



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
OF KIN TAI GARMENT (CAMBODIA)**

**FINDINGS, RECOMMENDATIONS AND STATUS  
December 31, 2014**

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## **A. Introduction**

This is a report of the findings and recommendations of the Worker Rights Consortium's ("WRC") assessment of labor conditions at Kin Tai Garment ("Kin Tai"), an apparel factory in Phnom Penh, Cambodia. Kin Tai is a Taiwanese-owned garment manufacturer employing approximately 600 workers.

Kin Tai was disclosed by the U.S. apparel firm, 5.11 Tactical ("5.11"), as a supplier of apparel and other products to the City of Los Angeles ("the City"). 5.11 is a California-based company that is a vendor of law enforcement, military and firefighting apparel and accessories. The City purchases men's and women's boots, jackets, pants and shirts supplied by 5.11 Tactical for use by City employees from Galls Long Beach Uniform ("Galls"), a local distribution company in Southern California.

As suppliers of goods purchased by the City, Kin Tai and 5.11 Tactical are obligated to comply with the City's Sweat-Free Procurement Ordinance ("the Ordinance"), which requires that all facilities that manufacture clothing and other accessories for the City follow certain labor and human rights standards, including the national labor and employment laws, and international treaty commitments, of the countries in which they operate<sup>1</sup>

The WRC carried out its assessment of Kin Tai pursuant to the WRC's contractual obligations as the City's independent monitor of City apparel vendors' compliance with the Ordinance. In addition to supplying 5.11 Tactical, Kin Tai also produces garments for Armani Jeans, a brand owned by the Italian firm, Giorgio Armani, s.p.a. ("Armani"), Nygard International, a women's clothing company based in Toronto, Canada, and Mark's Work Wearhouse, a clothing retailer owned by the Canadian Tire Corporation.

The WRC began its assessment of Kin Tai in March 2013 after initial outreach to workers indicated a strong likelihood that violations of the City's Ordinance were taking place at the factory. The WRC's investigation was carried out between March 2013 and November 2013, and was followed by extensive efforts to achieve remediation of the violations that this investigation found. The following report details the WRC's findings and recommendations regarding labor rights compliance at Kin Tai and the results of our requests of Kin Tai and 5.11 Tactical that the factory correct these violations.

The WRC's assessment of Kin Tai found violations of Cambodian labor law and, by extension, the City's Ordinance,<sup>2</sup> in the areas of: (1) labor contracts, including illegal employment of workers on short-term contracts and as casual labor; (2) wages and benefits, including failure to properly provide legally required bonuses and paid leaves; and (3) occupational health and safety, including failing to provide employees with necessary protective equipment.

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<sup>1</sup> Ordinance No. 176291 (Nov. 9, 2004) (amending the Los Angeles Administrative Code ("LAAC") to establish a sweatshop-free policy for procurement of equipment, materials, goods, and supplies, and to establish compliance procedures for the City's "Contractor Code of Conduct," including §§ 10.43.3.A and B).

<sup>2</sup> Id. § 10.43.3.A.

As discussed in this report, with respect to several of these recommendations, the International Labor Organization's Better Factories Cambodia ("ILO BFC") factory monitoring program, also has urged Kin Tai, on multiple occasions, to take similar measures in order to comply with Cambodian law. Moreover, some of these issues also have been the subject of arbitration awards against the company by Cambodia's Arbitration Council, the country's statutory labor adjudication body, with which Kin Tai, unfortunately, has failed to comply.

On June 24, 2013, the WRC sent both Kin Tai and 5.11 a copy of the WRC's findings and recommendations concerning these violations. Over the following three months, the WRC provided Kin Tai with both a corrective action plan based on these recommendations, and further explanation of its findings regarding the company's use of employment contracts. During the same period, the WRC also forwarded to Kin Tai and to 5.11 copies of the awards of the Cambodian Arbitration Council that are referenced in this report.

In response to the WRC's recommendations, Kin Tai did correct several of the violations that had been identified, most notably:

- Ending its practice of illegally denying maternity leave benefits to female workers; and
- Reducing the number of workers that the factory was employing unlawfully under casual labor arrangements.

Kin Tai's management, however, failed to comply with the WRC's other recommendations for correcting the violations that had been found, leaving the factory still in violation of Cambodian labor law and the City's Ordinance.

Moreover, in January 2014, the WRC received additional complaints, which it subsequently investigated and found accurate, concerning the alleged retaliatory and illegal discharge of two workers who were activists in the factory employees' union, with one of whom serving as the union's elected president. The WRC concluded that these terminations were, indeed, retaliatory in nature and, therefore, violated workers' rights to freedom of association, as protected under Cambodian law, international labor conventions, and the City's Ordinance.<sup>3</sup>

The WRC communicated to Kin Tai its findings concerning these terminations in February 2014, and reminded the company of the other outstanding labor rights violations it had previously reported to the factory. The company did not respond directly to the WRC, but, on March 24, 2014, the Cambodian NGO, Community Legal Education Center, informed the WRC that it had learned from the two worker union activists that Kin Tai had offered them both reinstatement to their jobs at the factory and back pay. One worker, the union president, reportedly accepted reinstatement and back pay, while the second worker declined to return to the factory, but did receive statutory severance benefits and back pay from the company.

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<sup>3</sup> Id., §§ 10.43.3.A., B. Cambodian Labor Law, Arts. 266, 271, 279, International Labor Organization Convention 98 (Right to Organize and Collective Bargaining) (ratified by Cambodia, Aug. 23, 1999).

On March 28, 2014, the WRC provided an updated copy of its finding and recommendations to Kin Tai, noting with concern the company's lack of adequate progress in correcting the outstanding violations despite the more than nine months that had passed since the WRC had shared its initial findings and recommendations with Kin Tai. The WRC also reported to Kin Tai its finding that despite reinstating the employee who was the factory union president, the company was continuing to press her to consider resigning from the factory, a further violation of this worker's associational rights under Cambodian law and the City Ordinance.<sup>4</sup>

The WRC also urged Kin Tai to take urgent action to address the excessive heat levels in the factory, noting that as Cambodia entered its hot season, temperatures in the factory were reaching levels that could cause workers to suffer from heat stress and possibly faint. In response, Kin Tai informed the WRC that it intended to install "curtains" to address the excessive temperatures in the factory but has not since communicated to the WRC concerning this issue or the other outstanding violations detailed in our report.

