



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
E GARMENT (CAMBODIA)
FINDINGS, RECOMMENDATIONS AND STATUS**

December 13, 2012

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I. Introduction

This report details the findings and recommendations of the Worker Rights Consortium (WRC) concerning labor right violations at E Garment, an apparel factory located in Kandal, Cambodia that employs roughly 2900 workers.

Since 2009, E Garment has been disclosed by VF Corporation as a supplier of university logo apparel. E Garment also produces non-collegiate licensed garments for Vantage Custom Classics and for other overseas buyers, including Inditex (Zara), H&M, Marks & Spencer, C&A, Phillips Van Heusen (PVH), and Kohl's Department Stores.

E Garment is owned by the Hong Kong-based Yee Tung Garment Company, Ltd. ("Yee Tung Group"). The Yee Tung Group, which is a "participating supplier" member of the Fair Labor Association (FLA), owns and operates fifteen apparel factories in Asia and the Middle East.

The WRC undertook its assessment of labor rights practices at E Garment in response to complaints received in August 2010 from the factory's workers of violations of Cambodian law and applicable codes of conduct, specifically in the area of respect for freedom of association.

The WRC initiated its assessment of these allegations in September 2010, a process which involved interviews with 32 employees, review of relevant video and documentary evidence, and interviews and other communications with government officials and E Garment's managers. The WRC has continued to monitor developments at the factory from its receipt of the original complaint to the present.

On the basis of this investigation, the WRC found serious and ongoing violations by E Garment's management of its workers' associational rights. These violations include, most significantly:

- Systematic and targeted terminations of 35 workers by E Garment's management in retaliation for these employees' support for and participation in the associational activities of an independent union;
- Additional retaliatory firings of eight workers who were leaders of an independent union following an incident in which these workers were violently attacked on the factory floor by the members of a rival union favored by the company;
- Active complicity and collusion by E Garment management in fabricating and falsifying evidence to place blame for the violence on workers who were actually the victims of this brutal assault, and concealing the roles and responsibilities of those who were its actual perpetrators and instigators; and
- Interference with workers' freedom to join a union of their choice, by preventing workers from resigning from a union favored by the company and joining an independent union.

The WRC finds that these actions by E Garment's management are elements of a larger pattern and practice by the factory's management of denying its workers the fundamental right to be represented by a union of their own choosing.¹

Pursuant to these findings, the WRC engaged extensively with E Garment's management with the goal of correcting these violations and achieving compliance with Cambodian law, international labor standards and applicable codes of conduct. Unfortunately, despite prior promises to take corrective action, E Garment has failed to remedy the very serious violations of workers' associational rights that its management has committed over the last several years.

In August 2011, the WRC sent a previous version of this report to E Garment's main buyers including PVH, H&M, Inditex, and VF and asked them to urgently resolve the violations detailed in the report. Regrettably, VF and Inditex did not respond, and H&M only referred to evidence that, as we explain herein, was by then clearly discredited as its justification for not taking any action. Prior to receiving the WRC's August 2011 communication, PVH, VF and H&M had taken some steps to achieve the reinstatement of two of the over 40 union activists who had been discriminatorily discharged by the factory, but since have not taken any steps to resolve the other serious labor rights violations detailed in this report.

Despite the longstanding nature of the violations in this case, remedial action by the company and its buyers remains a vital necessity. Violations of freedom of association, which has been enshrined by the International Labor Organization (ILO) as a fundamental workplace right, must be, and always are, taken seriously by the WRC. This is particularly true where, as here, violations of associational rights appear in what are, perhaps, some of their most virulent forms: mass retaliatory termination of employees who are union supporters, and complicity in the use of violence against workers for their union activities.

Two additional factors make corrective action of particularly urgent importance in this case. First, Cambodia has an unfortunate recent history of violence against employee union leaders and other workers engaged in associational activities. Over the past decade three Cambodian union leaders – Chea Vichea, Ros Sovannareth and Hy Vuthy – have been the victims of yet unsolved murders; other union leaders have been brutally attacked and beaten outside the factories where they worked.² Most recently, a local government official in the border town of Bavet shot three protesting workers outside the Kaoway Footwear factory on February 20, 2012. The official, while subsequently removed from office, still has not been arrested for the shooting of the workers, who were unarmed.³ When, as in these incidents and those discussed in this report, workers and union leaders are intentionally made the targets of violence because of their exercise of associational rights, yet the perpetrators face no real consequences, it sends a chilling message to workers that those responsible enjoy virtual impunity and that the risk associated with asserting such rights is too great to bear.

¹ ILO Convention 87 ("Freedom of Association and Right to Organize"), art. 2 ("Workers and employers, without distinction whatsoever, shall have the right . . . to join organisations of their own choosing without previous authorisation.").

² See, WRC Case Summary: Bright Sky, Suntex and Rainbow Screen Printing (Cambodia), December 19, 2006 http://www.workersrights.org/Freports/Case%20Summary-Bright%20Sky_Suntex_Rainbow.pdf.

³ See, May Thithara, "Bandith trial to begin soon", *Phnom Penh Post* (September 17, 2012).

Secondly, as detailed in this report, the violence at E Garment was visited on workers in retaliation for their gathering the signatures of their coworkers on a petition to demand national collective bargaining over wages in the Cambodian apparel industry. Suppression of collective bargaining is a major labor rights issue for the Cambodian garment sector. Despite Cambodia's having ratified all of the ILO's core conventions, and the labor rights environment in the country's garment industry having been monitored for the past decade by the ILO Better Factories, there is little authentic labor-management bargaining that occurs.

The violations of freedom of association at E Garment provide a stark illustration of the challenges facing Cambodian garment workers who seek to exercise this fundamental right. Vindication of this right – and compliance with university and buyer codes of conduct – will not be possible until these violations are corrected and those complicit in them have been held accountable.

The fact that after two years, with very limited exception, there has been no meaningful action taken by E Garment's buyers to resolve the very serious violations detailed in this report calls into stark question the credibility of these firms' self-proclaimed commitments to protecting the rights of the workers who make their products. At E Garment, Cambodian garment workers seeking to exercise the most quintessential of associational rights – to petition their employers to negotiate over the wages they earn for their labor – have suffered both physical injury and loss of livelihood at the hands of a factory management acting in collusion with a group of violent thugs in its own employ. The factory punished the victims of this assault, and aided the perpetrators in concealing their crime. And, as is all too often the case in such matters, the response of most of the company's buyers, thus far, including VF, has been the complicity of simply pursuing business as usual.

II. Methodology

The WRC's findings concerning labor rights violations at E Garment are based on the following sources:

- Interviews with E Garment management;
- Interviews with 32 E Garment production employees, which were conducted both at and away from the factory premises;
- Interview with E Garment's company nurse;
- Interviews with staff at Chay Chom Nas hospital;
- Interviews with officials from the National Social Security Fund (NSSF);
- Review of relevant official documents and company records, including medical records and police complaints;
- Review of video footage captured by factory surveillance cameras;
- Review of video footage and photographs taken by workers;
- Inspection of the factory's production areas; and
- Review of relevant Cambodian labor laws.

