



**Clean  
Clothes  
Campaign**  
International Secretariat

# 10 Years of the Better Factories Cambodia Project

A critical evaluation

**Community Legal Education Centre  
& Clean Clothes Campaign**

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International Secretariat



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& Clean Clothes Campaign**

**August 2012**

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## **Abbreviations**

<b>AC</b>	Arbitration Council
<b>BFC</b>	Better Factories Cambodia
<b>C.CAWDU</b>	Coalition of Cambodian Apparel Workers' Democratic Union
<b>CCC</b>	Clean Clothes Campaign
<b>CLC</b>	Cambodian Labour Confederation
<b>CLEC</b>	Community Legal Education Centre
<b>FDC</b>	Fixed Duration Contracts
<b>FoA</b>	Freedom of Association
<b>GMAC</b>	Garment Manufacturers' Association in Cambodia
<b>ILO</b>	International Labour Organisation
<b>MFA</b>	Multi-Fiber Agreement
<b>MoU</b>	Memorandum of Understanding
<b>TATA</b>	US-Cambodia Textile and Apparel Trade Agreement
<b>UDC</b>	Undetermined Duration Contract



Photo: Will Baxter

# Introduction

**2011 marked the 10th anniversary of the International Labour Organization's (ILO) Better Factories Cambodia (BFC) project in Cambodia. The overarching goal of the BFC is to gradually improve the working conditions of factories in Cambodia and ultimately increase production of sweat-shop-free goods<sup>1</sup>.**

The BFC's aim is to ensure that garment factories in Cambodia comply with international recognised labour standards and Cambodia's own labour laws. BFC argues that improved compliance would benefit "workers, employers and their organizations [and] consumers in western countries and help reduce poverty in one of the poorest nations of the world"<sup>2</sup>. It promotes compliance by "assessing and reporting on working conditions in Cambodian garment factories according to national and international labour standards, by helping factories to improve working conditions and productivity, and by working with the Royal Government of Cambodia and international buyers to ensure a rigorous and transparent cycle of improvement"<sup>3</sup>.

This report by the Community Legal Education Centre (CLEC) and Clean Clothes Campaign (CCC) assesses the BFC program based on consultation with Cambodian trade union groups, NGOs, and experts in the garment industry about the strengths and weaknesses of the BFC. The report is divided into four main sections: Section 1 discusses the background of the BFC program; section 2 identifies the program's strong points; section 3 discusses six areas where the program can be improved; and, finally, section 4 concludes with recommendations concerning areas that need improvement. We believe that addressing these areas would help achieve BFC's mission to improve working conditions in the Cambodian garment industry.

## Methodology

Our research focused primarily on the individual workers and their unions in order to gather information about the working conditions. A total of four confederations level trade union leaders<sup>4</sup>, five labour movement experts<sup>5</sup>, 31 current factory workers, six former factory workers<sup>6</sup>, the BFC's Chief Technical Advisor and Training Special-

ist were also interviewed in order to ensure improved insight into the factories and a wider analysis of the BFC's impact on factory conditions<sup>7</sup>. All interviewees, except one, consented to being named.

The aim of the interviews with trade union leaders was to hear about their experiences with, and opinions of, the BFC. After the interviews were completed, the interview transcripts were forwarded to each interviewee and permission to use their names and information in this research report was requested. After corrections, the data was analysed and categorized based on the BFC program's accomplishments and shortcomings, which were then used by the CLEC Labour Unit, in collaboration with the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU), to develop a set of recommendations for the program.

An earlier version of this report was discussed with representatives from international labour rights organisations and Better Work in Washington (October 25, 2011). We also organised a roundtable in which 70 people participated to discuss the outcomes and gather further input. At this roundtable the BFC's new Chief Technical Advisor, Jill Tucker, as well as major trade union representatives, gave useful comments and feedback that has been used to produce this final version. Lastly, the researchers have utilised the extensive (academic) literature on the BFC program. >✂



Workers on their way to the factory. Photo CLEC



# 1 Background of the BFC Program

**Better Factories Cambodia (BFC) was launched in 2001, while a quota system was still in force, which made it possible to link increases in market access to improvements in labour rights<sup>8</sup>. The notion was that if working conditions improved, the industry would gain greater access to American markets.**

Manufacturers had to participate in the program to earn an export license, which would help in creating a level playing field among manufacturers. In essence, US-Cambodia Textile and Apparel Trade Agreement (TATA), which is the legislative root of the BFC, created incentives (more quotas) to improve labour rights. The textile quota system encouraged a “carrot and stick” approach to promote workers’ rights<sup>9</sup>. These trade-driven incentives were eventually eliminated after the MFA was phased out in 2005. The BFC now focuses more on capacity-building activities, workplace cooperation, and dispute resolution, even though monitoring continues to be the main activity.

BFC seek to ensure that garment factories in Cambodia comply with international recognised labour standards and Cambodian labour Laws and its overarching goal is to gradually improve working conditions in factories in Cambodia and increase production of sweat-shop-free goods. The ILO manages the BFC, but works closely with the Royal Government of Cambodia, the Garment Manufacturers’ Association in Cambodia (GMAC) and the labour union federations. The BFC also works closely with other stakeholders, including international buyers, i.e., companies that contract with garment factories to produce and buy apparel.

## Factory monitoring

Factory monitoring is a key element of the program. In order to participate, a factory has to sign a Memorandum of Understanding (MoU) in which it agrees, among other things, to provide ILO monitors full access (announced and unannounced) to their factories and documentation and allow BFC monitors to freely interact with shop stewards, union representatives and factory

**BFC’s goal is to gradually improve working conditions in factories in Cambodia and increase production of sweat-shop-free goods.**

workers, both inside and outside factory premises. The monitors are recruited by the BFC and trained on the details of national and international labour standards as well as monitoring techniques. BFC normally sends two monitors to each factory.

The BFC indicators for freedom of association and collective bargaining in particular, focus on the process of workers exercising these rights at the workplace. The monitors may witness trade union elections, shop steward election, and collective bargaining sessions. They also consider any workers’ complaints concerning interference in union activity or anti-union actions to be a violation of Cambodian labour law. This information is reflected in the factory monitoring reports<sup>10</sup>. The monitoring process includes interviews with management, workers, shop stewards and union leaders; observation of factory conditions (or a factory walk through); and an analysis of documents (such as payroll and time sheets). During monitoring visits, the BFC uses a large checklist based on labour laws and international labour standards, which includes over 500 items. This includes core

## **Buyers are expected to endorse the Better Factories program; commit to the program and to participate twice a year in the buyers' Forum. In 2011, the buyers' forum consisted of 32 brands that comprised 60% of Cambodia's garment exports.**

international labour standards that cover forced labour, child labour, discrimination, freedom of association, and the right to collective bargaining. The BFC also monitors Cambodia's legal requirements regarding wages, work hours, employment contracts, leave, occupational safety and health, welfare and labour relations. The level of management cooperation is also recorded during each visit. According to the MoU, BFC seeks to visit each participating factory at least twice a year<sup>11</sup>.

