁶⁴ and putting their own lives at risk as a result. Moreover, many women on FDCs do not get their contracts renewed after they go on maternity leave.⁶⁵

Furthermore, the return to work after delivery remains an issue for many women. Article 186 of the Labor Law states that factories employing more than 100 female workers must set up a nursing room and a day-care center. However, according to the latest BFC monitoring report, 67%⁶⁶ of the factories monitored do not comply with this provision. Consequently, women who do not have relatives nearby that can help take care of the infants have to choose between leaving their jobs in order to breastfeed their babies, and thus lose their only income, or take them to private day-care centers where they are fed with low-quality formula milk.⁶⁷ Although, under Article 184 of the Labor Law, mothers are given one hour (which can be split into two 30-minute breaks) off a day (in addition to regular breaks) for breastfeeding during the first 12 months after delivery, most of the workers live too far from the factories where they work to be able to take advantage of this provision.

4.5 Gender-based violence

Although levels of sexual harassment of women within the factories are low, research conducted in 2007 by One World Action found that gender-based violence is frequent in the areas around the factories.⁶⁸ Most women working at garment factories in Cambodia have left their homes in the provinces in order to work in the factories, the majority of which are located in and around Phnom Penh and other major cities. Unable to afford higher quality housing, they rent wrecked houses or rooms to share with large numbers of people. Women have to commute on overcrowded and often broken buses and they experience sexual harassment from male colleagues.⁶⁹ They live under constant

⁶¹ The AC has stated that 90 days of maternity leave refers to 90 calendar days, including Sundays and holidays (see AC awards 25/08, 23/08, 08/07).

⁶² ILO ‘Practical challenges for maternity protection in the Cambodian garment industry’ (2012) <http://bit.ly/1bt1Otk>.

⁶³ ILO ‘Practical challenges for maternity protection in the Cambodian garment industry’ (2012).

⁶⁴ One World Action & SOLIDAR ‘Decent Work? The Cambodian Garment Industry’ (August 2007) <http://bit.ly/17Tdgev>

⁶⁵ ILO ‘Practical challenges for maternity protection in the Cambodian garment industry’ (2012).

⁶⁶ BFC ‘Thirtieth synthesis report on working conditions in Cambodia’s Garment Sector’ (18 July 2013).

⁶⁷ ILO ‘Practical challenges for maternity protection in the Cambodian garment industry’ (2012).

⁶⁸ One World Action & SOLIDAR ‘Decent Work? The Cambodian Garment Industry’ (August 2007).

⁶⁹ ActionAid ‘Garment factory workers and a dose of Cambodian optimism’ (August 2013) <http://bit.ly/1epJPIE>.

fear of rape and robbery, especially at nighttime when they leave work. Poor public services mean no street lighting and inadequate policing, which are some of the factors that put workers lives at risk on a daily basis.⁷⁰

4.6 Freedom of association

Lastly, the garment sector in Cambodia is plagued by rampant disregard for and violations of freedom of association. Over the past several years, Cambodia has been increasingly seen as a dangerous country in which to be a trade unionist, with independent, legitimate labor unions facing severe pressure and working in a 'violent climate of terror and impunity.'⁷¹ Strikes and demonstrations outside the factories are frequently dispersed violently by law enforcement, with the use of live ammunition becoming increasingly frequent. In addition, union workers, as well as union representatives and leaders, are frequently summarily fired as a result of their union activities. For instance, in early January 2014, at least 50 workers were fired from several factories operating in the Manhattan Special Economic Zone in Svay Rieng province, allegedly for participating in strikes over the month of December 2013. The workers are members of the Collective Union of Movement of Workers and Cambodian Alliance Trade Union.⁷²

During a CCHR roundtable discussion, a representative from the Max View factory stated that there are many reasons for firing union leaders who are on strike, including a lack of capacity to work.⁷³ However, it is becoming increasingly clear that union leaders are targeted by factories and by the RGC for their activism.

Case Study: Sabrina Garment Factory

In late May and early June 2013, multiple violent clashes broke out at Sabrina Factory, which produces clothes for Nike, Wilson Sports Apparel and Lululemon Athletica, following the factory's failure to comply with a collective agreement between it and FTUWKC on 30 January 2013. The agreement was a result of collective bargaining between Sabrina Factory and FTUWKC, during which mutually acceptable terms of employment and working conditions were negotiated. In particular, FTUWKC was asking for a monthly \$14 pay increase for workers from 1 May, in line with the national minimum wage increase, and for workers employed on temporary contracts to be automatically converted to permanent employment status. Initially, the failure of Sabrina Factory to uphold their obligations led to around 4,000 of the 5,300 workers going on strike.

