

WORKER RIGHTS CONSORTIUM FACTORY ASSESSMENT

Trax Apparel (Cambodia) Co., Ltd.

*Findings, Recommendations, Company Response,
Current Status of Remediation*



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WORKER RIGHTS
CONSORTIUM

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I. Introduction and Executive Summary

This report details the findings and recommendations of the Worker Rights Consortium’s (“WRC’s”) investigation at Trax Apparel (“Trax”), a sportswear factory in Phnom Penh, Cambodia, of violations of Cambodian labor law, international labor standards, and university and brand codes of conduct. The report also reviews the company’s response to these violations—specifically, Trax’s refusal to date to adequately remedy these violations.

Trax, which employed 2,853 workers at the time of the WRC’s investigation in early 2022, is owned and operated by Liberty Inter Group, a Thai sportswear manufacturing conglomerate that also operates factories in Thailand, Indonesia, and Vietnam.¹ Trax has been disclosed as a supplier by Triform Custom Apparel, adidas’ licensee for collegiate apparel, and thus, the factory is required to comply with university codes of conduct.² The factory also produces noncollegiate apparel for adidas, including apparel under license from the Manchester United Football Club.³ The factory is also disclosed as a supplier of noncollegiate goods by New Balance.⁴

The WRC’s assessment of Trax found that the factory violated workers’ right of freedom of association, as protected under Cambodian law, international labor standards, and university and brand codes of conduct, by:

- In April 2020, retaliating against eight workers who are leaders and activists in a then newly registered union at the factory, using a layoff due to the economic impact of the Covid-19 pandemic as an opportunity to discriminatorily target these workers for termination;
- In December 2021, an agent of Trax and a factory manager making multiple (unsuccessful) attempts to bribe a Cambodian labor federation, which were captured in audio recordings, wherein the factory management proposed that the labor federation abandon its efforts to secure the fired worker union leaders’ reinstatement in exchange for illegal payoffs from the company;
- In April 2022, refusing to reinstate any of the eight discriminatorily dismissed employees, unless four of these workers agreed to forfeit their own right to reinstatement and all of the terminated employees agreed to sacrifice a substantial part of their owed back wages; and
- From April 2022 to the present, deliberately segregating the four discriminatorily dismissed worker union leaders whom the company agreed to reinstate, in an area of the factory where they are isolated from more than 95 percent of the plant’s other workers.

¹ Liberty Group, “About Us.” Available at <http://www.libgroup.com/who-are-we/#aboutus>

² Collegiate Licensing Company, Special Agreement on Labor Codes of Conduct, Sched. I (Labor Code).

³ Manchester United, “Store: home kit,” accessed on August 26, 2022 at https://store.manutd.com/en/manchester-united-home-authentic-shirt-2022-23/p-2358250085962267+z-999-505921453?_ref=p-HP:m-NK2:pi-CAROUSEL_KIT:i-r0c1:po-1

⁴ New Balance, “List of Tier 1 suppliers” (February 2022). https://www.newbalance.com/on/demandware.static/-/Library-Sites-NBUS-NBCA/default/dwce556208/pdf/NB_Tier_1_Supplier_List_Feb_2022.xlsx

As noted above, although Trax discharged the eight union leaders and activists more than two years ago, and despite extensive engagement by the WRC with adidas in the interim, Trax has, to date, reinstated only four of these workers to their jobs in the factory. Moreover, the factory has paid the eight dismissed union leaders and activists only roughly US\$2,000 per worker. The WRC has calculated that this is, on average, less than 50 percent of the back wages needed to make these employees whole for the economic harm the factory has inflicted on them.

Furthermore, as noted, Trax has continued to discriminate against the four worker union leaders it has reinstated, after their return to the factory, by segregating them from other workers in an isolated area of the premises and preventing them from entering the main production floor outside of work hours. Finally, there is no indication that adidas has taken any steps to hold the factory accountable for having attempted to bribe the trade union federation to abandon the fired workers' efforts to secure reinstatement, in return for payoffs to the union federation from the factory.