In addition, manufacturers may choose to participate in BFC's *advisory services program*. Here the BFC provides guidance on remediation efforts addressing noncompliance issues that have been identified during monitoring<sup>12</sup>. BFC advisors will work for a period of one year with the enterprise to draw up improvement plans to address noncompliance issues and management systems, which includes the creation of a *Performance Improvement Joint Consultative Committee* with management and union/worker representatives to oversee the process. As part of its services, BFC advisors may offer a variety of trainings and coaching sessions related to factory improvements, including, for example, supervisor skills training, workplace cooperation OSH matters, HR training and gender awareness<sup>13</sup>.

### **Reporting**

The BFC generates both individual factory reports and synthesis reports. Factory reports are accessible only to the factory, which may, however, decide to grant access to third parties (mostly buyers, vendors), thus making information about a particular factory's practices transparent to global buyers such as Nike, Gap, or H&M.

Third parties are charged a fee to access to these reports, which was set in 2011 at US \$750 per factory per year<sup>14</sup>.

The BFC argues that this system reduces the number of audits a factory is forced to undergo. Instead of being subjected to multiple audits and inspections by different buyers, the factory can now simply show the BFC monitoring report to its buyers. The idea is that global buyers will use these reports to determine whether suppliers comply with labour rights standards and, if not, encourage them to improve conditions. If improvements are not forthcoming, a buyer may decide to terminate its commercial relationship with the supplier to protect its brand reputation. Some major buyers – it is unclear how many precisely – have indeed stopped their own monitoring programs and have decided to rely exclusively on BFC reports.

Buyers are expected to endorse the Better Factories program; commit to the program and to participate twice a year in the buyers' forum. In 2011, the buyers' forum consisted of 32 brands that comprised 60% of Cambodia's garment exports.

Meanwhile, the synthesis reports, which provide summaries of general working conditions, are made available to the public and published on a semi-annual basis. However, readers cannot trace the information back to specific factories (for a critique, see **Limited Transparency**, page 20).

The BFC's key product is its synthesis report, which is crucial because it is a "calling card for Cambodia" to show the world how much working conditions have progressed or regressed<sup>15</sup>. The synthesis report initially functioned as a surveillance mechanism for the US Government to monitor Cambodia's progress and establish import quotas. It currently serves more as a mechanism that provides information about the evolution of working conditions but is no longer linked to US quotas<sup>16</sup>. However, garment manufacturers still need to be members of the BFC program in order to receive an export license. >◁

# Importance of the garment industry for Cambodia

The Garment sector is Cambodia's single largest industrial sector. In fact, in the first six months of 2010, the garment sector accounted for 70 percent of Cambodia's exports, whilst more recently, it has been as high as 90 percent of total exports<sup>17</sup>.

In the first 10 months of 2011, total garment export values reached over US\$3.2 billion. This is an increase of 32 percent compared to the same period in 2010, while within this period, exports to the EU rose 60 percent to over \$886 million<sup>18</sup>. Manufacturers from Taiwan, China and Hong Kong continue to dominate the industry. It is estimated that around 90 percent of the industry is foreign-owned<sup>19</sup>. By far the largest majority of them are assembly factories, which means they basically concentrate on the cut-make-trim phases of the production process and have a limited capacity to take on more (higher "value-added") processes. Moreover, nearly all inputs – from textiles to machinery – are imported from abroad, which represents a "severe drag on both lead times and competitiveness"<sup>20</sup>. This also leaves Cambodia vulnerable to economic shocks and foreign decision-making.

Garment analyst David Birnbaum notes that: "in bad times when orders become scarce, the big-time

strategic suppliers will decide that there are no orders too cheap to produce. They will now send whatever orders they have to China, leaving their Cambodia branch factories with little or nothing<sup>21</sup>."

After the financial crisis in 2008, "garment exports dropped 26%... with 50 factories closing and 60,000 workers laid off"<sup>22</sup>. A survey of the impact of the crisis on garment workers revealed a decrease in wages and hence remittances, which was partially due to reduced overtime hours; greater difficulty requesting leave and the obligation to take compulsory leave; late payment of wages and deterioration in health and safety conditions in the workplace<sup>23</sup>. While the industry recovered in 2010, it nonetheless signals Cambodia's precarious dependence on "footloose investors." This is one reason why Arnold and Toh have challenged the notion that Cambodia represents a "Post-MFA success story" that is taking the "high road" to improving work conditions.



Photo: CLEC



Heath Kimhuor, a woman garment worker, testifying at the People's Tribunal on a Living Wage (Phnom Penh, February 2012). Photo: Michel Cermak

# 2 Positive Reflections and Experiences

**A decade of factory monitoring by BFC has brought achievements for garment workers. The interviewees considered the following items some of the BFC program's accomplishments.**

## Improvements in working conditions

All three union leaders interviewed stated that the BFC was important for Cambodia's garment industry and the improvement of labour rights. One trade union leader thought that "factory conditions are getting better"<sup>24</sup>. Another trade union leader believes that, on the whole, factories subjected to ILO monitoring "are in better condition" than those not participating in the program<sup>25</sup>. Another trade unionist commented:

*In general it is a success. ILO pushes the employer to respect labour laws by monitoring factory conditions. And, while the ILO can't enforce any of the violations that it finds while monitoring, it can post the report on the website. If the buyer sees these violations it might choose not to invest in the factories<sup>26</sup>.*

The majority of interviewed workers were unaware of the existence of the BFC and the ILO. Although many have witnessed monitoring activities, they did not know who the monitors were. Some, however, noted evidence of improvements after (BFC) monitors visited their factory: a first aid kit was installed, doors were opened, and the toilets were cleaned. Another worker noticed improvements with regard to laws governing annual leave after she had complained to BFC monitors that management often violated these regulations<sup>27</sup>. However, even though many improvements have been implemented, in section three of this report we will see that there remains much to do.

## ILO involvement/ credibility

As an independent agency, the BFC has a high degree of credibility and prestige, which it maintains by not falling

victim to corruption or fraud. This is very important in a country that has been plagued by corruption. "In fact", as one respondent puts it, "one of its positive qualities is that it is not a government organisation"<sup>28</sup>. Another respondent agrees: "We need the BFC to stay. If we rely on government it won't report all of the conditions." The BFC's credibility means that its reports and input are respected throughout the international community. International buyers want a factory that is monitored by the BFC and is ILO approved. It is also important that the ILO operates as a tripartite organisation with equal roles for government, labour and employers. Unlike most non-state auditing programs, which usually marginalises the input of unions and workers, the BFC is unusual in that it includes them in all aspects of its operations because "unions and workers often inform BFC about various issues and request information and advice concerning the labour laws."<sup>29</sup>

## A sector-wide program

Another strength of the program is that the BFC operates on a sector-wide basis. Garment factories have to join the program in order to gain an export license. As of 5 July

**We need the BFC to stay. If we rely on government it won't report all of the conditions.**

## **ILO pushes the employer to respect labour laws by monitoring factory conditions.**

2011, there were 284 factories registered with the BFC<sup>30</sup>. This means that it is definitely qualified to systematically monitor trends over a longer period of time thus making it possible to identify and study weak spots and to develop programs to tackle them, for example, by developing tailor-made training sessions that focus on specific items. BFC presents a coherent, sector-wide approach. The interviewees recognise the importance of this sector-wide approach:

*No one will evade BFC's monitoring. Those who violate laws and don't fix conditions will have their names reported in the full version of the synthesis report (as opposed to the summary report)<sup>31</sup>.*

Unfortunately, this system is not watertight as factories continue to use (illegal) subcontractors, while other garment factories not engaged in exportation are not in the program.