The consequent clashes were particularly violent. Despite the legal legitimacy of the strike, police intervened violently, often using stun batons to disperse the crowds, and about 50 people were injured, including nine police officers. Those injured also included two pregnant women, one of whom lost her baby after reportedly being pushed to the ground by a police officer. Following the strike, 415 workers were dismissed from Sabrina Factory.

⁷⁰ ActionAid 'Making cities safer for garment workers in Cambodia' (February 2013) <http://bit.ly/1bnduh1>.

⁷¹ One World Action & SOLIDAR 'Decent Work? The Cambodian Garment Industry' (August 2007).

⁷² Mom Kunthear and Sean Teehan, 'Svay Rieng garment workers fired, suspended' *The Phnom Penh Post* (10 January 2014) <http://bit.ly/KN9BY7>.

⁷³ CCHR Roundtable Discussion on 'Business & Human Rights in the Garment Sector in Cambodia' (Phnom Penh, 12 December 2012).

Of particular concern however, is that events at Sabrina Factory appear to be being emulated across the country in a disturbing trend of targeting members of unions, in repeated and deliberate attempts to disrupt union activities. On 3 June, eight FTUWKC representatives were arrested and charged with “inciting violence and destroying company property at the factory,” charges that they deny. Following the strike, a further three unionists were suspended from work on 4 September and form part of a total of sixteen people facing court charges. The strikes not only resulted in disputes between FTUWKC and factory management however. Accusations of defamation also occurred between FTUWKC and the Coalition of Cambodian Apparel Workers’ Democratic Union (“CCAWDU”), the union that most workers at Sabrina Factory belong to. CCAWDU claimed that they did not back the strike and that during the clashes on 27 May 2013 FTUWKC forced 3,000 workers out of the factory to strike. On the other hand, FTUWKC accused CCAWDU of instigating violence during the clashes.

More recently, eight of the union representatives were released on bail on 21 October, after spending four months in prison, with the judge citing the plaintiff’s withdrawal of demands for compensation as a key reason for this decision. As the accused await trial, tensions remain high between Sabrina Factory’s management and FTUWKC however, with FTUWKC’s president Chea Mony denying that any of his representatives had any role in instigating violence at the protests and Kuch Ratha, FTUWKC’s lawyer, confirming that Sabrina Factory is suing FTUWKC for \$150,000 in damages.⁷⁴

Of great concern are incidences of union leaders being killed as a result of their union activities. Chea Vichea, who was the leader of FTUWKC, was gunned down in broad daylight near a newspaper stand, in central Phnom Penh, on 22 January 2004. Under intense international pressure, the police arrested two men — Born Samnang and Sok Sam Oeun — and charged them with murder, but it quickly became apparent that the arrest was a cover-up of government involvement in the murder. The two men were sentenced to twenty years in prison each, despite a lack of credible evidence, reliable alibis proving their innocence and the corroborating evidence of the only eye witness testifying that the two men charged were not those she saw at the scene. Finally, on 25 September 2013, the Supreme Court acquitted Born Samnang and Sok Sam Oeun, who by then had already spent more than four and a half years in prison for a crime they did not commit. Although the decision represents a victory of sorts of the two accused, justice for Chea Vichea remains elusive, as his real killers remain at large. Recent developments indicate that these concerns are not old news: in early November 2013, Ath Thorn, the president of CCAWDU, reported that he had received several anonymous phone calls, during which he and other union officials received death threats.⁷⁵

Tensions between garment workers and the authorities reached breaking point in early January 2014. On 2 January, military units, armed with batons, steel pipes and AK-47 assault rifles, were deployed to a protest outside of the Yak Jin Factory off of National Road 4 near Phnom Penh, where they several beat over a dozen people, including monks, garment factory workers and journalists, and arrested 15 people.⁷⁶ The following day, 3 January 2014, military police opened fire on protestors outside the Canadia Industrial Park on Veng Sreng road in Phnom Penh, killing at least four and leaving more than

⁷⁴ Chin Chan, ‘Eight More Charged Over Violent Factory Protest’ *The Cambodia Daily* (18 June 2013) <http://bit.ly/IHyOC3>.