The WRC also provided an updated copy of its findings and recommendations to the City and spoke with 5.11 Tactical regarding the drafting of a time-bound Corrective Action Plan ("CAP") to address the outstanding violations at Kin Tai. On May 13, 2014, the WRC provided 5.11 Tactical with a CAP for Kin Tai that addressed all of the outstanding issues and gave target dates for completion – June 15 in the case of items that could be implemented within a short timeframe and August 1 for items requiring additional time and effort to complete. On May 21, 5.11 Tactical confirmed to the WRC that it would require Kin Tai to carry out the CAP. However, the company noted that it had already reduced its orders from Kin Tai on account of problems with the quality of the factory's goods and would not continue doing business with Kin Tai beyond August 1, 2014 if these problems were not resolved. As an incentive for the factory to cooperate, the WRC urged 5.11 Tactical to restore some orders to Kin Tai if the factory complied substantially with the CAP by the target dates.

Despite repeated communications to the company by both WRC and 5.11 Tactical, Kin Tai has made very little progress in correcting the labor rights violations that have been identified at the factory. On October 7, 2014, 5.11 Tactical informed the WRC that its last shipment from Kin Tai would ship in December 2014 and that it was shifting orders to Roo Hsing Garment Co., another supplier in Cambodia. Given the lack of progress by Kin Tai in achieving compliance with the City's Ordinance, the WRC does not recommend that 5.11 Tactical place further orders with the factory until it demonstrates significant improvements in this area. The WRC recommends that 5.11 Tactical communicate this to Kin Tai.

According to testimony by factory workers, the vast majority of Kin Tai's current production is for Armani Jeans. The WRC has written to Armani several times and has provided it with the WRC's findings and recommendations concerning labor rights violations at the factory but has received no response from the company. Unfortunately, unless Kin Tai's current customers, including Armani, take action to require the factory to implement the WRC's recommendations, it is unlikely that additional progress toward labor rights compliance will be achieved at the factory.

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<sup>4</sup> LAAC, § 10.43.3.A; Labor Law, Art., 279.

## **B. Methodology**

The WRC's assessment of Kin Tai involved the following research activities:

- Interviews with Kin Tai managers;
- In-depth interviews with 16 Kin Tai production employees, that were conducted both at the factory, itself, and offsite;
- A review of relevant documents and records, including employment contracts and payroll records;
- A physical inspection of the factory in May 2013, with follow up meetings with Kin Tai management in July and September 2013;
- A review of an ILO-BFC monitoring report on the factory dated January 31, 2011;
- A review of an award issued by the Arbitration Council against Kin Tai in 2010; and
- A review of relevant Cambodian labor laws.

## **C. Findings, Recommendations, Remediation and Current Status**

### **1. Freedom of Association**

#### *a. Illegal Retaliatory Dismissal of Union Leaders and Activists*

##### Findings

On December 1, 2013, Kin Tai workers, exercising their right to freedom of association under Cambodian labor law and the City's Ordinance, organized a union, which they chose to affiliate with the Cambodian Alliance of Trade Unions (CATU). On December 12, 2013, the union forwarded a list of the employees who comprised its elected leadership to the factory management, which, under Cambodian labor ministry regulations, meant that the company was prohibited from terminating these workers' employment without prior permission from the ministry.<sup>5</sup>

Between December 25, 2013 and January 3, 2014, employees at Kin Tai went on strike in conjunction with nationwide protests by Cambodian garment workers calling for a higher legal minimum wage. After workers began to return to the factory on January 6, 2014, Kin Tai's management began to retaliate against employee union activists. On January 6 and 10, 2014, the factory's management failed to renew the labor contracts of Uy Sokleng, an active member of the CATU-affiliated union, and Chheang Thida, the union's president, respectively – thereby terminating their employment. On the following day, January 11, 2014, Kin Tai's management threatened Sem Sovan, the union's vice president, with dismissal as well.

Kin Tai did not provide an explanation for its failure to renew the contracts of the two employees, one of whom had worked at the factory for more than two years under a contract that

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<sup>5</sup> See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Prakas 305.

had been renewed several times previously. Instead, the company asserted that since the workers were employed on revolving short-term contracts (known in Cambodia as “Fixed Duration Contracts” or “FDCs”), it was the company’s prerogative whether or not to renew the agreements.

Kin Tai’s refusal to renew the employment contracts of the two union activists and its threat to take similar action against the third violated Cambodian law, which prohibits employers from taking into account union membership in decisions of hiring and dismissing workers.<sup>6</sup> Cambodia’s Arbitration Council, which has statutory authority to interpret the country’s labor law,<sup>7</sup> has made clear that this prohibition applies in cases where employers refuse to renew workers’ employment contracts on account of their activities:

“...[T]he employer is strictly prohibited from terminating or not hiring a worker for reasons of union membership or participation in union activities in accordance with Arts. 12 and 279 of the Labor Law. In these circumstances both the decision not to renew a contract of fixed duration and the decision to terminate a worker on an undetermined duration contract should be considered to fall within the category of decisions which an employer cannot make for reasons of union membership or participation in union activity  
...<sup>8</sup>

Moreover, in the case of Chheang Thida, the union president, under Cambodian labor ministry regulations, if Kin Tai had wished to terminate his employment for disciplinary reasons, the company would have had to obtain prior authorization from the ministry, which Kin Tai did not claim to have done.<sup>9</sup>

Furthermore, it should be noted that retaliatory termination of workers who are union activists or elected officers through discriminatory refusal to renew their employment contracts has been recognized as a tactic commonly used by Cambodian factory owners to undermine workers’ exercise of associational rights. Recent reports by independent human rights experts have linked the proliferation of the practice among Cambodian factories of employing year-round workers on

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<sup>6</sup> See, Cambodian Labor Law, Arts. 12, (“...[N]o employer shall consider on account of: race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers’ union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.”) and 279, (“[E]mployers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.”).

<sup>7</sup> See, Arbitration Council, *Frequently Asked Questions*, <http://www.arbitrationcouncil.org/en/frequently-asked-questions>.

<sup>8</sup> See *In re Jacqsintex*, Cambodia Arbitration Council Award 10/03 (Jul. 23, 2004).