### **More than just monitoring and auditing**

While factory monitoring under the right circumstances can lead to improvements regarding the more visible or physical problems there are a number of labour rights issues, which often go undetected by the auditors. This includes, for example, the undermining of freedom of association and collective bargaining by managers; abusive attitudes towards workers on the part of supervisors; insufficient provision of medical care and sick leave, and discriminatory hiring practices. The BFC at least recognises that its program has a significant impact on child labour, forced labour and health and safety issues, while its impact on other – less visible – violations has been more limited<sup>32</sup>. As the former Chief Technical Advisor of BFC - Tuomo Poutiainen – argues:

*If one were to look at the synthesis reports, he/she would see that there is less movement in compliance now than 10 years ago because the so-called low-hanging fruits that are easier to address are not present so much anymore<sup>33</sup>.*

By recognising these issues, the BFC also seeks to address the weaknesses. For example, to find out to what extent issues of sexual harassment remain unreported, they commissioned a gender survey of one thousand garment factory workers, which discovered that 5 percent of female workers had experienced sexual harassment in the form of unwanted touching, while just over 25 percent had been subjected to derogatory language by management. By actually investigating these issues and trying to understand why they exist, the BFC goes further than most corporate-initiated monitoring efforts which usually fail to reflect on why fundamental worker rights issues pass under their auditors' radars virtually undetected. For many years, labour rights activists have criticised the over-reliance on social audits in monitoring labour conditions<sup>34</sup>.

The BFC also distinguishes itself from most private monitoring organisations through its significant training and capacity-building efforts as well as its efforts to improve and facilitate social dialogue at both the factory and industry-wide level. Training and education are prerequisites for creating an atmosphere where workers are regularly informed of their rights and can effectively and easily convey their concerns. The BFC, which has been providing a variety of training opportunities for Cambodia's factory workers and leaders for some time now, educates workers, union leaders, and management in an effort to create better working conditions, and a better working environment. In 2011, the BFC scheduled a number of training days, which covered a variety of topics. This training was aimed specifically at improving working conditions, increasing productivity, and creating workplace cooperation. The training sessions have been so successful in the past that some researchers actually consider it more important than their monitoring activities<sup>35</sup>. Furthermore, the BFC has produced "Good Practice Sheets" and comic books on a wide range of topics such as health and safety, sick leave, which aim to educate workers about their rights and responsibilities. ✂

# Better Work

Better Factories Cambodia represents the very first ILO factory-monitoring program. Similar (and yet different) programs were launched in Vietnam, Jordan and Haiti under the rubric Better Work in 2008.

Better Factories Cambodia represents the very first ILO factory-monitoring program. Similar (and yet different) programs were launched in Vietnam, Jordan and Haiti under the rubric Better Work in 2008. This program has continued to expand into countries like Lesotho, Indonesia, and Nicaragua. The interviewees in this report all believe this is a significant development because it will help improve working conditions throughout Southeast Asia and may help prevent companies from abandoning Cambodian factories in favour of factories located in regions where there is no monitoring system in effect. Employers have expressed their fears about regional competitiveness in the sector and have used this as justification for on-going repression of workers' rights. A NIFTUC representative says:

*BFC should be expanded to other countries. And, if it is expanded then the BFC should have the power to punish factories that violate laws by releasing a report with factory names (after two or three unsuccessful consultations)<sup>36</sup>.*

In other words, the expansion of ILO's Better Work programme would reduce the incentive for global buyers and manufacturers to relocate in search of the lowest standards. To find out more: [www.betterwork.org/EN/Pages/newhome.aspx](http://www.betterwork.org/EN/Pages/newhome.aspx)



Workers leaving a factory.  
Photo: CLEC



Sorn Reab, a 23-year-old worker, stands in the back of a transport truck near Vattanac Industrial Park, before riding back to her home in Kandal province at the end of an 11-hour workday.

Photo: Will Baxter



# 3 Room for Improvement

**While the interviewees acknowledge the benefits (importance) of the BFC program, they also offered some useful criticism. Conditions in the garment industry remain poor.**

Wages are seen as failing to meet even basic needs and working hours remain very long. Unions often face numerous difficulties in their work on the factory floor; they are often confronted with dismissal, harassment and even violence, unions have pointed out that employers increasingly use fixed-duration contracts to avoid paying maternity leave to female staff (the vast majority of workers) or to discourage workers from joining unions<sup>37</sup>. The Ministry of Labour and Vocational Training discovered that 1,900 workers fainted in 12 shoe and garment factories in 2011 alone<sup>38</sup>.

In short, even if labour rights organisations generally consider the BFC as a positive development, it is a sad fact that working conditions in Cambodia remain highly inadequate. In this section, we will discuss six areas where we think the BFC should be improved. Our purpose is, however, not “to blast the ILO-BFC”, as Ath Thorn from CLC puts it, but “to provide the BFC with constructive comments to enable it to function more efficiently. We have been working closely with the program and are pleased to give further collaboration to showcase the real situation and challenges of industry”. In the concluding section of this report, we present some recommendations for improvement for the BFC.

## **No law enforcement powers**

Unlike labour inspectors in the employ of the ministry of labour, the BFC’s monitors do not have any law enforcement powers. Their mandate is to verify the conditions in participating factories, to report on them and to provide information and advice on improving compliance. This means that “addressing disputes or enforcing the labour law is not the mandate of BFC”<sup>40</sup>. This lack of law enforcement powers can at times be frustrating for unions and workers who report labour rights violations to BFC monitors. In fact, some workers and labour rights

organisations have expressed their disappointment in the general lack of any kind of action. One labour rights organisation brought the dismissal of factory workers to the attention of both the ILO and the BFC and was ultimately disappointed by their lack of response. We no longer “inform the BFC because it can’t do anything”<sup>41</sup>. Another interviewee felt that the BFC does not satisfactorily handle the individual complaints of workers and unions. One worker told us she was disappointed to discover that nothing was done after she complained about her employer violating basic wage regulations<sup>42</sup>.

Actual enforcement of labour laws is the task of the Ministry of Labour’s inspectors. However, some respondents had some strong doubts about this agency, mainly

**Our purpose is not to blast the ILO-BFC, but to provide the BFC with constructive comments to enable it to function more efficiently. We have been working closely with the program and are pleased to give further collaboration to showcase the real situation and challenges of industry.**

## **Retaliation has become a hallmark of labour-management relations in Cambodia and includes the assassination of union leaders, use of criminal charges against unionists, threats and unfair dismissal of union leaders and supporters.**

because they fear that labour inspectors don't actually do their job (often because they are corrupt and easily bribed by the manufacturers). One interviewee noted that it made little sense for labour organisations to involve the government because unions "have no leverage over the government to push for these changes"<sup>43</sup>. This interviewee went on to say that if the "Ministry sends its own Labour Inspectors to investigate factory conditions... they do not report the violation"<sup>44</sup>. Another trade unionist added that even when the Ministry of Labour actually enforced the law, "the punishment is often a small fine that they [manufacturers] can pay without fixing the violation"<sup>45</sup>. Jill Tucker, Chief Technical Advisor of ILO's Better Factories Cambodia, recognises that the BFC has no enforcement powers, but the BFC continues to advocate change<sup>46</sup>.