⁷⁵ Mom Kunthear & Sean Teehan, ‘Union leader ‘threatened’’ *The Phnom Penh Post* (5 November 2013) <http://bit.ly/IODsxj>.

⁷⁶ CCHR, ‘CCHR releases a Briefing Note on the excessive use of force against demonstrators in 2013 and condemns yesterday’s violence’ (Press Release) (3 January 2014) <http://bit.ly/1djMW16>.

20 injured. 23 people were also arrested.⁷⁷ The demonstrations were sparked by the RGC's announcement of the 2014 minimum wage of \$95 per month on 24 December 2013, following which seven unions called for nationwide strikes demanding an increase of the minimum wage to \$160 per month. The RGC later offered an increase to \$100, which the unions rejected. Approximately 350,000 workers joined the strike to demand an increased wage. The protests were clearly marred by increasing tension and frustration with the RGC's response to the demonstrators' demands, resulting in some demonstrators resorting to using violence – including throwing rocks – against the security forces at some of the protest locations. The protests came to a halt on 4 January 2014, when the Ministry of Interior banned all protests for an indefinite time period.⁷⁸

4.7 Other rights violations

Related to violations of freedom of association are widespread violations of the right to collective bargaining, starting with employers failing to conduct good faith bargaining with unions.

Case Study: SL Garment Factory

Employees of the SL Garment Factory, located in Meanchey district in Phnom Penh, which produces clothes for H&M and Gap, have been engaged in a prolonged battle with the company that has so far lasted over a year. With little progress, the months since August 2013 have been categorized by protests and strikes by factory employees, who are asking for a wage increase, the reinstatement of meal breaks and the removal of military police hired by the factory as security guards.

While a number of the protests have resulted in violence, including most recently the death of a woman who was shot by security forces, there is particular concern over repeated attempts by factory management to disrupt the activities of unions, including the largest CCAWDU. Most prominently, on 4 September 2013, the company dismissed around 700 workers who are members of CCAWDU. Over 4000 workers protested in retaliation, demanding an intervention by the RGC. A further 19 CCAWDU representatives have also been fired, with reasons for the dismissal remaining a matter for debate. While the factory's management cited violence and destruction of factory property as the reason, CCAWDU claimed that such allegations are false and were intended to cover up motivations that spur from the factory management's desire not to have union representatives present in the factory. In addition, as mentioned above, a death threat was made towards Mr. Ath Thorn, president of CCAWDU, at the beginning of November.

Until very recently, the factory's management has ignored the demands of the workers. In response to increasing tensions, the management hired military police to guard the factory buildings including, reportedly, those in plain clothes. The severity of the situation has resulted in intervention by the MLVT, who has facilitated dialogue between the two parties. Although some progress was made initially, disagreements persisted, particularly in relation to the SL Garment Factory's refusal to reinstate the 19 CCAWDU members. Following involvement from Prime Minister Hun Sen, a letter was issued from the Council of Ministers on 15 November, which ordered the company to take a number of steps to reconcile the situation, including reinstating the 19 union members as a priority. While on the surface

⁷⁷ CCHR, 'CCHR condemns the RGC's violent clampdown on human rights and the resulting deterioration of the state of democracy in Cambodia' (Press Release) (4 January 2014) <http://bit.ly/1evlNUk>.

⁷⁸ Prak Chan Thul 'Cambodian garment workers return to work after deadly clashes' (7 January 2014) <http://reut.rs/1ffccY3>

it appeared that progress was being made, following a meeting with the MLVT, the factory's owner, Mr. Wong, announced that he would not rehire the workers.

On 3 December however, in an unexpected turn of events, strikes at the factory officially ended after a further meeting at the MLVT concluded with both CCAWDU and the factory's management signing an agreement. Under the agreement, the factory will rehire the 19 CCAWDU members, drop all lawsuits filed against CCAWDU and pay workers half the wages they would have earned during the strike. In addition, the MLVT established a committee to oversee implementation of the agreement.