<sup>9</sup> See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Prakas 305, §4 (d), (“[A]ny employer who terminates or dismisses employees from work who receive protection in accordance with above provisions without prior permission from the Labour Inspector or causes any damage to those employees shall be penalized in compliance with Article 373 of the Labour Law.”).

successive short-term contracts (FDCs), in part, to the fact that such arrangements facilitate employer retaliation against workers who attempt to exercise these rights.<sup>10</sup>

In this case, given that the company had provided no other business or performance-related justification for refusing to renew the two workers' employment contracts, after having renewed them previously on multiple occasions; that the timing of the terminations directly followed both the union's establishment and its having led the factory's workers to participate in the December 2013 - January 2014 wage protests; *and* that the company was on notice that the two dismissed workers were union activists, the WRC concludes that Kin Tai refused to renew these workers' employment contracts in retaliation for their union activities. The company's action, therefore, violated both Cambodian law and, by extension, the City's Ordinance.

### Recommendations

The WRC recommended, therefore, that Kin Tai management reinstate the two dismissed union activists to their former positions with payment of back wages from the dates of their dismissals to the effective date of the offer of reinstatement. The WRC also urged that Kin Tai desist, going forward, from threatening or carrying out any further retaliatory terminations via non-renewal of FDCs or other means, and communicate to its employees and management, verbally and in writing, a firm policy of nondiscrimination against employees who exercise associational rights.

### Remediation and Current Status

On March 8, 2014, the Arbitration Council issued an award against Kin Tai, confirming the WRC's prior finding that the company's actions were illegal, and ordering the company to reinstate Union President Chheang Thida, with full back pay,<sup>11</sup> which the factory implemented on March 24, 2014. The other terminated union activist, Uy Sokleng, decided, however, not to pursue reinstatement, and accepted back pay and terminal compensation from the company. Following the union president's return to work, however, factory managers continued to urge her to voluntarily resign, a violation of associational rights which is still outstanding.

## **2. Labor Contracts**

Since 2006, Kin Tai Garment has employed all workers who have completed their probationary periods either as casual employees or under successive short-term contracts (FDCs). Those employees who are classified as casual workers are also employed on contracts, of even shorter terms, that vary in duration from two days to two months, while other workers are employed on contracts that are typically three to six months long. Only around 30 of the factory's employees, less than 3% of its workforce, are employed under open-ended contracts (known in Cambodia as "Unspecified Duration Contracts" or "UDCs").

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<sup>10</sup> See, e.g., Allard K. Lowenstein International Human Rights Clinic, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry* (Yale Law School: Aug. 2011) ("Yale Law School Report"),

[http://www.law.yale.edu/documents/pdf/Intellectual\\_Life/Cambodia\\_TearingApartattheSeams.pdf](http://www.law.yale.edu/documents/pdf/Intellectual_Life/Cambodia_TearingApartattheSeams.pdf).

<sup>11</sup> See, Cambodia Arbitration Council Award 35/14 (award published in Khmer only).



### *a. Illegal Employment of Workers as Casual Labor*

#### Findings

The WRC found that Kin Tai was employing approximately 60% of its workforce under “casual labor” arrangements which violate Cambodian law. According to the factory workers, Kin Tai employed these workers under successive contracts of up to two months’ duration, with a one-day hiatus of employment between the expiration of one contract and beginning of the next. Kin Tai does not pay the workers it employs under this arrangement statutory benefits to which they are legally entitled, such as wage increments for length of service, or paid maternity and annual leaves.<sup>12</sup>

Kin Tai’s management reportedly told the workers it employs under these arrangements that the factory would offer them three-month FDCs, if they underwent a medical examination. Some workers interviewed by the WRC indicated, however, that they did not undergo such examinations because of the upfront costs of the exam, itself, and transportation to the health clinic where it is performed. Although the factory reimburses workers for the cost of the examination it does not reimburse them for the cost of transportation.

Cambodian labor law clearly prohibits firms from contracting with employees as “casual workers,” to perform jobs that are not temporary or seasonal in nature.<sup>13</sup> In addition, the law also requires an employer to issue a regular employment contract (a FDC or UDC) to any worker it has employed for more than two months.<sup>14</sup> Kin Tai’s practice of employing workers indefinitely under “casual worker” contracts violated both of these statutory requirements, and, thereby, the City’s Ordinance as well. The labor law does not permit employers to avoid these requirements by insisting that casual workers undergo medical examinations before being issued regular contracts.

#### Recommendations

- Kin Tai should immediately issue all workers currently employed on contracts of two-months or fewer in duration, whose job duties are not actually temporary or seasonal in nature, and who have passed their probationary periods, regular employment contracts. If Kin Tai wishes to require employees to undergo medical examinations before offering them longer-term contracts, Kin Tai should provide such examinations free of charge at its existing onsite health clinic.

#### Remediation and Current Status

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<sup>12</sup> Cambodian Labor Law, Arts. 10, 161.

<sup>13</sup> See, Cambodian Labor Law, Art. 9 (“... Casual workers are those who are contracted to: perform a specific work that shall normally be completed within a short period of time ... [or] work temporarily, intermittently and seasonally.”).

<sup>14</sup> See, *in re Cambodia Sports Wear Garment Factory*, Cambodia Arbitration Council Award 26/04, [http://www.arbitrationcouncil.org/en/ac\\_decisions/decisions-digest](http://www.arbitrationcouncil.org/en/ac_decisions/decisions-digest).

After receiving the recommendations of the WRC, Kin Tai's management promised that by September 2013, it would issue workers currently employed as casual labor regular employment contracts. Although the company failed to take such action by the promised date, employees currently report that the company has issued such contracts to roughly half of the workers whom it formerly employed as casual labor, reducing the share of the factory's workforce employed under such arrangements from 60% to 30%. The reason for this reduction, however, appears to be a decline in the factory's business over the past few months, and not any change in its labor practices.

Moreover, according to workers, the factory's current practice is still to require workers employed as casual labor to, at the end of their initial employment contracts, undergo health examinations, after which the factory provides them with FDCs of three months' duration. As the workers employed as casual labor under their initial contracts with Kin Tai are still, in nearly all instances, not actually temporary or seasonal employees, the factory's use of such arrangements, even in this more limited manner, still constitutes a violation of Cambodian law and, thereby, the City's Ordinance.

*b. Illegal Use of Short-term Employment Contracts*

Findings

The WRC found that, in addition to employing 60% of the factory's workers on casual labor contracts, Kin Tai also employed nearly all of its remaining workforce under successive short-term contracts ("FDCs") of three or six months' duration. Less than 4% of the factory's workforce is employed under open-ended contracts (known in Cambodia as "undetermined duration contracts" or "UDCs").