It is commendable that the BFC provides an opportunity for workers to tell their stories without having to feel threatened by management or having to fear government retaliation, but if the remedy to the problem is largely left up to the supplier, there is not much hope for change. Some union leaders say that manufacturers clean up the factory when the BFC monitors come, but that there is little lasting impact<sup>47</sup>. In light of the fact that neither the Ministry of Labour nor the employers fear the ILO, the ILO would be well advised to improve its relations with both the buyers and the unions. As one unionist noted:

*Employers are afraid of the buyer mostly because the buyer can choose to not buy from that factory. Employers are also afraid of the unions since they can strike. The ILO should also train workers on labour laws. The BFC should expand its contacts to more NGOs, stakeholders, and corporations so that it can leverage enforcement even though it is not an enforcement agency. Additionally, they should report the name of the factory in the report<sup>48</sup>.*

## **Freedom of association under threat**

Union leaders are in a unique situation because they have access to both factories and the workers, which provides them with insights regarding actual factory conditions. Freedom of association (FoA) is central to the negotiation of collective bargaining agreements that truly reflect the rights of workers. As one unionist puts it: "unions are the heart of workers – we need a good union to promote good working conditions"<sup>52</sup>. The researchers involved in this project are certain that the BFC program has been beneficial for Cambodia's unions. Nevertheless, there are still enormous problems regarding freedom of association. Workers are still unfairly punished, unions continue to be hindered in their activities of representing the workers and they often receive threats. There are a number of pro-business or corrupt unions that compete with the independent unions for representation in the factories<sup>53</sup>. One union leader argues that wherever

*GMAC factories have poor conditions, this is because the union in that factory is organised by the employer so the ILO is unable to get a sense of the realistic conditions in the factory.<sup>54</sup>*

The growing use of fixed-duration (i.e., short-term) contracts not only leads to job insecurity and instability but can also be used to prevent workers from joining unions (see also: **Fixed-duration contracts**, page 21)<sup>55</sup>. It has been noted that it is sometimes difficult for workers under fixed-duration contracts to join independent unions like the C.CAWDU because their contracts are often not renewed. One significant problem has been the labour unions' general lack of power and influence in defending workers rights. Even though the unionisation rate is high, no union has yet succeeded in reaching a collective bargaining agreement to raise wages above the legal minimum. Collective bargaining agreements are all too often simply copies of existing labour law. Meanwhile, the massive dismissal of hundreds of trade union activists and leaders after the September 2010 strike, clearly shows that there is much room for improvement. (See also: **Union busting and retaliation**, p18).

## **This climate of intimidation and harassment has also been used to further undermine the labour rights movement**

# Mass fainting

The mass fainting of workers has become a regular occurrence in garment and shoe factories in Cambodia. Incidences range from dozens to several hundred workers at a time, with, as already noted, 2,400 workers fainting in 2011 alone.

These instances not only suggest that working conditions remain very poor, but that the BFC is also 'ineffective on occupational health and safety', as CCAWDU suggests in a public statement<sup>39</sup>. Research by the BFC and others has yet to find a common underlying cause driving the mass fainting phenomenon. The investigations and company statements have come to a variety of conclusions regarding the contributing factors. They point to several factors, including:

- inadequate ventilation;
- noxious chemicals;
- low blood sugar;
- malnutrition;
- dehydration;
- food poisoning;
- long working days;
- and mass hysteria.

Whilst currently no workers have suffered serious injuries because of fainting, it remains a worrying trend, which is detrimental to both the public image and efficiency of Cambodia's Factories.

The BFC has begun to take a more active role in the matter. On 7 September 2011, they declared that they were going to work with 24 international clothing brands and provide comprehensive investigations into the precise causes of fainting amongst factory workers. Tuomo Poutiainen of BFC puts it as follows:

*More research is urgently needed to identify possible new causes that will explain the fainting phenomenon, as well as eliminate ones we know about, in areas such as occupational safety, health and nutrition. BFC will ensure all stakeholders are involved and any necessary action is expedited.*

On 9 December 2011 the BFC held a press conference to announce their findings. Once again it reiterated that there was no single cause for the incidents and launched a health and hygiene campaign as a means of mitigating the risks. They suggest a variety of ways that nutrition of garment workers could be improved, such as onsite canteens, and is offering cash incentives



Photo CLEC

for factories that participate in the program. It is of paramount importance that the BFC insure that future investigations are conducted in an independent and proficient manner to ensure their neutrality. The BFC should also discourage people from concluding that psychological factors such as some "mass psychogenic illness" were responsible for the incidents.

These kinds of conclusions are often drawn by people who are not in the mental health profession and are unable or unwilling to accept that there may be infrastructural and/or physiological causes for the problem such as poor ventilation. Furthermore, the media, in their reporting on these investigations, tend to use anachronistic terms such as "mass hysteria" in describing them, which, of course, has derogatory connotations and may distract inspectors and reporters from investigating other contributing factors such as stress, heat, malnutrition, and illegal working hours, which are the kinds of factors that the BFC is trained to address and offer improvements on.

# Union busting and retaliation

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**Union density in Cambodia is relatively high, but here too, when unions seek to use their collective capacities to try to force collective bargaining negotiations, they are often confronted with significant employer opposition.**

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This happened, for instance, when workers at the Hong Kong-owned Goldfame Enterprises International Knitters Limited factory, which employs nearly 7,000 workers, went out on a massive, three-day, national strike for higher minimum wages in September 2010. After the government agreed to reopen negotiations and union organisers decided to return to their jobs, management retaliated by locking out 168 union members and activists. In response, workers went out again, this time on a two-day strike to demand their immediate reinstatement. This led to violent clashes with the riot police, leaving numerous workers injured. It took months of negotiations between the union, management and the major global buyers (including H&M) before workers were reinstated. However, union representatives claim that labour-management relations remain very tense and that management continuously attempts to undermine the position of the local union president. This is not an isolated incident: Retaliation has become a hallmark of labour-management relations in Cambodia and includes the assassination of union leaders, use of criminal charges against unionists, threats and unfair dismissal of union leaders and supporters. This climate of intimidation and harassment has also been used to further undermine the labour rights movement. Fear regarding the regional competitiveness of the sector is used as justification for on-going repression of workers' rights. Whilst the high cost of corruption allows factory owners to claim they cannot afford wage increases.

## The Arbitration Council

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**The Arbitration Council (AC) was established in 2003 with support from the Ministry of Labour, employers and the trade unions. It operates as an independent body to resolve disputes through conciliation and arbitration.**

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The AC provides a forum for workers and employers to seek the fair and equitable resolution of labour disputes. In the absence of any form of labour court, the AC effectively acts as a substitute. The Council directly addresses these disputes in a timely and transparent manner, by hearing disputes and issuing balanced, reasoned and just decisions based on law. Despite the AC being widely respected, its decisions are not binding, which means that employers guilty of engaging in anti-union discrimination usually appeal the council's decisions in the provincial courts<sup>49</sup>. Given that the law and the courts are often used as a tool against independent trade unionists and Cambodian workers<sup>50</sup>, there appears to be severe limits to the ability to seek justice for violations. Moreover, because government officials often have a close relationship with employers<sup>51</sup>, the consequences for those who violate the laws are very limited.