The longevity of the strike highlights the importance of factories and international brands engaging in good faith negotiations with employees and while both sides may have lost out due to the strike in some respects (profits for the factory and wages for the employees), it is clear that this development was a positive step forward for increasing the likelihood of productive negotiations in the future. As Ouch Noeun, secretary-general of the SL factory chapter of the CCAWDU announced following the agreement, *'After today, everybody will know that the workers at SL got their justice, and we appeal to every employer to respect human rights.'*⁷⁹

The situation is exacerbated by competition and "in-fighting" between different unions and the resultant lack of intra-union cooperation and communication.⁸⁰ Garment factory representatives have expressed concerns during the roundtable discussions that union leaders intentionally convert individual grievances into collective grievances, using union representation as a shield and encouraging workers to go on strike. It has also been reported that union leaders do not always act in the best interest of their workers, but rather work in their own interests and without an aim of cooperating to find a resolution.⁸¹

Moreover, although union membership in the garment sector is higher than other sectors, many unions are allied to either factories – whose owners sometimes create management-sponsored unions in order to avoid having to negotiate with independent unions⁸² – or to the RGC. Government or factory-aligned unions – known as "yellow unions" – and independent unions often have very different demands, which can cause confusion as to where garment factory workers truly want to see changes. For instance, when the RGC announced in late November 2013 that it was considering progressively raising the minimum wage for garment workers over the next five years, beginning in January 2014, the RGC-aligned Cambodian Council of National Unions ("CCNU") expressed its support for the plan, while the independent CCAWDU continued to ask for a "dramatic increase" in the minimum wage.⁸³

⁷⁹ Sean Teehan & Mom Kunthear, 'Jubilation as SL strike ends' *The Phnom Penh Post* (4 December 2013) <http://bit.ly/1cAIOZF>

⁸⁰ CCHR Roundtable Discussion on 'Business & Human Rights in the Garment Sector in Cambodia' (Phnom Penh, 12 December 2012); CCHR, Workshop on 'Business and Human Rights in Garment Industry' (Phnom Penh, 18 January 2013); CCHR, Roundtable Discussion on 'Perspectives on Arbitral Award of the Arbitration Council' (Phnom Penh, 14 February 2013).

⁸¹ CCHR Roundtable Discussion on 'Business & Human Rights in the Garment Sector in Cambodia' (Phnom Penh, 12 December 2012); CCHR, Workshop on 'Business and Human Rights in Garment Industry' (Phnom Penh, 18 January 2013); CCHR Roundtable Discussion on Perspectives on Arbitral Award of the Arbitration Council' (Phnom Penh, 14 February 2013).

⁸² International Human Rights and Conflict Resolution Clinic/Stanford Law School & Workers Rights Consortium, 'Monitoring in the Dark: An Evaluation of the International Labour Organization's Better Factories Cambodia monitoring and reporting program' (Report) (February 2013) <http://stanford.io/ltuZ31>.

⁸³ Aun Pheap & Dene-Hern Chen, 'Labor Minister Proposes Annual Wage Rise' *The Cambodia Daily* (28 November 2013) <http://bit.ly/1ckWnv9>.

As reported by the *Cambodia Daily*, Som Aun, the president of CCNU, called the independent unions' proposal for a minimum wage of \$154 per month "unrealistic."⁸⁴

Finally, GMAC and garment factory management systematically and actively impede efforts to properly monitor the situation in Cambodian garment factories. In response to the BFC's decision to publically name factories that violate the Labor Law in its monitoring reports from January 2014, GMAC issued a statement urging its members to refuse entry to BFC monitors unless accompanied by RGC officials.⁸⁵ Although 13 international brands purchasing from Cambodian factories issued a letter requesting that GMAC withdraws the above request,⁸⁶ GMAC has yet to publically express its support for BFC's new transparency in reporting. GMAC has also blamed strikes by garment factory workers for allegedly damaging the reputation of Cambodia's garment industry and for decreasing profits⁸⁷ – despite continually increasing values of garment exports. In a statement following the violent clashes between authorities and garment workers which left at least four dead on 3 January 2014, GMAC Secretary-General Ken Loo endorsed the use of excessive force, announcing that the authorities had acted appropriately.⁸⁸

Major international brands including H&M, Levi and Gap have expressed concern over the use of force by sending an open letter to the RGC, trade unions and manufactures, clearly stating that they 'strongly oppose all forms of violence' and call for peaceful resolution to the dispute in addition to a 'regularly-scheduled wage review'.⁸⁹ Whilst this was undoubtedly a welcome step, it should be noted that leading brands Nike and Walt Disney did not sign the letter.

The attitudes of the garment industry – as demonstrated by GMAC's stance – are underpinned by a widespread disregard by garment factories, which fail to adhere to the provisions of the GPs. For instance, GP 16, which suggests that business enterprises express their commitments to respecting human rights through publically available and operationalized statements of policy, is rarely if ever implemented by garment factories. Similarly, factories systematically fail to conduct human rights due diligence, as mandated by GPs 17 to 21, in order to address potential adverse human rights impact – made evident by the widespread human rights violations detailed throughout this Chapter.