Cambodian labor law, however, requires that employees who have worked for an employer for more than two years in total be employed under UDCs.<sup>15</sup> Kin Tai does not comply with this legal requirement. Because Kin Tai is violating Cambodian labor law in this area, it is violating the City's Ordinance as well.<sup>16</sup>

Furthermore, on October 14, 2014, Cambodia's Arbitration Council issued an award ordering Kin Tai to provide UDCs to all employees who had been employed by the factory for at least two years. Kin Tai has failed to comply with this award.<sup>17</sup>

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<sup>15</sup> Cambodian Labor Law, Art. 67 (2) ("[T]he 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."); and, *in re Jacqsintex* ("The Arbitration Council finds that contracts of employment of fixed duration shall automatically be transformed to undetermined duration contracts where the total duration of the employment contract (including the period of the initial contract and any renewals) exceeds 2 years.").

<sup>16</sup> LAAC, § 10.43.3.A.

<sup>17</sup> *See*, Cambodia Arbitration Council Award 266/14 (award available in Khmer only).

While Kin Tai's employment of workers with less than two years of total service at the factory under FDCs is not illegal in itself, the WRC finds that, like many other Cambodian garment factories, Kin Tai uses such arrangements as a means of illegally denying employees other statutory rights. Indeed, as discussed elsewhere in this report, Kin Tai, has used its employment of workers on successive FDCs as an excuse to withhold from these employees seniority bonuses, paid annual leave and maternity leave – all benefits to which workers are legally entitled, regardless of their contractual status. Such practices thereby result in violations of Cambodian law and, by extension, the City's Ordinance.

Although the practice of factories employing their regular year-round workforce under successive FDCs has become common in the Cambodian garment industry over the past decade, it has been criticized by ILO BFC and other international labor and human rights organizations as incompatible with respect for basic worker rights.<sup>18</sup> As these observers have noted, the practice runs counter to the ILO's Termination of Employment Recommendation (Recommendation 166, 1982), which disfavors use of short-term contracts that have the effect of denying workers the protections from termination stipulated in the Convention on Termination of Employment (ILO Convention 158).

In 2011, Yale Law School's Lowenstein International Human Rights Clinic published an in-depth study which found that employing workers on repeated short-term FDCs significantly undermines factories' compliance with Cambodian law and labor codes of conduct, like the City's Ordinance.<sup>19</sup> The clinic's report recommended, among other measures, that brands and retailers require their Cambodian suppliers to limit use of FDCs to employees hired to perform work that is actually short-term or temporary in nature, and to employ all other workers on UDCs.

### Recommendations

- To ensure compliance with Cambodian labor laws concerning employment contracts and Cambodia's Arbitration Council's award, Kin Tai must issue UDCs to all workers currently employed on FDCs who have worked at the factory, in total, for more than two years.
- In order to avoid noncompliance with other provisions of Cambodian law, Kin Tai, as a matter of good practice, should employ all workers who have passed their probationary period, except for those hired to perform work that is actually short-term or temporary in nature, on UDCs.

### Remediation and Current Status

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<sup>18</sup> ILO Better Factories Cambodia, "Better Factories Concerned about Labor Contracts," *ILO Better Factories Cambodia Quarterly Newsletter* (Oct. 2006), <http://betterwork.com/cambodia/wp-content/uploads/2013/05/Better-Factories-Newsletter-No.6-en.pdf>.

<sup>19</sup> Yale Law School Report, *supra*, n. 10.

In a follow-up meeting with the WRC on September 5, 2013, Kin Tai's management claimed that the company had written to Cambodia's Ministry of Labor to inquire if it was legally required to provide UDCs to employees who have worked at the factories, in total, for more than two years. The WRC explained that the requirements of Cambodian law on this subject were well-established and requested that Kin Tai management provide a copy of the letter it claimed to have sent to the labor ministry. The document that the company provided to the WRC in response, however, was not a letter to the ministry, but, instead, a notice to employees in Chinese comparing the respective benefits available to them under FDCs and UDCs.

Not only was this notice to employees not an inquiry to the Ministry of Labor, as Kin Tai originally had described it, but its content also appeared to be intentionally misleading. While the notice listed in detail the specific benefits that workers are entitled to under FDCs, with respect to UDCs, it stated only that workers are entitled to those benefits required by law, suggesting, inaccurately, that FDCs provide more benefits to workers than UDCs. Not only is this, in general, not the case, but also, with respect to Kin Tai, specifically, the company does not even provide the workers it employs on FDCs many of the benefits that the law requires – and, moreover, uses the fact workers are employed on FDCs as an excuse for not doing so.

The fact that the Kin Tai's management never supplied the WRC with the letter it purportedly sent to the Ministry of Labor suggests that Kin Tai never actually made such an inquiry. The WRC finds that the company continues to willfully avoid compliance with the requirements of Cambodian law with respect to labor contracts.

### **3. Wages and Benefits**

#### *a. Nonpayment of Legally Mandated Seniority Bonuses*

##### Findings

Cambodian labor law mandates that employers pay employees who have worked at a factory for more than one year, a monthly seniority bonus of U.S. \$2 (“USD”)<sup>20</sup> plus one additional dollar per month for each additional year of service, up to a maximum of 11 USD per month.<sup>21</sup>

The WRC found that Kin Tai unlawfully denies these statutory seniority bonuses to those workers whom the company employs on FDCs or under casual labor arrangements – who, together, comprise roughly 97% of the factory's workers. Kin Tai claims, however, that these

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<sup>20</sup> The Cambodian garment industry and government use the U.S. dollar (“USD”) as the currency in which wage payments and minimum wage requirements, respectively, for garment workers are denominated.

<sup>21</sup> See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Notification 17/00, Clause 5 (2000) (“[W]orkers who have been working for a long time in a factory or an enterprise shall receive a seniority bonus as follows: 5.1 those who have been working from one year up shall receive a seniority bonus of US\$ 2 per month; 5.2 those who have been working from two years up shall receive a seniority bonus of US\$ 3 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year ....”); and Ministry of Labour and Vocational Training, Notification 41/11, Clause 3 (2011) (“[W]orkers with seniority in accordance with the years set out above will receive a seniority bonus corresponding with their years of seniority (as per the table 1 above). Workers who have worked for more than 11 years will receive a seniority bonus of US\$ 11 per month.”).

employees are ineligible to receive seniority bonuses based on their length of service, on the grounds that because the company terminates their employment at the expiry of each of the successive short-term contracts under which they work, they do not accrue seniority.