## Subcontracting factories that evade monitoring

The scope of BFC's monitoring is restricted to factories registered with GMAC and the MOC (Ministry of Commerce). Factories that want to engage in export activities must be registered. Although this covers the entire sector, some interviewees pointed out two weaknesses here: firstly, manufacturers frequently use sub-contacting factories to evade monitoring. Working conditions there are typically significantly worse than in the regulated ones, while trade unions are virtually non-existent. Although subcontracting factories supplying to exporting factories technically do "fall within the BFC's mandate"<sup>56</sup>, in practice, the BFC is "not looking into the violations that occur in small factories that subcontract to big factories"<sup>57</sup>. The use of subcontracting factories is a growing problem: while estimates of their precise number differ (between 300-3000), the BFC believes that their numbers run into the hundreds, even if they tend to be smaller than registered factories. Some factories are known to have up to 12 subcontracted facilities. Secondly, the BFC does not cover garment factories that produce solely for the domestic market and do not engage in export activities. BFC recognises this problem and has committed to addressing it, although it remains unclear yet how they will tackle this problem<sup>58</sup>.

## Improving on monitoring

Factory monitoring is an important element of the BFC program. From our research and interviews we can deduce three areas for improvement. They are related to a. announced/unannounced inspections, b. the number of visits and, c. the way workers are interviewed.

### a. Unannounced/ announced monitoring

The BFC can perform either announced or unannounced inspections. Union leaders and individual workers reported that factory officials often "know in advance about the ILO's visit"<sup>59</sup>. This is problematic for three reasons: first, this gives management an opportunity to clean up the factory and hide certain violations. For example, one trade union respondent pointed out that because employers know when they are going to be inspected they can "hide underage workers and women who ought to be on maternity leave"<sup>60</sup>. Union leaders, for example, noticed that factories were hiding underage workers in bathrooms during factory visits<sup>61</sup>. Second, it also gives factory management an opportunity to brief and coach workers on what to say to the auditors. Finally, it also creates disparities between what the BFC's report indicates and what the actual factory conditions are. The interviewees all believe that unannounced inspections would be more effective and should BFC should stick to them and only them<sup>62</sup>.

## Since workers are continually present at the production site, they have first-hand experience of working conditions.

### b. Number of audits

The BFC aims to inspect each factory twice annually. Since the last report was published, the BFC has inspected approximately 54% of the registered factories over a 6-month period<sup>63</sup>. At that pace, the BFC would end up inspecting each factory only once per year. More inspections need to be conducted if the BFC are to have a comprehensive understanding of the working conditions in the factories. Many of the violations that the BFC wants to monitor are less easily detected. Increasing the number of inspections will allow the BFC to conduct more interviews, observe more interactions, and gain a better overview of each factory. It is extremely difficult if not impossible to gain a comprehensive understanding of the complex anatomy of a factory with its hundreds and possibly thousands of employees with one or two inspections annually. The interviewees thus suggest that BFC should increase the number of inspections.

### c. Interviewing workers

Since workers are continually present at the production site, they have first-hand experience of working conditions. Interviewing workers is therefore an important element of BFC's monitoring process. This must be carried out carefully, as managers might either try to deceive social auditors by coaching workers before they are interviewed to convey false or incomplete information, or because workers are concerned about losing their jobs if they actually describe the real working conditions they face. Therefore, it is crucial that interviewees feel as secure as possible by ensuring their anonymity.

From our interviews with workers, it turns out that most of them have no knowledge of who or what the ILO and BFC are while others had very little to say about them. A few workers, however, told us they were interviewed by the BFC auditors or participated in BFC-organised seminars on labour law. They also told us that interviews with workers usually took place in the workplace. They said that the factory owner hands ILO a list of the workers

## The reports are too general and not specific to the factory. Management is not concerned.

and then ILO randomly selects workers off that list. They interview the workers within the factory-- all at the same time and in the same room. Although the interviewed workers said they felt comfortable speaking with the BFC's monitors, they believed other workers were afraid of losing their jobs if they told the truth.

*Some workers say what the employer tells them to say; these workers are never C.CAWDU members. C.CAWDU members say what they want to say.*

This was confirmed by a CCTU trade union leader: "The union and union members are not afraid to speak up, but unaffiliated individual workers might be." Given that many workers are not members of a union, it would be good, therefore, if BFC would put more effort in creating a more suitable situation for workers during interviews, for example, by conducting interviews outside of the workplace.

### Limited transparency

Upon completing an inspection, the monitors compile the data and write a report, which is then sent to the managers of the targeted factory along with suggestions for improvement. As we already saw in **Reporting**, page 8, these *individual factory reports* are *not* made available to the general public; but the manufacturers can make them available to third parties (most likely, buyers). In contrast, the BFC's semi-annual synthesis reports – which are publicly accessible - include general compliance trends, employment figures, and progress made in Cambodia without naming any individual factories.<sup>69</sup> So, while the factory reports are only made available to the factory itself and those the factory gives access to on the basis of confidential agreements, the *synthesis* reports often "don't say much".<sup>70</sup> Another trade union leader says: "The reports are too general and not specific to the factory. Management is not concerned".<sup>71</sup> Most interviewees believe that the BFC needs to be more transparent.

Transparency can be an important external driver that encourages increased compliance to established labour standards (see above: **BFC's current reporting performance: a disappointing step backwards**, page 22) but it

could also be an *internal* driver to create decent working conditions. To arrive at an adequate picture of what is going on the factory floor, monitors are dependent on the interviews they do with workers and union representatives employed at the factory being monitored who offer their first-hand experiences of what actually happens on the factory floor. While interviews with workers and union representatives are indispensable to accurately assessing working conditions, only management now has access to the BFC's factory report.

This is not only unfair because it makes it difficult for unions to keep track of what actually happens to their input; it also impedes the successful remediation of noncompliance issues. While the BFC monitors may visit a factory once or twice per year, workers have to work there all the time. They should be able to serve an important role in ensuring that management addresses the BFC's recommendations. Indeed workers should be at the centre of the process, which requires full access to auditing results. This, in turn, would increase worker control over the very programs that focus on improving working conditions.

The current reporting system is biased toward the factory owners and their clients, while the potential victims of labour rights violations are basically ignored. This is a problem that is by no means confined to the BFC; it is endemic to almost all code monitoring initiatives whose funding depends partly or wholly on the financial contributions of corporate actors, who have a strong interest in limiting public access to this information.

To their credit, the BFC has actually sought to foster improved worker involvement through the promotion of *performance improvement joint consultative committees*<sup>75</sup>. In these joint management-worker committees, the findings of the monitoring process are shared with labour representatives and plans are made to remediate noncompliance issues. However, participation in the BFC advisory program is voluntary and only happens when management agrees to establish a program in its factory. This is problematic because the worst violations can often be found in the very factories that refuse to participate in these initiatives.

### The limited role of global buyers

Brand names and retailers are essential to the Cambodian garment industry. They place orders representing almost 90% of Cambodia's total export earnings. But they play a much smaller role within the BFC's program. Buyers basically engage in only two activities. Firstly, in the placing of orders, buyers are expected to consult the BFC report on candidate factories to ensure that a particular factory complies with international labour standards. The US\$750 fee that buyers pay for these

# Fixed-duration contracts

Cambodian labour law distinguishes between two main categories of employment contract: undetermined duration contracts (UDCs) and fixed duration contracts (FDCs). The first refers to a permanent contract, the latter to short-term contracts (which can last anywhere between three to six months).