⁸⁴ Ibid.

⁸⁵ Matt Bloomberg, 'GMAC Urges Factories to Resist New Monitoring' *The Cambodia Daily* (1 October 2013) <http://bit.ly/1e4r1MB>.

⁸⁶ Daniel de Carteret, 'Brands tell GMAC to dial it down' *The Phnom Penh Post* (18 October 2013) <http://bit.ly/1fcc885>.

⁸⁷ See for instance, George Styllis, 'Exports Grow Despite Record Number of Strikes' *The Cambodia Daily* (15 November 2013) <http://bit.ly/JdtXZG>.

⁸⁸ Aun Pheap and Zsombor Peter, 'GMAC Defends Use of Force Against Striking Workers' *The Cambodia Daily* (6 January 2013)

⁸⁹ H&M, Gap Inc., Adidas Group et al, 'Open letter to government, manufacturers and trade unions calling for peaceful resolution of nationwide strike linked to the Cambodian garment industry annual minimum wage increase' (Open letter) (7 January 2014)

5 Conclusion and Recommendations

5.1 Conclusions

Despite a relatively protective legislative framework and several national-level policies aimed at implementing this framework, labor rights, in the context of the garment industry in Cambodia, continue to be violated with alarming frequency. Little improvements have been made with regards to working conditions within the factories over the past several years, and the latest monitoring reports indicate that the conditions may actually be degrading. Moreover, workers' protests – which are often fraught with violence – are becoming increasingly frequent, as negotiations with factory management fail to result in concrete improvements in the situation and state security forces act swiftly to repress protests and other union activities.

As has been demonstrated in this Policy Brief, the root causes of this situation are multifaceted, beginning with a complete disregard of the law and made possible by the lack of systematic monitoring and oversight by the RGC of the garment industry. Moreover, the lack of adequate mechanisms for dispute resolution – which results from a lack of full implementation of the provisions of the Labor Law and from the lack of independence of the Cambodian judiciary – is creating untenable relationships between workers, unions and the factories.

Finally, the issues highlighted in Chapter 4 reflect a widespread disregard for the responsibility of businesses in Cambodia to respect and protect human rights, as mandated by the GPs. Garment factories regularly fail to uphold basic human rights in their daily operations, resulting in widespread and systematic human rights abuses, which are creating an untenable situation for those employed in the industry.

5.2 Recommendations

Despite these challenges, there is continued room for improvement in the garment industry and in the implementation of the legal framework, which would benefit Cambodia as a whole. Increased adherence to human rights standards by all stakeholders would result in higher profits for the factories: increased worker satisfaction would lead to higher productivity; an improved reputation among buyers would lead to higher sales; and supply chain security would lead to greater stability in production. Similarly, the RGC's increased enforcement of human rights standards in commercial enterprises would result in economic growth, as stability in the private sector would likely increase and investment in Cambodia would become more attractive.

5.2.1 Recommendations to the RGC

As noted throughout this Policy Brief, there are several aspects of the legal and policy framework regarding labor rights in Cambodia that can be improved upon in order to bring the laws in line with international laws and with the GPs. As such, CCHR recommends the following:

- Ratify the ILO Labour Inspection Convention 1947 (No. 81);
- Enforce the Labor Law and related laws (GP 3);
- Review and amend the Labor Law in order to establish more substantial sanctions to dissuade violations of the Labor Law and to prevent employers from continuing to violate the Law,

including through legislating higher fines, procedures for closing businesses in cases of continued, serious violations and higher punitive damages to victims of violations;

- Review the contracting system within the Labor Law to add restrictions to the use of FDCs in order to ensure that the contracting system is not abused by employers at the detriment of the employees;
- Ensure adequate consultation with civil society, unions and workers with regards to the draft Trade Union Law and ensure that the law reflects human rights principles;
- Exercise additional oversight when contracting with garment factories and other businesses to protect against human rights abuses, promote a respect for human rights among the businesses, and ensure that Cambodia meets its international human rights obligations (GPs 4, 5 and 6);
- Ensure – through the provision of information, training and support – that the Ministry of Commerce, the MLVT, and any other governmental departments that are involved in shaping business practices in Cambodia, and observe Cambodia’s human rights obligations (GP 8);
- Ensure that victims of labor rights’ violations have access to effective remedies, including through the creation of domestic Labor Courts (GPs 25 and 26);
- Take steps to strengthen the MLVT’s grievance mechanisms and effectiveness, including by providing funding for additional staff and training on the Labor Law and relevant international laws (GP 27); and
- Take steps to strengthen the AC’s enforcement and monitoring capabilities, including by making decisions and arbitral awards binding and providing funding for the implementation of monitoring mechanisms (GP 28).