Cambodian labor law states, however, that employees “who have been working from one year up shall receive a seniority bonus ...” The law makes no distinction with respect to workers’ eligibility for these bonuses, on whether employees have worked under a single long-term contract or several short-term ones. Kin Tai is obligated to pay seniority bonuses to workers employed on FDCs or as casual laborers on their total lengths of service at the factory, regardless of whether workers have been employed at the factory under multiple contracts or have received severance benefits following the termination of these contracts.

The WRC’s findings in this regard are consistent with those of the ILO BFC program, which indicated in its January 31, 2011 report of an inspection of Kin Tai not only that the factory was failing to comply with the requirements of Cambodian labor law on this point, but also that the program’s four previous inspections of Kin Tai had reached the same conclusions. Moreover, since 2010, Kin Tai has been subject to an award by Cambodia’s Arbitration Council ordering the factory to pay workers these seniority bonuses going forward, and to provide back pay to employees for its prior noncompliance with the law.<sup>22</sup>

### Recommendations

- Kin Tai should pay seniority bonuses to all employees in accordance with the schedule mandated by Cambodian law, and in amounts that reflect employees’ total lengths of service at the factory.
- Kin Tai should provide back pay to all workers who have been illegally denied statutory seniority bonuses because of the factory’s practice of withholding these bonuses from workers it employs under successive FDCs or casual labor contracts.

### Remediation and Current Status

In May 2013, Kin Tai agreed to pay seniority bonuses to workers employed under FDCs based on their total length of service at the factory going forward. The factory management did not make clear whether the company would also provide these bonuses to those workers it employed under casual labor contracts. While an improvement over the company’s prior practice of completely withholding such benefits from nearly all of the factory’s workers, this revised policy still violated Cambodian law, which mandates that employees receive such bonuses based on their lengths of service from the dates when they first began working at a given establishment, and not simply a date arbitrarily chosen by their employer.

Indeed, under the company’s revised policy, employees who currently are entitled to such bonuses were not due to start receiving them until May 2014 and, even then, were to be paid less

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<sup>22</sup> See, *in re Kin Tai Garment*, Arbitration Council Award 60/10 (2010) (award published in Khmer only).

than the legally required amounts. Moreover, this policy also failed to remedy the harm to employees of the company's past noncompliance in this area.

In July 2014, Kin Tai began paying a seniority bonus of 2 USD to all workers with more than one year of service. However, many workers at the factory have been employed there for much longer. Furthermore, Kin Tai still has not provided back pay to workers for the previously withheld seniority bonuses. On June 5, 2014, Cambodia's Arbitration Council issued an award ordering Kin Tai to compensate workers for their unpaid seniority bonuses for the previous three years.<sup>23</sup> To date, Kin Tai has failed to comply with this award.

*b. Failure to Provide Legally-Mandated Maternity Leave*

Findings

The Cambodian Constitution prohibits employers from terminating female workers on account of pregnancy.<sup>24</sup> The Cambodian labor law requires employers to provide three months of maternity leave to workers who give birth, and employers are not permitted to terminate an employee immediately before or during this period.<sup>25</sup> If a worker has more than one year of seniority when she begins her maternity leave,<sup>26</sup> the employer must pay her, at the time when she begins her leave, 50% of her average earnings for a three-month period.<sup>27</sup>

Based on interviews with both factory workers and Kin Tai's management, the WRC found that the company illegally discriminates against pregnant workers by refusing to renew the contracts of employees who are visibly pregnant at the time of their contracts' expiration. In other cases, workers reported, Kin Tai does renew the employment contracts of pregnant workers, but shortens the duration of these agreements to ensure that they will expire before the workers are due to give birth. The company then waits to renew these workers' contracts and allow them to resume employment until the period during which they are eligible to receive paid maternity leave has ended.

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<sup>23</sup> See, Cambodia Arbitration Council Award 102/14 (award published in Khmer only).

<sup>24</sup> Constitution of the Kingdom of Cambodia, Art. 46 (2) (“[A] woman shall not lose her job because of pregnancy. Women shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits.”).

<sup>25</sup> Cambodian Labor Law, Art. 182 (“[I]n all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days. After the maternity leave and during the first two months after returning to work, they are only expected to perform light work. 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.”).

<sup>26</sup> Id., Art. 183 (“[D]uring the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer. Women fully reserve their rights to other benefits in kind, if any. Any collective agreement to the contrary shall be null and void. However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise.”).

<sup>27</sup> Id., Art. 103 (“[W]age includes, in particular: actual wage or remuneration; overtime payments; commissions; bonuses and indemnities; profit sharing; gratuities; the value of benefits in kind; family allowance in excess of the legally prescribed amount; holiday pay or compensatory holiday pay; amount of money paid by the employer to the workers during disability and maternity leave.”).

Kin Tai's management explained that because its practice is to terminate the employment of workers who are employed under successive FDCs or casual labor agreements at the end of each contract, it does not view these workers as having attained the one year of seniority required for them to be eligible for paid maternity leave. As Cambodia's Arbitration Council made clear in a 2010 award against Kin Tai, this policy violates Cambodian labor law, which does not allow employers to deny workers maternity leave on such basis.<sup>28</sup>

As with respect to the company's denial of seniority bonuses to the workers it employs under FDCs and casual employment contracts, the WRC's findings concerning Kin Tai's discrimination against pregnant workers are consistent with those of the ILO BFC program as well. As detailed in the program's report of its January 2011 inspection of the factory, the factory was violated Cambodian law on this issue not only at that time, but during ILO BFC's four previous inspections of Kin Tai as well. Additionally, as already noted, Cambodia's Arbitration Council has ruled that Kin Tai must provide paid maternity leave to employees who have been working at the factory for more than one year and must make such payments to employees before they begin their maternity leave.<sup>29</sup>

### Recommendations

Kin Tai should immediately cease all discrimination against workers who are or become pregnant and allow these employees to take legally required paid maternity leave if they have worked at the factory for more than one year in total.