While a FDC may be renewed one or more times, its total length cannot exceed two years. In practice, however, unions report, employers are eager to extend the use of FDCs.

Take, for instance, M&V International Manufacturing Ltd, which launched its operations in 2002 at Kumpong Chnang City, 70 km outside of Phnom Penh. The factory employs some 4652 workers, most of whom are young women between the ages of 18-30. Some 50% of the total workforce has a less-than 3-month FDC, while approximately 40% have a 6-month FDC. Only some 10% have permanent contracts<sup>64</sup>. This has a negative impact because: a) Workers fear that their contract may not be renewed if they participate in union activities or become union members; b) workers worry that their contract may not be renewed if they refuse overtime or take sick leave, or do anything that will make their supervisors unhappy; c) workers hesitate to join struggles to demand for any rights or benefits because they worry that the employer may not renew their contracts. The non-renewal of fixed duration contracts of trade union leaders and activists is among the leading causes of disputes and strikes<sup>65</sup>.

The growing use of FDCs is verified by the BFC's synthesis reports which report that violations in this area rank high in terms of negative change (in other words, the current level of compliance has decreased compared to the level of compliance six months earlier). This is leading to the increased casualisation of the workforce, with some factories hiring workers exclusively on a short-term basis. Employers prefer fixed-duration contracts "... because they believe that it is easier to terminate workers". This is particularly true for union members<sup>66</sup>. One interviewee believes that fixed duration contracts are particularly common among manufacturers that "cannot deal with unions". These factories experience high worker turnover rates, which has a negative impact on productivity levels. Fixed duration contracts are also used to deny women workers (the vast majority of the workforce) their legal right to maternity leave.



Photo: Michel Cermak

As one worker observed:

*If the employer finds out that you are pregnant they will 'stop' your short-term contract. They don't call it dismissing you, which is a very serious term and can allow the worker to fight back. But is the meaning of the terms different or the same<sup>67</sup>?*

Moreover, workers on fixed-term contracts are often refused annual leave requests and often find it difficult (nearly impossible) to apply for seniority bonuses, thus levelling their wages even more toward a bare minimum. The BFC could improve its monitoring process by requiring factories to file reports that detail the actual composition of their workforces and to ensure that their regular workforces (i.e., all employees who are not seasonal, temporary, or casual) are offered UDCs<sup>68</sup>. The BFC should also strictly monitor the process of converting FDCs into UDCs, and ensure that FDCs are not be extended beyond the legal 2-year period. Moreover, the BFC should ensure that workers with FDCs receive their legal benefits (holiday, legal benefits etc.).

# BFC's current reporting performance: a disappointing step backwards

BFC's current reporting performances are a glaring step backward from the level of transparency the program started with. Between 2001 and 2006, the BFC did actually publicly report factory names and compliance levels.

During this period, it was possible to analyse the monitoring results, making the BFC an outstanding example of transparency. This transparency was an important incentive for manufacturers to improve conditions. The reason why BFC became less transparent is related to the MFA phase-out in 2005 and the elimination of quotas. In the post-MFA era, Cambodia could no longer directly benefit from the quota system through BFC labour monitoring. A research brief by Better Work indicates that public disclosure “lowered the probability of noncompliance”<sup>72</sup>. For factories that were monitored for the first time by the BFC, “the threat of public information had a large and significant effect on the decision to become compliant”. By contrast, since 2006, after the BFC moved away from public

disclosure, “the rate of improvement slowed for all factories, including those with a reputation-sensitive buyer”<sup>73</sup>. Jill Tucker, Chief Technical Advisor of ILO-Better Factories Cambodia, has announced that the program plans to improve its transparency by “tying factory names with their compliance in a limited number of areas. We hope this will encourage factories to accelerate changes related to these working conditions”<sup>74</sup>. This would be a very welcome step.



Photo: CLEC



reports is low compared to what it would cost them to monitor this themselves or to hire an external social auditing firm. Most buyers do “verify the level of labour standard compliance before placing orders”<sup>78</sup>. But, once a sourcing relationship has been established, the same research shows, noncompliance issues “rarely affect buyers’ sourcing decisions”. The exception here is child labour and forced labour; they know that any association with these issues will have a very negative impact on their reputations. While labour rights advocates generally do not favour an approach in which buyers terminate business relationships when labour rights violations occur; the opposite, which basically means ignoring reported worker rights violations of the kind of noncompliance issues that pose little risk to their public relations – is also extremely undesirable.

Secondly, buyers are expected to participate in an annual buyers forum where they meet with BFC staff and trade union representatives. While these meetings may be useful for the sharing of experiences and the discussion of noncompliance areas, some interviewees have observed that the results are usually disappointing because any agreements reached have no binding obligations that require follow-ups. While some major buyers actively work with the BFC in addressing workplace conditions; the problem remains that too many factories have no active buyers to pressure them into improving conditions. Many buyers have not joined the initiative, which means that the BFC “does not possess complete information about which buyer is sourcing from which factory”<sup>79</sup>.

Other than these two basic activities, buyers have very few other ties or obligations. The BFC program’s primary focus is on manufacturers, the direct employers that have the largest share of the responsibilities for respecting labour rights. But global buyers must also share some responsibility as well: their purchasing methods can severely undermine decent working conditions. For example, shorter lead times on deliveries, rush orders, abrupt order cancellations, and fragmentary orders often translate into excessive overtime for the workforce. Furthermore, the constant pressure to reduce costs may exacerbate wage violations, increase the use of fixed-duration-contracts, and lead to further abuses by management. Unsustainable sourcing practices that are based on the strategy of rapid switching of orders may make suppliers feel that there is no incentive for making any of the required improvements. This is not an uncommon phenomenon: a review by Nike found that “as many as one of every two noncompliance issues can be traced back to the buyers”<sup>80</sup>.

What is particularly important about this detail is the impact that falling prices have on working conditions<sup>81</sup>. Falling prices represent a common trend in the garment industry, and buyers try to shift these types of market

risks back to the supplier. “Between 2004 and 2008 the average price of apparel exports [from Cambodia] to the United States fell by 25 percent, from \$52 to \$39 per dozen, while the average price of apparel exports to the EU-15 declined by 7 percent, from €13.4 to €12.5 per kilogram between 2004 and 2008”, a World Bank report states<sup>82</sup>.

It should not seem so strange that many manufacturers are frustrated by this trend. “At the end of the day”, as Ken Loo of the industry association GMAC argues, “buyers do not pay more for high labour [standards] compliance; it is a pass/fail system and a cost that suppliers must bear. In other words, buyers may require labour [standards] compliance but the cost of implementation is generally passed on to suppliers”<sup>83</sup>.

Falling prices make it increasingly difficult to demand and facilitate wage gains even where trade unions already exist. Employers will argue for a freeze on any minimum wage demands because any increase in labour costs will ultimately undermine their international competitiveness. Brands are important powerbrokers in the global garment supply chain and are in a position to deal with the living wage demands because, after all, they make handsome profits and should ensure a sustainable industry. This is why it’s not just manufacturers that need to change their conduct; global buyers must also contribute to basic improvements in working conditions. At the very least, their purchasing practices should enable and rather than inhibit suppliers to become decent, law-abiding employers.