Since Trax has had ample opportunity to correct these violations, but has chosen not to do so, the WRC concludes that it is necessary for adidas, in accordance with its responsibilities as a university licensee, to require the factory to complete these remedial actions as a condition of further business. The WRC is sharing this report with adidas, as well as with the universities that are adidas' licensors, and requesting adidas' response as to whether adidas will take these necessary measures.

II. Methodology

A. Sources of Evidence

The WRC findings of violations of workers' freedom of association at Trax are based on the following sources of evidence:

- Detailed confidential interviews, conducted away from factory premises, with current and former Trax workers;
- Review of relevant factory records and documentation provided by workers, including worker pay slips and company announcements, agreements, and communications between workers, worker representatives, and factory management (including audio recordings);
- Review of conciliation meetings convened by the Cambodian Ministry of Labor and Vocational Training ("MOLVT") between factory workers and management; and
- Written communications with adidas.

It is important to note that Trax asserted, via adidas, various factual claims, that the factory alleges demonstrate that its 2020 termination of the worker union leaders and activists was not discriminatory or retaliatory in nature. However, despite several requests by the WRC over the course of more than nine months, neither the factory nor adidas ever supplied any documentation to support these claims.

The purported documentation that the factory claims supports its claims, but has repeatedly failed to furnish to the WRC (despite the WRC's requests), included performance appraisals the factory said it conducted of workers in 2019 and 2020, a list of factory employees, payroll documents, and renewals of employment contracts, as well as documents the factory said had been signed by the workers' union that supposedly contain admissions that bolster Trax's assertions.

Trax's repeated failure to provide these purported documents is particularly significant because, in the case of some of them, workers provided credible testimony casting doubt on whether they actually exist. In particular, the leaders of the workers' union denied signing documents that, according to the factory, contained admissions supporting the company's position. Additionally, factory workers denied ever being informed by the company that it conducted performance appraisals of employees. In light of the company's failure to produce such documents, despite several requests and the testimonies of workers raising questions as to these documents' very existence, the WRC cannot credit assertions by the factory that rest on such purported documents' supposed content.

B. Terms of Reference

The WRC assessed Trax's labor practices and working conditions as they relate to violations of freedom of association with reference to the company's obligations under Cambodian labor laws

and regulations, international labor standards, and university and vendor codes of conduct. These terms of reference include:

- Labor Code of the Kingdom of Cambodia, 1997;
- Cambodian Law on Trade Unions, 2016;
- Other *prakas* (regulations), notifications, and instructions of the Cambodian labor authorities;
- Conventions of the International Labour Organization (ILO) that Cambodia has ratified;⁵
- University codes of conduct;⁶ and
- adidas' and other brands' vendor codes of conduct.⁷

⁵ Cambodia has ratified 13 Conventions of the ILO, including all of the ILO's eight "Fundamental Conventions," which include Conventions 87 ("Freedom of Association and Protection of the Right to Organise") and 98 ("Right to Organise and Collective Bargaining").

⁶ Collegiate Licensing Company, Special Agreement on Labor Codes of Conduct, Sched. I (Labor Code).

⁷ adidas Group, "Guidelines on Employment Standards (updated 2020)." https://www.adidas-group.com/media/filer_public/eb/a2/eba27acf-3ef2-4e22-b677-ac3e3d988692/adidas_employment_guidelines_november_2020.pdf

III. Findings, Recommendations, and Company Response

The sections below detail the findings of the WRC with respect to actions and omissions by Trax's factory management that violate Cambodian labor laws, university and brand codes of conduct, and international labor standards concerning freedom of association.⁸

A. Background Information

1. December 2019: Workers establish independent union at factory, elect employee leaders

On November 26, 2019, workers at Trax delivered a letter to the company notifying the management that employees were establishing an enterprise-level union affiliated with the labor federation, Cambodian Alliance of Trade Unions ("CATU"), and were holding elections for the union's leadership positions. The letter was signed by three factory employees who were candidates for election to leadership positions in the newly formed union (Mses. Yorn Yet, Khen Vin, and Kong Sok-Aun)—all of whom, along with other worker union leaders and activists, were, as discussed below, subsequently terminated by the company on the same date.