- Kin Tai should provide compensation to any worker who, absent the discriminatory and unlawful practices discussed above, would have received paid maternity leave. Workers whose employment at the factory was interrupted as a result of the company refusing to renew their contracts due to pregnancy or childbirth should have their seniority amended in the factory's personnel records to reflect their original dates of hire and receive back pay for the wages or maternity benefits they lost as a result of Kin Tai's discriminatory practices.
- Former Kin Tai workers whose contracts the factory previously failed to renew on account of pregnancy or childbirth should be offered both back pay and reinstatement to their previous positions at the factory, with no loss of seniority. Provision of back pay to these workers should not be conditioned on their acceptance of reemployment at the factory.
- Kin Tai should immediately adopt, implement and communicate to employees and management a comprehensive official policy of nondiscrimination toward pregnant workers, in accordance with Cambodian law. This policy should make clear that pregnant workers will not be treated differently from other workers with regard to hiring, renewal of employment contracts, or dismissal. This policy should be communicated: (1) in writing and verbally, over the factory's public address (PA) system to all current

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<sup>28</sup> See, id., Art. 183; also, *in re Kin Tai Garment* (2010).

<sup>29</sup> *In re Kin Tai Garment* (2010).

employees; (2) for the next 12 months, in any advertisement, posting, or announcement for recruitment of new employees; (3) to all managers and supervisors via mandatory training; and (4) going forward, to all new employees, verbally and in writing, at the time of hire.

### Remediation and Current Status

In May 2013, Kin Tai began to provide paid maternity leave to eligible workers. Additionally, the factory has provided back pay to 37 workers who were illegally denied wages and maternity benefits as a result of Kin Tai's practices. However, the WRC has identified at least 16 other workers who are still owed back pay.

The company has not taken any of the other remedial actions recommended by the WRC which are necessary in order for the factory to achieve compliance with Cambodian law and the City's Ordinance in this area.

#### *c. Failure to Provide Legally Mandated Annual Leave*

### Findings

The WRC found that Kin Tai failed to provide the workers it employs under "casual labor" contracts statutory paid annual leave, even if they work, on average, 21 or more days per month, thereby making them eligible for this benefit.<sup>30</sup> Cambodian labor law does not permit employers to deny such workers annual leave simply on account of their being employed as casual labor.<sup>31</sup>

As explained above, Kin Tai uses casual labor contracts to employ a large proportion of the factory's workforce. The use of casual labor contracts to avoid paying annual leave is a clear violation of Cambodian labor law, which establishes that even workers who are legitimately employed under such terms for seasonal or short-term temporary work, are still entitled to such benefits.<sup>32</sup>

In the case of the factory's remaining workers, nearly all of whom it employs under serial three or six-month FDCs, while Kin Tai provides them with some paid annual leave, it is, in many cases, not the full amount required under Cambodian law. This is because, although the labor law requires employers to provide workers with one additional day of paid annual leave per three years of service,<sup>33</sup> Kin Tai unlawfully calculates the seniority dates of the workers it employs

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<sup>30</sup> See, Cambodian Labor Law, Art. 166 (1) ("[U]nless there are more favorable provisions in collective agreements or individual labor contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service.").

<sup>31</sup> Ibid. ("For jobs that are not performed regularly throughout the year, a worker is considered to have met the condition of continuous service if he works an average of 21 days per month.").

<sup>32</sup> See, id., Art. 10 ("[C]asual workers are subject to the same rules and obligations and enjoy the same rights as regular workers, except for the clauses stipulated separately.").

<sup>33</sup> See, id., Art. 166 (4) ("[T]he length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service.").



under FDCs as being reset at the start of each new contract, thereby never permitting them to accrue greater seniority.

### Recommendations

- Kin Tai should provide paid annual leave to all workers in accordance with Cambodian labor law in amounts that reflect the total length of time that each employee has worked at the factory.
- Kin Tai should compensate workers for any paid annual leave which they have been illegally denied.

### Remediation and Current Status

In early 2014, Kin Tai began to provide paid annual leave to casual workers at the end of their contract term at the rate of 1.5 days per month. However, Kin Tai continues to violate the law by failing to provide paid annual leave to workers employed either under FDCs or as casual labor in accordance with the total length of time that a given worker has been employed at the factory. Additionally, the WRC found no evidence that the factory has provided back pay to workers for annual paid leave that they previously have been illegally denied.

#### *d. Failure to Provide Statutory Paid Sick Leave and Unlawful Restriction on Use of Statutory Sick Leave*

### Findings

Cambodia's labor law requires any company with more than eight employees to formulate internal work rules.<sup>34</sup> The country's Ministry of Labor has mandated that these internal work rules must include language on provision of sick leave to employees.<sup>35</sup> Before they are posted in the workplace, these work rules must be approved by the Ministry of Labor.<sup>36</sup> The established practice of the Ministry of Labor is to approve only internal work rules that provide paid sick leave, thereby mandating its provision as a requirement for all firms.<sup>37</sup> Given this practice, the

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<sup>34</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Notification No. 14 (Aug. 16, 2002) (On the Internal Work Rules of the Enterprise), Clause 1; (“[T]he owners or directors of the above mentioned [businesses] which employ at least 8 employees shall have internal rules for their enterprises.”)

<sup>35</sup> See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Appendix for Notification No. 14 (Oct. 16, 2002) (Model Internal Rules), Clause 4; (providing model rules for “[W]orking hours including both night work and work shifts; - Weekly time off; - Annual leave, public holidays and special leave; - Maternity leave; - Sick leave”)

<sup>36</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Notification No. 14 (Aug. 16, 2002) (“[T]he internal rules shall be organized by the owners or directors of the enterprise after discussion with the staff representatives within three months after the opening of the enterprise. After their creation, the owners or directors of the enterprise shall send two copies of these internal rules with the written ideas and opinions of the shop stewards in order to apply for a visa from the labour inspector before applying the rules.”)

<sup>37</sup> See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Appendix for Notification No. 14 (establishing that the standard rate for sick leave payment is 100% of the wages for the first month of sick

ILO BFC factory inspection program treats provision of paid sick leave as a required element of compliance with Cambodian law.<sup>38</sup>

Kin Tai's internal work rules stipulate "that for those who take sick leave and obtain a proper medical certificate, the employer will pay full wages for the first month[;] 60% of the wages for the second and third month[;] and [f]rom the fourth to the sixth month [of the leave], the company will not provide wages, but will keep the post for the worker." However, Kin Tai unlawfully restricts employees' use of paid sick leave by requiring workers to provide, as a condition of payment for these leaves, a medical certificate of illness from a state-run hospital or community health clinic – and by refusing to accept such certificates if they are issued, instead, by a government-approved private health clinic. Because Cambodia's Arbitration Council,<sup>39</sup> which, as noted, is the body authorized to interpret the labor law, has found such restrictions to be illegal, the WRC finds that the factory's practices in this area violate Cambodian law and, by extension, the City's Ordinance.