**Buyers do not pay more for high labour (standards) compliance; it is a pass/fail system and a cost that suppliers must bear. In other words, buyers may require labour (standards) compliance but the cost of implementation is generally passed on to suppliers.**

# Addressing mass faintings with increased transparency

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Public disclosure of factory names and compliance levels should be the goal of any type of factory monitoring, including those initiated by the BFC.

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Without the ability to “name and shame”, little can be done to force factories that systematically violate labour standards or their clients that source from them to comply. These factories are monitored and examples of noncompliance documented, but management feels no compunction to address the violations, which is unacceptable because these conditions expose workers to severe health and safety risks.

This is, perhaps, most glaringly obvious when we look at the issue of mass faintings (see also: *Mass fainting*, page 17). The BFC’s twenty-fifth synthesis report lists several noncompliance issues that the BFC believes may be causes that lead to mass fainting incidents,<sup>76</sup> including:

- excessive overtime (95%);
- extremely high temperatures (62%);
- inadequate access to drinking water (due to lack of cups) (53%);
- inadequate access to soap and water near the toilets (52%);

- failure to form joint worker/management OSH committees (no % given);
- lack of chairs so that standing workers can periodically rest (no % given);
- failure to provide masks (no % given); and,
- failure to ensure that workers undergo a medical exam prior to hiring (no % given).<sup>77</sup>

Public exposure is likely to reduce the levels of noncompliance in these areas, and, hence, reduce the risk of mass faintings. We recommend that the BFC start to publish its compliance indicators at the factory level - including the naming of clients - that may be linked to mass faintings. This is the only way to force unwilling manufacturers and buyers to address these health-threatening violations. Here BFC can take an example of the Better Work program in Haiti, which is publishing factory details in its synthesis reports.

## H&M

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One of Cambodia’s biggest buyers is H&M. In 2010, H&M’s turnover was approximately €14 billion, which is nearly half of Cambodia’s total Gross Domestic Product (circa US\$32 billion). With profits for 2010 at some €2 billion, the company has expanded its operations very rapidly over the past few years. In 2011, H&M grew by some 12%, opening shops in five new countries and a total of 266 new shops worldwide. H&M has approximately 675 first-tier suppliers in 30 countries. Although H&M belongs to one of the more active buyers in the BFC program, none of the factories it sources from currently pays a living wage.

The current BFC monitoring process could be significantly improved by taking into account the role that buyers play in the establishment of basic working conditions. The BFC should, for example, investigate the relationship between excessive overtime and lead times. For example, the Fair Wear Foundation (FWF), a Dutch multi-stakeholder initiative operating in the garment industry, requires its members to ensure “that the terms of trade allow the manufacturer to implement the Code of Labour Practices”<sup>84</sup>. The initiative conducts a yearly “management system audit” of its member companies, i.e., buyers. This audit aims to evaluate how FWF members have adapted their management systems, including their

purchasing practices, so that effective implementation of decent labour standards leads to essential changes. This is something we urge the BFC to explore as well. Furthermore, the BFC should also consider developing a mechanism “whereby the right to a living wage and decent working conditions can be extracted from those with the economic power to provide them”<sup>85</sup>. ✂

## Excessive overtime and living wage

**Excessive overtime remains of the major noncompliance issues in Cambodia. Only five percent of the factories are without exceptional overtime, while 16 percent of factories engage in less than two hours of overtime per day**<sup>86</sup>.

This means extremely long working weeks of 70 hours or more are still common practice. These long working weeks contradict decent working conditions because they interfere with family life, have a negative impact on health, and affect job satisfaction. Excessive overtime may be, as the BFC synthesis reports suggest, mostly voluntary, but workers accept overtime mainly because their minimum wages are inadequate for the survival of their families; basic pay simply does not pay for their basic survival. This indicates a more fundamental problem, which the BFC has failed to address, namely the issue of *living wages*. The current minimum wage is US\$61, which guarantees a life of poverty for workers. Even with overtime, workers often cannot make ends meet, meaning, in turn, that many of them end up in debt to landlords and moneylenders.

Heath Kimhuor, a woman garment worker, testified at the People’s Tribunal on a Living Wage that took place in February 2012, noting:

*If I get sick, I don’t have any money for treatment. I also worry that I don’t have money to cover the costs for my son to go to school because I have not saved much, but ... with my income, I cannot cover my daily expenses.*

She is not alone. In fact, the real wages workers receive have actually declined 14 percent since 2000 in relation to inflation rates<sup>87</sup>. In other words, garment workers have become poorer since the BFC was launched. One expert believes that poverty wages, which leads to malnourishment, is an important cause of the mass faintings (see also: *Mass fainting*, page 17)<sup>88</sup>. While unions have frequently raised this issue, most of them simply lack the bargaining power to insist on changes at the factory level. In short, the BFC has not been “successful in fairly circulating the wealth and success of the garment sector”<sup>89</sup>.



At 6.55am, workers from the Shen Zhou garment factory walk through a small open-air market on their way to work.

Photo: Will Baxter

# 4 Conclusion & Recommendations

**The general conclusion is that the BFC has significantly aided in the improvement of factory working conditions. The garment industry accounts for the bulk of manufacturing employment and foreign earnings and is a significant aspect of Cambodia's current development.**

The interviewees involved in this report all recognise the importance of the BFC's efforts, which have set not only a comparatively high standard for factory monitoring but, unlike many other CSR initiatives, is not limited solely to factory monitoring but works closely with unions, engages in trainings and other activities to actually improve conditions. Despite its shortcomings, the BFC is generally considered an indispensable component of today's Cambodian labour market.

But, it must also be stated that the BFC's program must be improved if it is to have a lasting effect. The BFC program has not yet turned – as some have suggested – Cambodia into an “ethical sourcing option” for many global buyers and consumers<sup>90</sup>. Unfortunately, unions continue to face difficulties in their collective bargaining activities; the minimum wage not only lags far behind current inflation rates, but also fails to meet the basic needs of workers and their families; workers are forced to work excessive overtime; they suffer severe health and

**The BFC program has not yet turned – as some have suggested – Cambodia into an “ethical sourcing option” for many global buyers and consumers.**

safety problems, which are most dramatically exemplified by the mass fainting phenomenon. Meanwhile, employers increasingly use fixed-duration contracts to avoid paying maternity leave benefits to female staff (the vast majority of workers) or to discourage workers from joining unions<sup>91</sup>. Unionists are often confronted with dismissal, harassment and even violence.

We discussed six areas where we believe the BFC's program could use improvements. We provide recommendations regarding these six areas below. We believe that addressing these issues will help in the achievement of the BFC's goal, which is to improve working conditions in the Cambodian garment industry.

## **Sanctions for factories violating labour laws**

Unlike labour inspectors in the employ of the Ministry of Labour, the BFC is not a regulatory agency and monitors do not have law enforcement powers. The BFC can only report offenses and urge manufacturers to comply with established labour standards. It cannot enforce compliance, which is a government task. This can be very frustrating for unions who report violations to the BFC, but cannot count on any visible improvements. The BFC should:

- Use its position as a credible international organisation to apply pressure on Cambodia's government to increase sanctions for those violating labour laws, particularly those laws aimed at prohibiting discrimination against unions, because unions are essential to the workforce's capacity to defend itself. If the government were to impose harsher sanctions on those violating

## **Sending the report is not enough. In light of the fact that government (the Ministry of Labour) and the employer are not afraid of the ILO, the ILO would be well advised to form stronger relations with the buyers and the unions...**

factories, this would provide more incentives for factories to improve their working conditions.