III. Findings and Recommendations

The WRC's investigation of labor rights practices at E Garment focused on violations of Cambodian law, international labor standards and applicable codes of conduct in the area of freedom of association. The following section reviews the WRC's findings and recommendations in this area, E Garment's responses, and the status of remedial measures taken by the company, as verified by the WRC. Except where otherwise indicated:

- The WRC's initial findings and recommendations were based on investigative work performed between August 20 and November 10, 2010, including an onsite inspection conducted on September 8, 2010. These findings and recommendations were communicated to E Garment on November 17, 2010.
- Discussions of E Garment's responses to the WRC are based on communications from the company to the WRC between January and August 2011.

This section addresses three separate actions taken by E Garment's management during a two year period that constituted significant violations of workers' freedom of association. Although the violations of associational rights associated with one of these instances of misconduct have been remedied by the company, those related to other two remain uncorrected, despite repeated requests made to E Garment and its parent company in this regard by the WRC.

A. Failure to Remedy Prior Retaliatory Terminations of Employee Union Officers and Members

Findings

On July 31, 2007 workers at E Garment notified the company's management that they would be holding an election to establish a union at the factory that would be affiliated with the Coalition of Cambodian Apparel Workers' Democratic Unions (C.CAWDU). The election was held on August 3. On August 6, workers submitted to the company a list of 44 employees who had become members and officeholders in the new union.

Almost immediately, upon receiving the list of employees who had joined the union, E Garment began to target them for termination. On August 6, 2007, the union's vice president was dismissed along with seven other union members. Subsequently, the union president, treasurer and secretary were dismissed along with 25 other union members, bringing the total number of dismissed workers to 36. As prescribed under Cambodian labor law, the fired workers pursued conciliation with their employer and arbitration of the terminations.⁴ The country's chief adjudicatory body for labor issues, the Arbitration Council, ruled that E Garment had violated the workers' right to association and ordered that the dismissed union officers and members be reinstated.⁵

In the case of the 28 union officers and members who were discharged in the second round of firings, and activists, E-Garment had agreed, prior to a decision being rendered, that the

⁴ Due to an administrative error, the case of the initial eight leaders and activists was brought to the Arbitration Council after that of the subsequently terminated 28 leaders and activists.

⁵ See, Arbitration Council Award 123/07 (January 14, 2008) and Arbitration Council Award 30/08 (March 24, 2008).

Arbitration Council's decision would be legally binding upon the losing party. Nevertheless, after the Arbitration Council ruled that the terminations were illegal, E Garment refused to implement this decision.

Faced with the employer's refusal to respect the Arbitration Council's decision, the union exercised its legal right to call a strike.⁶ In response the company terminated even more workers who were union members.

Over the following year, one of the factory's buyers, Inditex Group, S.A., along with the International Textile, Garment and Leather Workers' Federation (ITGLWF), jointly pressed E Garment to remedy its violations of its workers' associational rights. On May 2, 2009, E Garment signed an agreement with the C.CAWDU under which E Garment committed to reinstate all 36 union officials and members whose terminations were the subject of the two Arbitration Council's awards, as well as an additional 25 union members whom the company had fired after the strike in 2008, in total, 61 workers.

The company agreed to reinstate all of these workers by July 2009, starting with the 28 workers whose cases were covered by the Council's binding decision of the previous year. E Garment also committed to take other measures to improve the environment for the exercise of freedom of association and collective bargaining at the factory, including issuing a policy forbidding discrimination based on union affiliation, and pledging to negotiate a collective bargaining agreement with the C.CAWDU and resolve future labor disputes by binding arbitration.

In accordance with this agreement, E Garment reinstated the first group of 28 terminated union officers and members. Following this, however, the company failed to deliver on its pledge to reinstate the remaining 33 fired workers, even though this group included eight union officers and members whose reinstatement also had been ordered by the Arbitration Council. Moreover, the company did not take any of the other steps to which it had committed in the agreement.

When the WRC questioned the company's refusal to fully implement the 2009 agreement, E Garment management stated that this decision had been made by Yee Tung Group's corporate office in Hong Kong. E Garment's local management claimed that the reason it had not fully implemented the agreement was that it had not received a written copy of it.. In light of the fact that E Garment had implemented a portion of the agreement, this explanation lacked credibility. Nevertheless, the WRC provided a copy of the 2009 agreement to E Garment's local management on September 15, 2010. Unfortunately, E Garment, to date, has not implemented any of the additional commitments it made in that agreement.

B. Failure to Permit Free Choice of Union Membership

In July 2010, around 260 E Garment workers submitted written requests to E Garment's management to stop deducting from their wages union dues to the Voice of Khmer Youth Federation Trade Union ("VKYFTU"),⁷ a union favored by the factory's management, and,

⁶ See, Cambodian Labor Law, §319("[T]he right to strike and to a lockout are guaranteed. Either can be exercised by one of the parties to a dispute in the event of rejecting the arbitral decision.").

⁷ The VKYFTU reregistered its name to Motanakpheap Kamakor Khmer Union (MKKU) in 2011, but is referred to as the VKYFTU in throughout this report.

instead, deduct and remit union dues to the C.CAWDU. Workers interviewed by the WRC explained that their motivation for making this request was that the VKYFTU was not, in their opinion, attempting to assist the factory's workers. These workers saw the C.CAWDU, on the other hand, as defending workers' rights and interests, by advocating for wage increases and providing other forms of help to employees.

The WRC found that E Garment had refused to honor these workers' requests to switch their dues deductions, and continued to deduct money from their pay for the VKYFTU, instead for the C.CAWDU. This refusal to allow workers to cease paying dues to the VKYFTU and initiate dues payment to C.CAWDU constituted interference in workers' basic right to freely join a labor organization of their choice.

Workers at E Garment also reported other practices by which the factory's management discriminates in favor of the VKYFTU and against the C.CAWDU. According to some workers, shortly after beginning their employment at E Garment, they were approached by line leaders or supervisors and asked to become members of the VKYFTU. In other cases, workers reported that they were enrolled in the VKYFTU by factory management without their knowledge.

Workers reported that E Garment provides the VKYFTU with office space in the factory, but does not provide the same facilities to the C.CAWDU. Moreover, VKYFTU leaders are allowed to carry ICOMs⁸ in the workplace, while other workers and C.CAWDU leaders are not.

Unfortunately, employer discrimination against independent unions and favoritism toward rival labor organizations is a frequent practice in Cambodia.⁹ Such employer conduct violates core International Labor Organization conventions regarding freedom of association. ILO Convention 87 specifically states that workers shall have "the right to establish and ... join organizations of their own choosing," and the ILO Committee on Freedom of Association has subsequently made clear that employers should not discriminate among worker organizations.¹⁰ Cambodian labor laws likewise expressly forbid interference with unions by employers.¹¹

⁸ A handheld transceiver radio or "walkie-talkie."

⁹ See, International Trade Union Confederation (ITUC), "Annual survey of violations of trade union rights 2011. ("Cambodia. . . .The establishment of yellow unions is another tactic deployed by some companies to prevent the emergence of genuine workers' representation."); <http://survey.ituc-csi.org/Cambodia.html#tabs-4>.

¹⁰ See, ILO Convention 98, art. 2 ("(1) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other . . . in their establishment, functioning or administration. (2) In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers . . . shall be deemed to constitute acts of interference within the meaning of this Article."); ILO Committee on Freedom of Association, *Digest of Decisions* (2006) ("ILO CFA Digest") ¶ 343 "[E]mployers should refrain from any discrimination between trade union organizations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities.").