### Recommendations

- Kin Tai should immediately cease its current practices taking deductions from workers' pay as a penalty for using sick leave, and refusing to pay workers' sick leaves in cases where medical certificates submitted by workers have been issued by government-approved private health clinics, instead of community health clinics or state-run hospitals.
- The factory should compensate workers for any wages or sick pay that they have been denied by the company on account of these practices.

### Remediation and Current Status

The WRC found no evidence that Kin Tai has taken any steps to end or remedy its violations of Cambodian law in this area.

## **4. Occupational Health and Safety**

### *a) Excessive Heat*

### Findings

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leave, 60% of the wages from the second and third month of sick leave, and for the fourth to sixth month the sick leave is unpaid, but the position will be kept open pending the employee's return).

<sup>38</sup> See, Stanford Law School International Human Rights and Conflict Resolution Clinic and WRC, *Monitoring in the Dark: An Evaluation of the International Labour Organization's Better Factories Cambodia Monitoring and Reporting Program*, Appendix A (ILO Better Factories: IMS Question Flow Checklist), ¶ A-7) (Feb. 2013), <http://humanrightsclinic.law.stanford.edu/wp-content/uploads/2013/03/Monitoring-in-the-Dark-Stanford-WRC.pdf>.

<sup>39</sup> See, *in re Supreme Garment*, Arbitration Council Award 81/05 (Jan. 19, 2006) ("However, the Arbitration Council determines that ... paragraph 3 of Article 71 of the Labour Law simply mandates a qualified doctor. The restriction on a worker to a public hospital for a medical certificate is in conflict with the law...."), [http://www.arbitrationcouncil.org/awards/81.05-Supreme\\_E.pdf](http://www.arbitrationcouncil.org/awards/81.05-Supreme_E.pdf).

The WRC found that temperatures in all the factory's work areas violated Cambodian Labor Law which mandates that temperatures in the workplace be kept to a level acceptable for workers' health and ability to perform their duties.<sup>40</sup> On the day that it inspected Kin Tai, the WRC measured the temperature in the workplace to be 37 degrees Celsius (99 degrees Fahrenheit) in the sewing department and 38 degrees Celsius (100 degrees Fahrenheit) in the washing, ironing and packing departments. The temperature outside the factory on the same day was measured at 36 degrees Celsius (97 degrees Fahrenheit).

Although the factory, contrary to the requirements of Cambodian law,<sup>41</sup> Kin Tai has not posted thermometers in the workplace, employees reported that, two days prior to the WRC's visit, the factory had been significantly hotter, suggesting that the temperature could have reached as high as 40 degrees Celsius (104 degrees Fahrenheit). In fact, all of the workers whom the WRC interviewed complained that the factory was almost unbearably hot on most days.

Kin Tai is housed in an older factory building whose roof is un-insulated and painted with non-reflective red paint. Although the roof has exhaust fans, these were not operating at the time of the WRC's inspection. The factory lacks other devices for moderating the temperature inside the building, such as water sprinklers on its roof, despite the fact that, since 2010, it has been subject to an award by Cambodia's Arbitration Council ordering the company to install them.<sup>42</sup>

### Recommendations

- Kin Tai should immediately ensure that all of the plant's exhaust fans in the plant are maintained in working order and should implement the Arbitration Council's 2010 award requiring installation of water sprinklers on the factory's roof.
- To ensure that temperatures in all parts of the plant are kept at appropriate levels, Kin Tai should install thermometers in each work area and regularly measure the temperature.
- If temperatures in the workplace are recorded that are above levels consistent with legal requirements, then the factory should take further measures to reduce them, such as installing additional exhaust fans, ventilation fans, wall-mounted evaporative cooling pads, and/or reflective roof coatings.

### Remediation and Current Status

On September 5, 2013 Kin Tai management informed the WRC that the company had commissioned an engineer to identify the best possible way to cool the building. For the next

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<sup>40</sup> See, Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation, Prakas 147, §1 (2002) (“[E]mployers of enterprises and establishments stated in Article 1 of the Labor Law must arrange in whatever way to make the heat temperature in the workplace to be an acceptable level. The heat temperature must be appropriate for the health of workers and it must not interrupt their work. The heat temperature is measured by thermometer or ‘temperature measurement device’ which is placed in the workplace.”).

<sup>41</sup> Ibid.

<sup>42</sup> See, *In re Kin Tai Garment* (2010).

seven months, however, the company provided no further information concerning remedial efforts in this area, and workers report no improvements in the heat levels in the factory.

As discussed above, on March 28, 2014, the WRC reiterated to Kin Tai significant concerns regarding the excessive heat levels in the factory and urged the factory to immediately address this issue. Kin Tai responded that it intended to install “curtains” to address the heat issue.

The WRC asked Kin Tai for clarification regarding what it meant by “curtains,” as evaporative pad cooling systems, which can be an effective method for reducing factory temperatures, are sometimes referred to as “water cooling curtains.” Kin Tai informed the WRC, however, that it could not afford to add an evaporative pad cooling system at the factory and that it would only be adding “curtains,” offering no further clarification.

As of November 2014, Kin Tai had added several more fans at the factory, but workers report that these only serve to bring more hot air into the building and did not reduce the temperature. Perhaps, as a result, Kin Tai has stopped operating the fans and the excessive heat levels in the factory remain an ongoing concern.

#### *b. Obstructed Walkways*

##### Findings

The WRC found that the walkways in the factory’s sewing department were obstructed by chairs, tables and boxes of work materials, a condition that would create a potential safety hazard in case of a fire in the factory. The fact that each of the factory’s production lines is very long, with 98 workers stationed on a single aisle, underscores the need for these walkways to be kept clear to permit all of these workers to evacuate in a timely fashion in case of emergency.<sup>43</sup> Failure to ensure a safe working environment is a violation of Cambodian law<sup>44</sup> and, by extension, the City Ordinance.