- Use its synthesis reports, or other public means, to publicise individual complaints emerging from the monitoring either from union representatives or from workers. This would allow the BFC to detect underlying patterns of abuse that are not as easily detected during scheduled inspections and to start a dialogue on how to deal with these patterns. The BFC should make more effective use of both union leaders and individual complaints to gain more insight into the practices of specific factories, and, in turn, gain more negotiating leverage.
- Finally, the BFC should monitor compliance with the Arbitration Council's rulings and refer to violators of these rulings in its synthesis reports. This would help increase its enforcement powers.

### **Increasing union clout**

One of the BFC's primary goals is to increase labour union clout. However, workers who want to organise are often confronted with a factory's anti-union measures, such as discrimination, demotion or the termination of their contracts. The BFC clearly needs to follow-up on some of their earlier recommendations with a focus on protecting and empowering unions and their members if it wants to seriously address the many problems that unions continue to face. With this in mind, the BFC should:

- Begin to seriously train potential union leaders so that they can better represent the workers. Improve the training sessions for worker on labour related issues.
- Pressure the Cambodian government to increase sanctions against factories that engage in anti-union

behaviour and encourage proper enforcement of existing labour laws that cover union rights.

- Encourage greater input from labour union leaders in the field, which it can use in the making of its decisions.

### **Expanding its scope to subcontracted factories**

The scope of BFC monitoring is restricted to factories registered with the GMAC and the Ministry of Commerce. This is problematic because manufacturers tend to use subcontracting factories to escape the monitoring process. These factories obviously fall outside the monitoring program's reach and thus provide an easy tactic for manufacturers to avoid BFC's monitoring system. To increase its effectiveness, the BFC needs to:

- Expand its operations to include factories not registered with the GMAC.
- Make a serious effort to root out illegal subcontracting activities by acquainting themselves with the production capacity of a factory<sup>92</sup>. This means that monitors should investigate whether a factory is using subcontractors by comparing a factory's production output to its production capacity<sup>93</sup>.
- Report factories that use subcontractors. The BFC could, for example, "cooperate with the Ministry of Labour and Ministry of Commerce to get the names of other [subcontracting] factories"<sup>94</sup>.

### **Improving the monitoring process**

While the BFC's monitoring methodology is comparatively strong – at least compared to most other private or company-driven labour rights initiatives – there are a number of areas where the program can be improved. To truly get a better understanding of factory conditions, the BFC should:

- Pursue a policy of unannounced inspections to ensure that management cannot simply prepare its factory and hide its violations temporarily;
- Increase the number of inspections. Each additional inspection will only serve to increase the BFC's overview of a factory, and would thus better serve the workers' interests;
- Create a more comfortable situation for workers during interviews. Many of the BFC's interviews with workers are conducted in group settings in the workplace. The interviewees who participated in this report all believe that this inhibits the ability for the workers to speak their minds. Moreover, interviews should be conducted outside of the workplace as much as possible.

## Improving transparency

The BFC semi-annual synthesis reports include general compliance trends and progress made on improving the working conditions during the reported time and give an overview of working conditions in Cambodia without naming individual factories. There needs to be more transparency regarding the factories themselves, but also the government and international buyers. Transparency would enhance the credibility of the program and lead to increased compliance. Furthermore, as a tripartite body, it must be transparent to all three of the involved parties, and carefully balance the various interests. This means that BFC should:

- Share its factory reports, including its improvement plans, with the unions involved in the targeted factories. This would offer unions a greater ability to directly monitor the implementation of the corrective action plan. It would also lead to increased empowerment of the unions in the actual BFC process.
- Publicise more of the BFC's findings, including the names of factories that have violated Cambodian labour laws along with details of specific violations. This was the original plan for the BFC program, and a return to its earlier level of transparency would aid the BFC's efforts in combating labour law violations. More detailed reports would also increase the pressure on the government, which does not want to appear to be promoting poor working conditions or face the risk of losing essential garment industry business and thus risk the nation's economic stability.

**...The employers are afraid of the buyers mostly because the buyers can choose to not buy from that factory. Employers are also afraid of the unions since they can strike.<sup>95</sup>**

- To ensure the effectiveness of the reports, a list of buyers who purchase from the BFC-monitored factories should also be made public. Brands are in great part dependent upon the image they create through advertising and the perception the public has of them. This means that brands are particularly sensitive to embarrassing revelations about working conditions in "supplier" factories. This, in turn, will increase the pressure placed upon the factories to improve their working conditions, at the risk of losing the business of major buyers who fear public shame. Finally, the government should certainly take the BFC's recommendations seriously, but it should also publicly declare how it seeks to implement these recommendations.

## Taking the responsibilities of buyers seriously

The primary focus of the BFC's program lies with the manufacturers. While buyer participation is voluntary, the costs of compliance are mostly borne by the manufacturers. This is problematic because buyers can negatively impact working conditions through their sourcing and purchasing practices. For example, the problem of excessive working hours is closely related to (insufficient) pay rates, which, in turn, is hard to address if the prices that brands and retailers pay for their merchandise continue to fall. Therefore, buyers must begin to play a larger role in the BFC's program.

- Buyers must commit to a larger financial contribution to the BFC program. They should also support the BFC's other related activities, such as its factory-level training programs.
- The BFC, in turn, should publicly differentiate between those buyers that are actively participating, and those that take very little initiative or have done nothing ("free riders").
- Furthermore, the BFC program should assess the impacts of purchasing practices of brands and retailers on working conditions, including the possibility of actually paying a living wage. This should ensure that purchasing practices encourage rather than discourage suppliers from becoming decent employers.
- Finally, the BFC should ensure that the buyers take the resolutions introduced during the buyer's forum seriously. >8

# Endnotes

- 1 See for information: <http://www.betterfactories.org/>
- 2 Cited from BFC's website: <http://www.betterfactories.org/ILO/aboutBFC.aspx?z=2&c=1> [last accessed 17 April 2012].
- 3 Ibid.
- 4 All 3 trade union leaders – Vong Sovann (CCTU), Morm Nhim (NIFTUC), and Ath Thorn (C.CAWDU) – were either interviewed in their own offices or in non-workplace situations.
- 5 Three of the 4 of labour movement experts interviewed – Kao Poeun (LO-FTF), Pheareak Ly (WIC), David Welsh (Solidarity Group) – were interviewed in their offices, while the fourth, Sothea Siv (BWI) was interviewed in our offices.
- 6 The workers came from 8 different factories. All of them were interviewed in restaurants near their workplaces during lunch breaks, or after work.
- 7 The last interviews were with the ILO's BFC staff members, Tuomo Poutiainen and Catherine Vaillancourt-Laflamme, both of whom were interviewed in the BFC's offices.
- 8 The Multi Fibre Arrangement (MFA) imposed quota on the amount of garments developing countries could export to developed countries
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Guard at a factory. Photo CLEC

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