¹¹ See, Cambodian Labor Law, §280; "[A]cts of interference are forbidden. For the purpose of the present article, acts of interference are primarily measures tending to provoke the creation of worker organizations dominated by an employer or an employers' organization, or the support of worker organizations by financial or other means, on purpose to place these organizations under the control of an employer or an employers' organization."

Cambodian law also states that workers have the sole right to determine whether they want to have dues paid to a labor organization deducted from their wages.¹² E Garment's ongoing refusal to honor workers' requests to stop paying dues to the VKYFTU and begin having dues deducted from their pay for C.CAWDU is a triple violation of workers' rights. First, workers' money is being given against their will to an organization with which they do not wish to associate, and, second, these funds are being withheld from an organization these workers have freely chosen to support. Finally, the factory's management is furthermore interfering with its workers' right to freedom of association by favoring one worker organization over another.

It is important to note that the situation described at E Garment is distinguishable from that of employees in many other countries who, either by force of national law and/or contractual relationship between the employer and a union representing the employer's workforce, are required to maintain membership in, and/or pay dues to, a labor organization. Cambodian law does not recognize the principle of exclusive representation by a single union at the factory level, nor, as previously noted, does it permit involuntary deduction of union dues, or the requirement of paying dues or maintaining union membership as a condition of employment.

Finally, the VKYFTU is not the exclusive representative of E Garment's workers; indeed, it has not even negotiated a collective bargaining agreement with the factory's management. Neither E Garment's management nor the VKYFTU have any legal right to interfere with workers' ability to resign from that union and join another union of their own choice.

C. Discriminatory Termination of Employee Union Officers and Members Who Were the Victims of Physical Assault by a Company-Backed Union

On July 31, 2010, union officers and members from the VKYFTU physically attacked union leaders and members from the C.CAWDU affiliate union inside the E Garment factory. The union leaders and members of the C.CAWDU had been soliciting workers' signatures for a national campaign to increase the minimum wage in the garment industry. This campaign had been strongly opposed by the country's leading employer's association, the Garment Manufacturers Association in Cambodia (GMAC).

The violent attack caused widespread panic among other employees, and factory management called local police to restore order and security. Workers who were injured in the incident were first treated at the factory's onsite health clinic, and some were later also taken to a nearby community hospital.

Following the July 31, 2010 incident, which E Garment's management characterized as a "fight" between employees affiliated with the rival unions, the factory sought permission from local labor authorities to dismiss eight employee union officers and members from the C.CAWDU and four employee union members from the VKYFTU.¹³

On August 2, E Garment asked the Director of the Employment and Vocational Training Department for Kandal Province for authorization to suspend twelve workers whom factory

¹² See, Cambodian Labor Law, §129 (2); "[H]owever, the worker can authorize deduction of his wage for dues to the trade union which he belongs. This authorization must be in writing and can be revoked at any time."

¹³ See, Cambodian Labor Law, §293; "[T]he dismissal of a shop steward or a candidate for shop steward can take place only after authorization from the Labor Inspector."

management had identified as involved in the incident, on the grounds that the conflict could flare up again.

In support of this request, the company provided to the Employment and Vocational Training Department, and to the police, footage of a surveillance video filmed in the factory on the day of the incident. Factory managers subsequently indicated, however, that they identified the twelve workers involved in the incident solely on the basis of police complaints that each union filed against the other on the day it occurred.

Following the one-day suspension of the twelve employees, the Employment and Vocational Training Department granted E Garment permission to permanently dismiss all twelve employees identified, but did not provide any explanation of its decision. According to the company's management, the Department explained to E Garment that this information was confidential.

It appears, however, that the only method used by the Department to identify the workers involved in the incident was, again, the two unions' complaints against each other. All eight of the C.CAWDU union officers and members who were terminated were among those employees who had been fired by the company in retaliation for their associational activities in 2007 and reinstated as part of the agreement between the C.CAWDU and the company in May 2009.

Having reviewed all of the available evidence concerning the incident, the WRC finds that the Employment and Vocational Training Department failed to conduct an adequate investigation in this case.¹⁴ As detailed below, the WRC also found that this same evidence indicates that the disciplinary actions taken by E Garment in response to the incident were motivated, in significant part, not by concerns for order and safety, but by the company's, by then, well-established hostility to the exercise of associational rights by workers who were members and officers of the C.CAWDU and favoritism towards the company-backed VKYFTU. For this reason, as explained below, the company's responses to this incident – both its termination of the C.CAWDU supporters, and its decision to mete out lesser discipline on VKYFTU supporters who had perpetrated a violent attack on other employees – represents a very serious violation of workers' associational rights.¹⁵

¹⁴ This is not the first time that the investigative competency and thoroughness of the Employment and Vocational Training Department's personnel have been questioned. For example, in a recent report on conditions at Huey Chuen, a footwear factory where there have been incidents of mass fainting by employees, the FLA observed that while it found that factory employees were exposed to hazardous chemicals and working in areas where the ambient temperature was as high as 43 degrees Celsius (109 degrees Fahrenheit), the Employment and Vocational Training Department had issued a report stating that there were no serious health and safety problems at the factory. See, Fair Labor Association. *Occupational Health and Safety Assessment of Huey Chuen (Cambodia) Co. Ltd.* (May 2011), page 13. It is also noteworthy that salaries for the Department's inspectors reportedly range roughly from US\$50 to US\$ 100 per month – approximately the same wage scale that prevails in Cambodia's garment factories.

¹⁵ Clearly, workers' right to freedom of association does not protect acts of violence in the workplace. Legally-sanctioned dismissal of persons who have been found by their employer to have engaged in or instigated violent conduct is not discriminatory with regard to associational rights and, therefore, does not violate university or buyer codes of conduct, if the employer would have taken the same disciplinary actions at the same time, regardless of the union affiliation or office of the employees involved. Therefore, in this case, the investigative focus of the WRC is whether E Garment's disciplinary actions were motivated significantly by animus, or favoritism towards employees' association with a particular union, rather than legitimate concerns regarding workplace safety and discipline.

In addition to interviewing officers from the two unions, the WRC carefully reviewed evidence provided by E Garment's management and factory workers, including:

1. Video surveillance of footage of the quality control ("QC") area of the factory's Building A, where the incident occurred, for the period from 1:00 - 1:30 pm on July 31, 2010;
2. Police complaints filed concerning the incident by the C.CAWDU and the VKYFTU.
3. Video footage of the incident and photographs of the victims taken by workers using their mobile phones;
4. Medical records of injured employees from E Garment's onsite health clinic;
5. Transfer records of injured employees from E Garment to the hospital;
6. Interviews with hospital staff and staff from the NSSF;
7. Worker interviews conducted at the factory; and
8. Offsite worker interviews.

These sources of evidence are reviewed in turn, below.

1. Video surveillance footage

The WRC was shown this video footage by E Garment management, and reviewed it thoroughly. The video was taken by a mounted camera that slowly swings back and forth. The camera is able to cover around half of the production area at any given time, meaning when the camera swings to the right, the left part of the production floor is unobserved and when the camera swings to the left the right part of the production floor is unobserved. The camera takes approximately one minute to swing from left to right and another minute to return from right to left, meaning that each area is covered in alternate minutes.