##### Recommendations

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<sup>43</sup> See, Cambodian Labor Law, Art. 230 (“[A]ll establishments and work places must be set up to guarantee the safety of workers.”). While Cambodian Labor Law does not explicitly specify that factory walkways must be unobstructed, both United States and European Union occupational safety and health regulations explicitly require this making clear that this is a well-established element of basic workplace safety. See, 29 C.F.R. § 1910.36 (g)(2-4) (“[A]n exit access must be at least 28 inches (71.1 cm) wide at all points. Where there is only one exit access leading to an exit or exit discharge, the width of the exit and exit discharge must be at least equal to the width of the exit access. The width of an exit route must be sufficient to accommodate the maximum permitted occupant load of each floor served by the exit route. Objects that project into the exit route must not reduce the width of the exit route to less than the minimum width requirements for exit routes.”); and Council of the European Communities Directive concerning the Minimum Safety and Health Requirements for the Workplace, §6 (“[T]o safeguard the safety and health of workers, the employer shall see to it that:—traffic routes to emergency exits and the exits themselves are kept clear at all times . . .”).

<sup>44</sup> See, Cambodian Labor Law, Art. 230 (“[A]ll establishments and work places must be set up to guarantee the safety of workers.”).

- Kin Tai should ensure that all walkways needed for employees to exit the factory in case of an emergency are kept unobstructed at all times.

### Remediation and Current Status

The WRC has found no evidence that Kin Tai has remedied this safety violation.

#### *c. Inadequate Sanitary Facilities*

### Findings

The WRC found that the factory's toilets were generally not maintained in a clean and sanitary condition as required under Cambodian law<sup>45</sup> and, by extension, the City's Ordinance. Workers testified that several of the toilet stalls lacked water pails<sup>46</sup> or functioning locks. The washrooms also lacked a reliable supply of hand soap for use by employees. Kin Tai's failure to properly supply and maintain the factory's toilets is a violation of Cambodian law and by extension the City Ordinance.

### Recommendations

- The factory should ensure that the toilet stalls are clean and sanitary, have functioning locks and are equipped with water pails;
- The factory should supply soap of adequate quality and quantity in the washrooms for workers' use.

### Remediation and Current Status

Kin Tai's management promised to send the WRC information concerning its plans for improving conditions in the factory's restrooms by mid-September 2013. To date, however, the company has not provided any such information, and factory workers have not reported any improvements in this area.

#### *d. Inadequate Onsite Health Clinic and First Aid Facilities*

### Findings

The factory has mounted first aid kits in various departments in the plant, but the WRC found during its inspection, and workers confirmed, that these kits are not kept properly stocked. The WRC found that most of the kits it inspected were half empty, a condition that is not consistent

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<sup>45</sup> See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Prakas 52, Clause 6 (2000) (“[W]ater for use in the bathroom must be sufficient, clean, and clear. There must be sufficient soap in each bathroom. Each bathroom must be cleaned at least once a day.”).

<sup>46</sup> Water from pails is commonly used in toilets in Cambodia in lieu of a flushing mechanism and/or toilet paper.

with the requirement, under Cambodian Law, that employers maintain a safe and healthy work environment.<sup>47</sup>

### Recommendations

- Kin Tai should maintain fully stocked first aid kits in the plant at all times.

### Remediation and Current Status

No remediation of this violation has been reported.

#### *e. Failure to Maintain Eye-Guards on Sewing Machines*

### Findings

The WRC found that the eye-guards mounted on several of the factory's sewing machines were no longer transparent as their surfaces had been badly scratched. This scratching made the eye guards unusable as operators could not see through them. As a result these eye guards were not being used, thereby exposing the machines' operators to risk of injury. Factories are required by law to ensure a safe environment.<sup>48</sup> The failure to uphold the law is, thereby, a violation of the City Ordinance.

### Recommendation

- Kin Tai must ensure that, where needed, eye guards are installed and properly maintained on machinery.

### Remediation and Current Status

The WRC found no evidence that this violation has been remedied,

#### *f. Lack of Canteen Facility*

### Findings

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<sup>47</sup> See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation and Ministry of Health, Joint Prakas 330, Clause 7 (2000) (“[F]or enterprise/establishment that has less than 50 workers, there shall be a means of relief as follow: - There shall be a first-aid box and a relief assistant for the number of workers less than 20. - There shall be a bandaging room and a nurse for the number of workers from 20 to 49. - Furniture and medical equipments must be available as determined in the Annex of this Prakas.”), and Annex 1 (specifying that factory first aid kits should contain “one pair of scissors, - one roll of Scotch tape, - 10 compress, - Alcool Iodé 200ml, - two pairs of pincers, - one roll of bandage, - 100 mg of cotton, - Eau Oxygéné 200 ml, - 20 gloves, - 5 rolls of gauze, - 1 bottle of medical oil, - 50 ml of Ether, - 1 bar of soap, - 4 rolls of three-corner white cloth, - 1 bottle of medical balm, - Analgésiques, - Anti-diarrhéiques”).

<sup>48</sup> See, Cambodian Labor Law, § 230 (“[A]ll establishments and work places must be set up to guarantee the safety of workers.”).

The WRC found that Kin Tai does not provide a hygienic canteen for workers' use at mealtimes. Although, according to the ILO BFC program, in 2011 the factory had set an eating area aside for employees' use, the WRC found that it is no longer made available to workers for this purpose. Currently, employees must eat their lunches either in the factory's parking lot or on the grass turf next to its driveway, neither of which offers rain or sun protection.<sup>49</sup> The failure to provide a hygienic eating area for employees is arguably a violation of the Cambodian labor law's general safety workplace safety requirements<sup>50</sup> — and, thereby, the City Ordinance — and, at the very least, a failure to comply with recognized standards of good practice.<sup>51</sup>

### Recommendation

- Kin Tai should provide a canteen inside the factory premises with adequate space, tables and chairs for employees' use at mealtimes.

### Remediation and Current Status

The WRC found no evidence that this condition has been remedied.

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<sup>49</sup> See, Cambodian Labor Law, Art. 229 (“[A]ll establishments and work places must always be kept clean and must maintain standards of hygiene and sanitation or generally must maintain the working conditions necessary for the health of the workers.”)

<sup>50</sup> See, Cambodian Labor Law, § 230 (“ [A]ll establishments and work places must be set up to guarantee the safety of workers.”).

<sup>51</sup> The provision of an eating area is one of the ILO BFC program's compliance benchmarks for its factory inspections, and also required by many buyer codes of conduct. See, e.g., Puma, AG, *Handbook for Occupational Health and Safety* § 11.1 (Hygienic and Healthy Workplace, General Conditions) (2010) (“Smoking or eating in production areas or toilets should generally not be permitted. A restaurant, canteen or dining area with sufficient space should be provided for all employees to support this rule.”).