5.2.2 Recommendations to garment factories

As the stakeholders most directly impacting the human rights situation as regards the garment industry in Cambodia, the owners and managers of garment factories can have a significant impact on the situation and can implement concrete steps to redress some of the issues highlighted throughout this Policy Brief. As such, CCHR recommends the following:

- Avoid infringing upon the human rights of their employees, particularly the rights defined in the ICCPR, ICESCR, CRC and the ILO conventions, and should address adverse human rights impacts with which they or their business partners are involved (GPs 11, 12, 13 and 18);
- Recognize and respect responsibility to protect the human rights of their employees, regardless of the factories’ size, sector, operational context, ownership or structure (GP 14);
- Express commitments to human rights through the operational implementation and public dissemination of a policy statement approved at the highest levels that stipulates the factories’ human rights expectations of their personnel, partners and other entities linked to their operations or products (GP 16);
- Engage in ongoing human rights due diligence that identifies actual and potential human rights impacts, acts upon the findings, tracks responses, and indicates how those impacts were or will be addressed (GPs 17, 20 and 21);
- Integrate the findings from human rights impact assessments into internal functions and processes (including budget allocations and oversight mechanisms) and take appropriate action to ensure that the impacts are mitigated or eliminated (GP 19);

- Provide for and cooperate in legitimate remediation processes for adverse human rights impacts in which they were involved (GP 22);
- Comply with all applicable laws and respect internationally recognized human rights, seek to honor human rights principles above other requirements, and treat the risk of gross human rights abuses as a legal compliance issue (GP 23);
- Follow a ‘*triage*’ approach to mitigating human rights abuses, addressing the most severe or irreparable violations first (GP 24);
- Establish effective operational-level mechanisms for employees, either individually or through unions, to bring grievances to the attention of their employers; these mechanisms should be based on engagement and dialogue with the employees (GPs 29 and 31); and
- Comply with all MLVT and AC decisions, whether or not the decisions are in their favor.

5.2.3 Recommendations to companies

Although the RGC and the garment factories themselves hold the primary responsibility for the protection of labor rights within the garment industry, the companies that purchase garments from Cambodian factories nevertheless can play an important role in addressing the situation. In late November 2013, Swedish fashion designer H&M announced a new “roadmap” aimed at putting in place structures and mechanisms to ensure that the 850,000 textile workers producing garments for H&M throughout the world receive fair living wages by 2018.⁹⁰

“We believe that the wage development in production countries, which is often driven by governments, is taking too long. H&M wants to take further action and encourage the whole industry to follow. With size comes responsibility and we have the ability to contribute to a positive change.” – H&M

CCHR commends this development and urges other companies purchasing garments from Cambodia and from other garment-manufacturing nations to follow H&M’s example. As such, CCHR recommends the following:

- Ensure that the factories they buy merchandise from are fully pursuing the provision stated in the Labor Law and the international covenants and the ILO conventions;
- Conduct their own, independent monitoring programs periodically in order to ensure the factories meet the standards, and no human rights violations are occurring;
- When a human rights violation has been reported, companies should immediately require detailed clarifications from the RGC and the factory management; and
- Publically support ongoing monitoring by the BFC program and any measures by BFC and other stakeholders to increase transparency with regards to monitoring in garment factories.

5.2.4 Recommendations to unions

As noted in Chapter 4, although a powerful force for change and the main protection mechanism for workers, unions in Cambodia could be more effective if communication and cooperation between unions were to be improved. Moreover, unions representatives could play a greater role in ensuring

⁹⁰ H&M, ‘Fair Living Wage’ <http://bit.ly/1eQP4uE>.

that the workers they represent are better equipped to fight for the rights and protections to which they are entitled under domestic and international law. As such, CCHR recommends the following:

- Ensure that workers are aware of their rights under the Labor Law, the ILO Conventions and other relevant international human rights instruments;
- Comply with all legally mandated strike procedures;
- Comply with all MLVT and AC decisions, whether or not the decisions are in their favor; and
- Improve communication and coordination mechanisms, so as to reduce redundant or contradictory complaints.

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