The video footage shows that around 1:10 pm, two persons, who were later identified as C.CAWDU members, begin to approach other employees at their work stations individually and ask them to sign a paper, which was later identified as a petition seeking industry-wide negotiations to increase the minimum wage. The other employees in view continue working as each is approached by the two C.CAWDU members.

From 1:14 to 1:18 pm, several persons later identified as VKYFTU members, including employees Lao Narong and Dol Khan, both of whom were subsequently terminated, appear in the field of view. Lao Narong is carrying an ICOM. By 1:20 pm approximately fifteen people, all later identified as VKYFTU members, are seen to have gathered near the building's entrance. At 13:23 pm, an E Garment Human Resources manager, Mr. Sok Ang, arrives at the entrance and appears to be remonstrating with the VKYFTU activists.

At 1:25 pm, when the incident turns violent, the camera is turned away from where both the C.CAWDU and the VKYFTU members are located. However, workers who are in the camera's field of vision start to run away and the expressions on their faces show fear and alarm.

At 1:26 pm, the camera shifts to the locus of the violence. Hong Sombat, the VKYFTU president at E Garment, is seen running on top of the production tables towards where some

of his union's members have confronted the C.CAWDU members. He appears to be shouting and gesturing aggressively, and directing other VKYFTU members to join the assault. VKYFTU member Lao Narong is seen concealing a large pair of scissors. A group of five VKYFTU members chase one of the C.CAWDU members down an aisle between the production tables. The five or six other C.CAWDU members appear to be either fleeing or attempting to defend themselves from attack by a much larger group of VKYFTU members.

Although the video footage is not entirely clear, the most reasonable interpretation of events it depicts is that of VKYFTU members, directed by their union president, carrying out a violent attack on the C.CAWDU members. As described earlier in chapter 1b, C.CAWDU had, just weeks prior to this attack presented the factory's management with requests from 260 workers to change their union dues deductions from VKYFTU to C.CAWDU, a change that would result in significant monetary loss to VKYFTU.

The assault appears to have been premeditated. There is no other apparent reason for the VKYFTU members to have gathered in the plant at the location where it took place except in order to confront the C.CAWDU members. Although Hong Sombat, the VKYFTU president, claimed that VKYFTU member Dol Khan was already present in the work area assisting an employee in applying for leave from work, he did not provide any reason for why the other VKYFTU members were present, nor is Dol Khan seen in the footage as approaching any workers.

2. Police complaints filed by both unions

As noted, both unions filed complaints against the other with the police, and E Garment's management stated that it determined which workers to terminate following the incident based on those named in these complaints.

C.CAWDU's complaint against the VKYFTU was signed by six workers. It names four VKYFTU members who, it alleges, were among a larger group of employees who assaulted them with walkie-talkies and scissors. The four VKYFTU members are identified in the complaint only by nicknames.

The C.CAWDU complaint is consistent with the surveillance video footage from the factory, which shows at least one VKYFTU member, Lao Narong, holding scissors and an ICOM. The four VKYFTU activists named in the complaint are all visible in the video footage and appear to be acting aggressively towards the C.CAWDU members.

The VKYFTU complaint against C.CAWDU is signed by the VKYFTU affiliate's president, Hong Sombat, and its vice-president. In the complaint the VKYFTU president alleges that a C.CAWDU member provoked a fight by taking a picture of him and then, with seven other C.CAWDU officers and members, attacking him from behind. The VKYFTU complaint names the eight C.CAWDU officers and members by their full names, surnames and factory-issued employee identification numbers, among them the union's president, secretary and treasurer. All were subsequently terminated by the company.

The VKYFTU's complaint is quite inconsistent with the video footage of the incident. First, the footage shows VKYFTU president Hong Sombat arriving at the scene after the violence began. Thus it is not possible that the fight was started by an attack on Hong Sombat.

Moreover, despite his claim to have been attacked by eight C.CAWDU union members, Hong Sombat is also not mentioned in the factory clinic's records as having been treated for any injuries. In addition, the eight C.CAWDU activists alleged to have precipitated the incident by attacking him in the complaint do not all appear in the video footage.

Casting further doubt on the validity of the VKYFTU complaint is the fact that it includes all eight of the C.CAWDU members' first names, surnames, and six digit employee identification numbers. As, in Cambodia, this information is not commonly available to employees or union officials, its inclusion in the complaint suggests that factory management assisted the VKYFTU in preparing this document, which was, in turn, used by the company as the basis for terminating the C.CAWDU officers and members.

3. Records from the factory health clinic and interviews with clinic staff

As part of its investigation of the July 31, 2010 incident, the WRC visited the factory clinic¹⁶ and spoke with the company nurse, who had been present on that day. According to company management, the doctor who had treated the workers that day had since left E Garment to work in another province.

The WRC asked to review the clinic's records for July 31, 2010. The clinic nurse provided the clinic's records for all of July, which indicated that no records of any injuries had been filed on that day. The nurse explained that the company's doctor had made a separate file with regard to the workers injured in this incident which was available in the factory management's offices. She was not able to explain why these injuries had not been logged in the clinic's records in the standard manner, nor why the records associated with the incident were kept in the factory management's offices rather than at the clinic.

E Garment's management provided the WRC with its record of the treatment provided at the factory health clinic to the workers injured in the July 31, 2010 incident. The sole document proffered by the company was a one-page list of names of nine workers whom, it states, were treated at the clinic and their respective injuries.

This document bears little resemblance to the records ordinarily maintained by factory health clinics in Cambodia. Contrary to typical practice, the list does not include the workers' employee identification numbers. Moreover, the list divides the names of the workers who were treated according to their union affiliations – five C.CAWDU members and four VKYFTU members.

Finally, the list lacks any details concerning the injuries the workers allegedly sustained or how these were treated. It states only that a given worker was "injured on the back," had an "injured nose" or was "injured at the face." No pictures are included of the alleged injuries, thus no visible proof exist of any injuries of the VKYFTU members. Similarly, the list provides no specific information regarding the treatments provided to each of the nine employees. Instead, there is merely a brief note at the bottom of the page explaining that the employees were treated by cleaning their wounds with anesthetics and antibiotics. The note

¹⁶ Upon entering the clinic during its September 8, 2010 visit, the WRC found the VKYFTU president, Hong Sombat, resting on a clinic bed. Upon our entry, he quickly arose and left the clinic. He had been interviewed by the WRC shortly before and did not seem to have any illness nor had the clinic nurse made any record of his visit. The reason for his visiting the clinic on the day of the WRC's visit to the factory remains unclear.

then states that some workers were sent to the hospital following the incident, but does not identify which or how many of the workers these were. The health clinic nurse was not able to supply this information either.

4. Transfer records of injured employees from the E Garment onsite health clinic to the hospital and interviews with hospital staff

E Garment provided the WRC with copies of records of the transfer of employees who were injured in the incident from the factory health clinic to the hospital. Such transfer records are commonly prepared in the case of workplace injuries as certification to the NSSF that the injuries in question occurred during working hours. Altogether, eleven transfer documents were signed by E Garment human resource managers. Three were signed for VKYFTU members, six for C.CAWDU members, and two for workers who lacked any union affiliation but reportedly were suffering from shock, presumably from having witnessed or been caught-up in the violence.

All three VKYFTU activists for whom transfer letters were issued also appeared on the list provided by the factory management of workers who were treated at the factory health clinic. Two C.CAWDU members who did not receive treatment at the factory clinic and, so, do not appear on the list, were still transferred to the hospital and issued letters attesting to this fact. The transfer letters for the three VKYFTU members were signed on July 31, 2010. The transfer letters for the six C.CAWDU members were signed on August 2, 2010.

According to E Garment's management, the reason for the discrepancy in dates on the transfer letters for the VKYFTU and C.CAWDU members was due to the fact that the company provided transportation to the hospital to the three VKYFTU members and the two workers who were not union members. The six injured C.CAWDU members had to travel to the hospital on their own.

The transfer letters issued to the C.CAWDU and VKYFTU members also differ in other respects. The letters the factory issued to the C.CAWDU members explicitly state that the cause of their injuries was "fighting during working hours." By contrast, the transfer letters for the VKYFTU members do not indicate any causes for their injuries. All the transfer letters are signed by E Garment's Human Resources manager, Sok Ang.

The WRC inquired at the hospital regarding the injuries to the workers and the treatments they received. The staff at the clinic was able to confirm the registration and treatment of the three C.CAWDU members and the two workers who were not members of either union. However, the staff had no memory or written records of having treated the three VKYFTU members. The NSSF verified its possession of records pertaining to the injuries to the three C.CAWDU members, but could not verify that it has any records relating to injuries to the three VKYFTU members.

Taken as a whole, this evidence clearly indicates that the three VKYFTU members did not actually receive any injuries requiring transfer from the factory to the hospital, and, moreover, suggests that, instead, the company's managers and the staff of the onsite factory health clinic created a false record of such injuries. This evidence, then, supports the conclusion that E Garment's management colluded with the VKYFTU to produce such false records in order to

form the basis for the union's complaint to the police against the C.CAWDU officers and members – a complaint that, in turn, provided a rationale for the company firing these workers.

5. Video footage and photographs taken by workers

One of the E Garment workers who witnessed the July 31, 2010 incident filmed a portion of the event on a mobile telephone. The video footage which the worker took shows roughly the first minute after the incident turned violent. When the footage taken by the worker, which lacks a time stamp, is compared to the time stamped video footage taken by the factory surveillance camera, it appears that the worker recorded this footage between 1:25:30 and 1:26:40 pm.

The video footage taken by the worker begins by showing VKYFTU member Dol Khan beating C.CAWDU member Chea Sompow, while C.CAWDU member Penh Longdy tries to hold Dol Khan back. Later, Chea Sompow is seen lying on the ground while several unidentified persons hit and kick him. A few seconds later, the video footage shows C.CAWDU member Pich Sochea attempting to stop VKYFTU's Lao Narong from kicking C.CAWDU member Kaew Thorn, who is also lying on the floor.

The footage then shows E Garment human resources manager Sok Ang attempting to calm VKYFTU president Hong Sombat, who is shouting agitatedly and jumping up and down on a table. Shortly after this, the video ends with VKYFTU member Hong Jin hitting C. CAWDU member Chea Sompow with an ICOM.

Significantly, in the video footage taken by the worker, the attackers are all VKYFTU members, while the C.CAWDU members are either trying to stop the VKYFTU members from attacking their coworkers or are defending themselves from attack.

This footage is consistent with photographs taken by workers on their mobile phones of the C.CAWDU members after the incident, including one that shows Chea Sompow with bleeding head injuries and another that shows Keo Thorn with a serious head injury, which ultimately required more than five stitches to treat.

6. Onsite worker interviews at the E Garment factory

The WRC attempted to interview the employees whose work stations are in the vicinity of where the incident occurred, but these workers were clearly too fearful to speak openly about the incident.

One worker did state that the VKYFTU members attacked the C.CAWDU members, but would not provide any further information. The remaining workers claimed that they had not seen any violence because they had been either absent that day or at the toilet at the time the incident occurred. However, the surveillance video footage shows clearly that the production lines in the vicinity were fully staffed at the time the incident took place. Although it is not surprising that workers would be cautious about discussing such an incident, the degree of fear exhibited calls into question E Garment's claim that the workers it dismissed were those actually responsible for the violence.

7. Offsite worker interviews

The WRC also interviewed E Garment workers at locations outside of the factory where they indicated that they felt comfortable to speak openly about the incident. The workers interviewed had witnessed the incident but were not C.CAWDU officers or activists. One worker who witnessed the incident reported that the fighting broke out after an argument began between VKYFTU's Dol Khan and C.CAWDU's Chea Sompow over each having photographed the other. Dol Khan then initiated the violence by hitting Sompow. Following this incident, the other C.CAWDU members attempted to stop Dol Khan, but were confronted by a larger group of VKYFTU members who attacked the C.CAWDU activists.

The worker stated that she saw the C.CAWDU members sustain visible injuries, but not any of the VKYFTU members. She stated that the C.CAWDU activists had not initiated any of the violence but only tried to stop the fighting. The worker explained that one of the dismissed workers – the president of the C.CAWDU affiliated union – had not been involved in the incident at all.

Another worker who did not witness the incident but was present at the factory health clinic afterwards confirmed that only the C.CAWDU members, and none of the VKYFTU members, had sustained injuries and been treated at the clinic. She indicated that at around 4:00 pm, two and a half hours after the incident, five or six VKYFTU activists entered the clinic and stayed for fifteen minutes before leaving the factory in a company car.

These worker interviews provide further support for the conclusion that the VKYFTU officers and members were responsible for the violence, that the C.CAWDU officers and members were essentially its targets, and that the factory management colluded with the VKYFTU in creating a false record to the contrary.

Conclusion

Based on a careful review of all the evidence, the WRC concludes the following concerning the chronology of the conflict on July 31, 2010:

- The C.CAWDU's union members arrived at Building A in order to ask workers to sign its petition for national minimum wage bargaining.
- The VKYFTU members arrived shortly after, in larger numbers, with the purpose of confronting the C.CAWDU members. Several of the VKYFTU members then approached the C.CAWDU members.
- After a verbal argument began, the VKYFTU members physically attacked the C.CAWDU members, who did not attack the VKYFTU members, but, instead, only tried to protect themselves and their fellow union members. The claim of the VKYFTU president that the incident began with an attack upon him by the C.CAWDU members is clearly false.
- There is no credible evidence that any of the VKFYFTU members were injured by C.CAWDU members, but there is clear evidence that several C.CAWDU union activists were seriously injured by VKYFTU members.

- After the incident, E Garment's management assisted the VKYFTU in fabricating documents to support the latter's claim that the C.CAWDU members injured the VKYFTU members. The factory health clinic did not record the treatment of those involved in its regular records but instead made an irregular note pertaining to the incident. E Garment sent the VKYFTU members by company car to the hospital and prepared transfer letters for them to document this, however, the VKYFTU members were not actually treated for injuries, either at the factory health clinic or at the hospital.
- Several of the C.CAWDU union members were seriously injured by the VKYFTU members; however, E Garment management did not assist them in getting outside medical attention.
- Finally, E Garment's management justified its dismissal of the eight C.CAWDU officers and members (and the four VKYFTU members) based solely on the police complaints filed by each of the respective unions against the other. While the available evidence indicated that the C.CAWDU complaint against the four VKYFTU activists was accurate and truthful, the VKFYTU complaint contains patently false statements about the incident and who were perpetrators and victims of the violence.
- The inclusion of such false statements in the police complaint not only invalidates the VKYFTU complaint as a document upon which disciplinary decisions should be taken, but is also a serious legal offense.¹⁷ As troublingly, E Garment's management appears to have been complicit in the concoction of these false statements.
- Rather than appropriately disciplining all of the VKYFTU members involved in the violent assault on the C.CAWDU members and the falsification of official documents, E Garment allowed the majority of them to continue working in the factory.

In sum, the WRC finds that the eight C.CAWDU union members and officer who were terminated from E Garment after the incident were victims of not only physical violence at the hands of the company-backed VKYFTU, but also discriminatory discharge by the company itself, via its complicity with the VKYFTU in fabricating the allegation that the C.CAWDU officers and members shared responsibility for the violence.

In this respect, E Garment management has violated its employees' freedom of association just as clearly as if the company had discriminatorily terminated the C.CAWDU leaders and activists for any other pretext. Indeed, permitting the VKYFTU union leaders to carry out an organized act of violence on the factory premises, without facing significant consequences, while punishing the C.CAWDU members who were actually its victims has created a severe chilling effect on the environment for the exercise of freedom of association by all workers at E Garment.

¹⁷ See, *Decision of September 10, 1992* § 63 Supreme National Council (“[A]ny bad faith allegation or imputation of a given fact which harms the honor or reputation of an individual is a defamation.”).

D. Discriminatory Terminations of Employee Union Members after the National Wage Strike of September 2010

Findings

From September 13-16, 2010, the C.CAWDU and another labor federation, the NIFTUC, held a national strike calling for collective bargaining over minimum wages for garment and footwear workers.¹⁸ The VKYFTU did not support or participate in the strike.

As previously mentioned, the VKYFTU union at E Garment carried out its attack on the C.CAWDU members while the latter were soliciting signatures for a petition calling on factory owners to enter into such bargaining. The factory owners' rejection of this appeal and their refusal to engage in such wage negotiations were the precipitating factors in the C.CAWDU and NIFTUC's deciding to undertake the national strike. The walkout ended four days later after the Cambodian government itself called for national wage negotiations between the Garment Manufacturers Association in Cambodia and the labor confederations.

The September 2010 strike was unprecedented in Cambodia with regard to both its scale and its purpose. While strikes are not uncommon in the garment sector, previous walkouts typically have been triggered by factory-specific conflicts.

Many E Garment workers participated in the strike. Upon attempting to return to work immediately after it ended, however, two employees who are C.CAWDU members were terminated by the company, on the grounds of having allegedly abandoned their jobs for more than six days.¹⁹

Due to its novelty, there is no established jurisprudence in Cambodia on how requirements for legal strikes under the country's Labor Code apply to a nationwide industrial action. A detailed analysis by the Cambodian Center for Human Rights, however, found the September 2010 strike to have been conducted by the C.CAWDU and NIFTUC in a manner that complied with the laws' requirements.²⁰

For this reason, workers who participated in the strike but did not engage in any violence or other misconduct should have been legally-protected from retaliation by their employers upon returning to work.²¹ This conclusion is supported by the fact that the Cambodian government, which had strongly discouraged the strike prior to its inception, publicly called upon factory owners to permit employees to return to work without retaliation.²²

Because, under Cambodian Labor Law, a legal strike temporarily suspends the contract between employer and employee, days spent on strike cannot be considered as absences from

¹⁸ The WRC has conducted a separate investigation regarding this strike and related freedom of association violations and will be releasing a report for universities on this topic.

¹⁹ See, Internal work regulations of E Garment.

²⁰ See, Cambodian Center for Human Rights, *Legal Analysis: September Garment Sector Strikes* (November 11, 2010).

²¹ Ibid.

²² See, Hul Reaksmey and Ian Williamson, "Hun Sen Calls for a Truce in Garment Sector", *Cambodia Daily* (September 30, 2010).

work for purposes of applying discipline.²³ For this reason, E Garment violated Cambodian labor law when it counted the days that the two workers were on strike as absences from work, and, therefore, in terminating them on that basis.

Not counting the days they were on strike, the two workers were only absent from the factory, for two and two and a half days, respectively. Under the factory's own work rules, then, the company lacked adequate justification to terminate them.

Given the factory's prior conduct towards the C.CAWDU and its members, particularly in the context of events leading up to the September 2010 strike, the WRC concluded that E Garment's termination of the two union members, in violation of Cambodian law and the company's own work rules, was motivated by retaliatory animus towards their exercise of associational rights through participation in the September 2010 strike. For this reason, the WRC found, the terminations constituted a further violation by E Garment of its employees' right to freedom of association.

Recommendations and Current Status

In an email communication sent to E Garment on September 29, 2010, the WRC recommended that E Garment should immediately reinstate the two workers who had been terminated following the strike. In response, E Garment provided the WRC with a report dated September 22, 2010 that had been prepared by one of its buyers, the Hong Kong-based trading company, Li & Fung, wherein E Garment management justified the dismissals on the grounds discussed above. The report, however, also quoted a Yee Tung Group human resources manager as saying that, "These two workers are being considered by management to be reinstated if they are coming back to work."

Several of the factory's other buyers, including PVH, VF and H&M also called on E Garment to reinstate the two workers. On a telephone conference call among PVH, Yee Tung Group and the WRC on January 3, 2011, the representative from Yee Tung Group promised that the company would do so.

Following the conference call, however, the company took no further action to fulfill this promise. In a meeting on February 3, 2011, Yee Tung Group reaffirmed to the WRC its commitment to reinstate the two workers.

On February 25, 2011, five months after the dismissal, the company reinstated the two workers, but deferred the question of whether it would provide them with back pay for their lost wages during this period. While encouraged by the reinstatement of these workers, the WRC, consistent with international labor standards concerning protection of the right of freedom of association,²⁴ continues to recommend that E Garment make these employees whole for their lost earnings as a result of their retaliatory termination by the company.

²³ See, Cambodian Labor Law, §332 (1); "[A] strike suspends the labor contract. During a strike, the allowance for work is not provided and the salary is not paid."

²⁴ ILO, *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* ¶ 840 (2006) (noting importance, in cases involving retaliatory termination of workers exercising freedom of association of "ensur[ing] that the persons in question are reinstated in their jobs *without loss of pay*" (emphasis added)).

E. Initial Recommendations

Based on the findings detailed above, the WRC recommended that E Garment take a number of actions to remedy the labor rights violations that have been identified in this report. The WRC communicated to the company on September 29, 2010 its recommendation that it reinstate the two union members dismissed following the September 2010 national strike. The WRC submitted the remainder of its recommendations to the company on November 17, 2010. A summary of these recommendations along with E Garment's responses to them follows below:

1. With regard to the physical attack by the VKYFTU officers and members upon the C.CAWDU members and officers, and the company's termination of the victims of this assault, the WRC recommended that E. Garment:
 - Reinstate the eight C.CAWDU union officers and members who were dismissed in August 2010 immediately to their former positions with full back pay.
 - Uphold the dismissals of the four VKYFTU activists, all of which were supported by credible evidence of their having physically attacked the C.CAWDU members.
 - Dismiss VKYFTU member Hong Jin, who was videotaped violently attacking another worker, using an ICOM as a weapon.
 - Take serious disciplinary action against VKYFTU president Hong Sombat and vice president Sim Veasna for making willfully false statements in the police complaint filed by the union concerning the incident in the case of the VKYFTU president inciting the violence against the C.CAWDU members and officers.
 - In light of the use of ICOMs as weapons in the July 2010 incident, E Garment should prohibit the carrying of ICOMs in the workplace unless these units are company-owned and issued for job-related purposes.
 - Identify those E Garment managers who participated in the preparation of false documents concerning this incident, and take appropriate disciplinary measures against them.
2. With regard to the unfulfilled commitments in the March 2009 agreement with the C.CAWDU, concerning the reinstatement of workers who been subject to discriminatory discharge, the WRC recommended that E Garment immediately fulfill its commitment to reinstate the remaining 33 fired employees.
3. With regard to the company's failure to comply with workers' requests to cease deducting dues for the VKYFTU, and begin deducting dues for the C.CAWDU:
 - Comply with any such previous and future requests by employees to have dues deductions terminated, and refund any dues deducted after the submission of such prior requests.

- Comply with all written requests submitted by workers to have dues to a particular labor organization deducted.
4. Provide full back pay to the two union activists who were discriminatorily dismissed following the September 2010 national strike for the period of time from their termination to their reinstatement in February 2011.

F. E Garment's Response and Current Status

To date, with the exception of reinstating the two union members who were terminated following the September 2010 national strike, E Garment's management has taken no action to comply with the WRC's recommendations and remedy the serious and ongoing violations of workers' rights detailed in this report.

The WRC provided E Garment with a written summary of its findings and recommendations on November 17, 2010. In December 2010, E Garment informed the WRC, through representatives of one of its buyers, PVH, that the Yee Tung Group would like to meet with the WRC and discuss the issues the WRC had raised. The results of the subsequent dialogue between the WRC and the Yee Tung Group are as follows:

1. Reinstatement of workers fired for associational activities

a. The Two Workers Fired after the September 2010 Strike

As discussed, the two union members who had been terminated in September 2010 were reinstated on February 25, 2011, but have yet to receive any back pay for the intervening period.

b. Forty-One Workers Terminated Prior to September 2010

On February 3, 2011, representatives of the WRC, Yee Tung Group and E Garment management discussed the issue of the eight C.CAWDU leaders and members who were dismissed following the July 2010 incident. Despite the fact that two and a half months had already passed since the WRC had initially forwarded its findings and recommendations concerning their firing, the Yee Tung Group representative requested additional time to review the evidence shared by the WRC. As an act of good faith, the WRC agreed to allow the representative to review the evidence, and also provided the representative with the video footage taken by E Garment workers to ensure that Yee Tung Group would have access to the same evidence reviewed by the WRC. It was further agreed that Yee Tung Group would finalize its review of the evidence by the end of April 2011. At this meeting, the WRC reiterated that unless new evidence contrary to our findings emerged, the WRC expected E Garment to carry out the WRC's recommendations.

At the same meeting, Yee Tung Group again committed to implement the 2009 agreement concerning the reinstatement of the 33 C.CAWDU leaders and activists. Yee Tung Group informed the WRC that it would meet with the C.CAWDU and ITGLWF to finalize details for the reinstatement of the 33 workers.

The meeting between C.CAWDU, ITGLWF and Yee Tung was held on May 10, 2011. E Garment directed the WRC to contact the C.CAWDU for details as to the results that were reached. C.CAWDU informed the WRC that E Garment had committed to reinstate not only the 33 union leaders and activists, as originally agreed in 2009, but also the eight union officers and member who were dismissed after the July 31, 2010 incident. According to C.CAWDU, E Garment pledged to reinstate these workers by the end of July 2011. However, E Garment has not, to this date, reinstated any of these employees.

In August 2011, the WRC wrote to E Garment to inquire about the promised reinstatement. In response, E Garment reverted to its initial position that the dismissal of the eight workers had been approved by the Labor Inspector, essentially disregarding its dialogues with, and commitments to, other stakeholders over the previous twelve months. Furthermore, in a subsequent email communication, Yee Tung Group stated that it was not willing to reinstate the eight C.CAWDU officers and members and admitted that it had not engaged in further review of the evidence the WRC had provided since having met with the WRC on February 3, 2011.

The fact that E Garment has not contested the WRC's analysis of the evidence concerning this incident, as detailed in this report, despite having nearly two years to review it, further supports its accuracy. Instead of either putting forth grounds to take issue with the WRC's findings, or engaging constructively to find a resolution that remedies the very severe violations of its workers' associational rights that we have described, E Garment has simply engaged in obfuscation and ongoing delay.

In August 2011, E Garment claimed it was still "engaging in discussions" with C.CAWDU and ITGLWF about the reinstatement of the 33 union officers and members. On December 6, 2011, a meeting, scheduled among E Garment company management, the ITGLWF, representatives from the Swedish labor confederation LO-TCO, representatives from the Swedish Embassy and the C.CAWDU to discuss this issue, was cancelled when E Garment management refused to allow the dismissed local C.CAWDU union president to enter the factory to attend.

Since that time, there have been no meetings between E Garment and the C.CAWDU. As more than two and half years have passed since the company signed the agreement with C.CAWDU, ITGLWF and Inditex wherein E Garment agreed to reinstate the 33 workers and none of these employees have been rehired, the only reasonable conclusion to be drawn is that E Garment has no intention to honor this commitment.

On June 28, 2012, the C.CAWDU filed a request with the provincial labor department for mediation of the issue of the termination of its 41 members at E Garment. When no agreement was reached on this issue through the mediation process, the labor department submitted the case to Cambodia's Arbitration Council. In considering the matter, however, the Arbitration Council did not have access to the evidence discussed in this report showing that the VKYFTU had been the perpetrators of violence in the July 2010 incident. Instead the Arbitration Council only considered evidence that, as shown in this report, has proven to be fraudulent, such as the factory clinic report claiming that the VKYFTU leaders were injured and sent to hospital, and the complaint submitted to the police by VKYFTU.

Based on the fabricated evidence before it, the Arbitration Council reached the unsurprising conclusion that the eight C.CAWDU union leaders had been “fighting” and thus could be legally dismissed. In the case of two of the terminated C.CAWDU members – the union’s president and vice president – the Arbitration Council still found that the legal procedure for their termination had not been followed and, therefore, ordered E Garment to reinstate them. In the cases of the other six workers terminated following the July 2010 termination, because four of them were not present at the hearing, the Arbitration Council declined to consider those workers’ cases and with regard to the remaining two employees, based on the evidence before it, the Council found no procedural wrongdoing regarding their dismissals.

In the cases of the other 33 workers, the Arbitration Council held that because the terms in office of the leadership of the local C.CAWDU union at E Garment had expired,²⁵ the union lacked standing to represent these workers. Since the union lacked standing to represent these workers, and the workers did not, themselves, appear at the hearing, or grant authority to another party to represent them, the Arbitration Council rejected the union’s demand for their reinstatement.²⁶ With regard to these claims as well, however, the Arbitration Council did not make any decision based on the underlying merits of the union’s allegations regarding their termination. It should also be noted, that when the complainants are absent, or the union has no legal right of representation, the usual practice of the Arbitration Council is to decline to consider the case, rather than to reject the complainants’ demand.²⁷

Despite the fact that the Arbitration Council only ordered reinstatement of two of the 41 workers, E Garment still rejected this award. While, in the letter it submitted to the Council rejecting the award, E Garment mentioned only the portions of these decisions that were unfavorable to it, Cambodian Labor Law only permits parties to reject arbitration awards in whole. When an award is rejected by one of the parties to an arbitration it becomes unenforceable as a whole against any of them.²⁸

Additionally, it is important to note that, during the Arbitration Council proceedings, E Garment stated publicly its unwillingness to honor its 2009 agreement with Inditex, ITGLWF and the C.CAWDU regarding reinstatement of the 33 workers. E Garment claimed that this

²⁵ To have standing to represent their members, Cambodian unions must register with the labor ministry and hold elections for their leadership positions every two years. *See*, Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation (MOSALVY), Prakas 305, § 3.

²⁶ *See*, Arbitration Council Award 12/144 re E Garment; findings re issue # 8: “The workers party demand the employer to implement point 2 of the agreement dated May 2, 2009, by reinstating the 33 workers. For this issue, arbitration council found that the 33 workers who demanded reinstatement neither showed up at the hearings nor authorized to the plaintiff or C.CAWDU to represent them at the AC. Thus, there is NO real worker as a plaintiff in this issue. Therefore, AC reject workers demand to reinstate the 33 workers based on the agreement dated May 2,” 2009. This reasoning is puzzling considering that three out of the thirty-three workers *were present* according to the list of attendees written in the Award.

²⁷ *See*, Arbitration Council Award 07/11 (June Textile) (closing case because the complainant failed to appear); *also*, Award 12/11 (Dai Young Garment) (declining to consider matter where union had not yet been registered with the Ministry of Labor; *and* Award 06/44 (Goldfame) (declining to consider matter –but not rejecting demand – where complainant appeared but did not produce sufficient evidence to proceed).

²⁸ *See*, Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation (MoSALVY); Prakas 99, §40 (“[E]ach of the parties may lodge an opposition to the arbitral award by informing the Minister of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation by registered letter or any other reliable means, within eight calendar days of notification. [...] If either party to a dispute lodges such an opposition within the specified timeframe, the award shall be unenforceable.”).

agreement was not valid as the company only entered into it under pressure from Inditex,²⁹ and the agreement did not bear the company's official stamp.

2. Interfering with workers' free choice of union membership

E Garment has been similarly unresponsive with regard to the other violations of freedom of association detailed in this report. The company also has not taken any action to date to comply with the pending requests by 260 workers to change the union for which they wish dues to be deducted from their wages, now have been pending since July 2010. As the WRC informed E Garment in September 2010, the factory management's denial of workers' right to freely exercise their choice of union membership – in this case, by ceasing paying dues to the VKYFTU and initiating dues payments to the C.CAWDU – is illegal under Cambodian labor law and violates international labor standards and applicable codes of conduct.

This conduct by company managers is yet another deeply troubling indicator of the collusion between E Garment and the VKYFTU in violating workers' associational rights. E Garment claimed that its failure to comply with the WRC's recommendations in this area was due to requirement that, for the company to cease deducting dues for the VKYFTU, workers needed to present forms showing their resignation from that union. This claim was clearly disingenuous, however, given that the WRC's investigation had documented that each of the 260 workers who submitted such a request to the company had included with it a signed letter resigning from the VKYFTU.

The company continues to refuse to respect its workers' associational rights in this area. In September 2012, the C.CAWDU received similar requests from an additional 130 workers who sought to stop having dues deducted from their pay for the VKYFTU and to begin having dues deducted for the C.CAWDU. When the C.CAWDU approached E Garment to ask that its management fulfill these employees' requests, the company again refused to do so, bringing to 390 the total number of such requests that it has denied.

Following this latest refusal, the C.CAWDU filed a complaint against E Garment with the provincial labor department, which called the parties to meet for mediation. The mediation session was held on September 25, 2012, but, because the parties were unable to reach agreement, the matter was submitted by the labor department to the Arbitration Council.

At a hearing before the Arbitration Council on October 23, 2012, E Garment and the C.CAWDU reached an agreement on procedures for the transfer of workers' union dues deductions from VKYFTU to the C.CAWDU. The agreement states, however, only that:

[T]he company will notice this list [of workers who wish to switch union due deductions from VKYFTU to C.CAWDU] to the union from which workers resigned from and ask that no more dues be deducted. The company then will stop deducting dues in accordance with that request within two weeks. *If within those two weeks there*

²⁹ According to E Garment's logic, therefore, it is not bound to live up to its commitments under any of its buyers' codes of conduct, since any agreement by the company to do so is, allegedly, improperly coerced. In light of the company having adopted this position in a public forum, it is all the more remarkable that neither the company's buyers nor the FLA have taken any action against E Garment or its parent company, Yee Tung Group.

is no rejection from the old union and the concerned workers, then the company will stop deducting the wage from the workers (emphasis added).

By giving the VKYFTU a virtual veto over workers' decisions to change their union affiliation to the C.CAWDU, E Garment continues to exhibit favoritism to the VKYFTU at the expense of its workers' associational rights.

Since this agreement was reached, however, 60 workers have resigned from the VKYFTU and submitted requests to pay union dues to the C.CAWDU and six workers have resigned from the C.CAWDU to join VKYFTU. Under this agreement, if workers wish to resign from one union and join the other, they must submit their request in person at the offices of the factory management between the first and seventh of the month.

The requirement that workers must submit their requests in person to the factory management is problematic given the management's demonstrated history of favoritism towards the VKYFTU and hostility toward the C.CAWDU. The adoption of this procedure also fails to adequately remedy the cases of the 260 workers who submitted requests in July 2010 to have union dues deducted from their pay for the C.CAWDU, but, because of the company's refusal to comply with their requests, have, for the past two-and-a-half years, had dues deducted for the VKYFTU.

As the new agreement has been in effect only since the beginning of November 2012, and dues are deducted on a monthly basis, it is still unclear whether E Garment's management will comply with the 60 new workers' requests to change union dues deduction and what it will do with regard to both the 260 pending prior requests and its prior misallocation of workers' dues as a result.

IV. Conclusion

Since its reinstatement in February 2011 of the two union members who were fired after the September 2010 strike, E Garment has failed to take any further corrective action to address the very serious violations of Cambodian law, buyer codes of conduct and international labor standards that have been identified by the WRC. While E Garment initially attempted to give the appearance of being open and willing to engage constructively with external stakeholders, it did not take any tangible steps to remedy the outstanding violations. Instead, as can be seen from this report, since the establishment of the C.CAWDU affiliated union in 2007, the company's actual and ongoing policy and practice has been to deny its employees the free exercise of their associational rights.

The WRC continues to urge E Garment's buyers – VF Corporation, Inditex, H&M, Vantage Custom Classics, PVH, Kohl's Department Store and Marks and Spencer – to require the company to remedy its violations of its workers' rights through the immediate implementation of the recommendations outlined in this report. While a significant time has passed since the company committed these violations, the workers and the C.CAWDU union whose rights have been denied as a result of E Garment's misconduct continue to seek redress.

The lack of remedial action also continues to have a chilling effect on not only the employees of E Garment but other Cambodian garment workers who seek to exercise their associational

rights. Conversely, it sends a message to other garment factory owners that they, too, may violate such rights with impunity – even through complicity in acts of violence against their own workers – and face no meaningful consequences from the brands and retailers with which they do business.