Mr. Korng Bunkim, a human resources officer at the factory, acknowledged the company's receipt of the newly formed union's letter on November 26 by signing the copy submitted by these three workers. The following day, 16 workers who were the union's founding members met again and elected Ms. Yet as the union's president, Ms. Vin as its vice president, and Ms. Sok-Aun as its secretary.

Four months later, on March 17, 2020, the Cambodian MOLVT issued the union formal, legal registration. The worker union leaders reported to the WRC that they received the union's registration documents from the MOLVT by the end of March and believed that the company would have received these documents from the ministry at the same time that they did. Trax claims, however, that it only received the union's registration documents from the MOLVT on April 8, 2020. In any case, however, Trax management already had received, in November 2019, the letter notifying the management of the union's formation that had been signed by the three worker union leaders, Mses. Yet, Vin, and Sok-Aun.

2. April 4, 2020: Factory announces plan to reduce workforce by 620 employees

On April 4, 2020, roughly two weeks after the labor ministry issued the new union its registration, Trax's management reportedly met with representatives of two other unions that were already established at the company, which are affiliated with the labor federations, Protection of Worker Rights Independent Union and the Khmer Union of Workers' Spirit—both of which are known to be non-independent and subject to the influence of the government and employers.⁹ At this meeting, the management reportedly stated that because the Covid-19 pandemic had reduced the

⁸ The WRC's investigation, as reported in this document, focused solely on the factories' labor practices in the area of freedom of association, and as a result should not be construed as a certification of the factories' compliance or noncompliance with respect to its practices in other areas.

⁹ See, e.g., Serrano, Melisa R. and Veasna Nuon, "Unions and Development in Cambodia" *Friedrich-Ebert-Stiftung* (2018).

factory's order volume, the company had decided it needed to reduce its workforce by 620 employees, from 2,853 to 2,233 workers.

According to Trax's managers, the company planned to achieve this downsizing by declining to renew the employment agreements of 620 workers who, like nearly all of the factory's workforce, were employed under three-month, short-term contracts (known in Cambodia as fixed duration contracts or "FDCs"). The management indicated that the workers whose employment the factory would be ending were specifically those whose contracts were expiring by the end of the current month (i.e., April 25, 2022).¹⁰

On April 9, 2020, which, Trax management claims, was one day after the company received the registration documents of the new CATU-affiliated union—including a full list of its leaders and founding members—Trax released a list of the 620 workers whose employment the company intended to end through nonrenewal of their FDCs. The company's list included the entire leadership committee of the CATU-affiliated union (consisting of seven union leaders) and another worker who was a prominent union activist in the factory).

For most workers at Trax, the company's issuing the list of the workers whose contracts were not going to be renewed was the first time they were informed of the planned mass termination. The CATU labor federation immediately conveyed its objection to the terminations to the factory management. In response to the CATU's objection, the factory management, on April 9, held another meeting with the leaders of the enterprise unions at the factory—which, this time, included the leaders of the new CATU-affiliated union, Ms. Yet, Vin, Sok-Aun, and Ny Thea, as well as an official from the MOLVT, Mr. Ou Rothana.

During this meeting, the leaders of the CATU-affiliated union argued against the factory terminating the 620 workers. The union leaders pointed out that on March 6, 2020 the Cambodian government had appealed to factory owners¹¹ to follow the recommendation which the government had issued to employers in February 2020¹² that, rather than terminating workers on account of the economic

¹⁰ Trax sets all of its production workers' FDCs to expire (and, therefore, be up for renewal) on the 25th day of the agreement's third month.

¹¹ Ministry of Labour and Vocational Training, Appeal on Implementing the Suspension of Employment Contracts for the Textile, Garment, Footwear, Travel Goods and Bag Sectors Affected by Lack of Raw Materials due to Acute Respiratory Illness CoVid-19, (March 6, 2020) ("The Ministry of Labour and Vocational Training would like to remind and appeal to owners or director of enterprises and establishment, workers/employees, professional organization in the sector of Textile, Garment, Footwear, Travel Goods and Bag Sectors Affected by Lack of Raw Materials due to Acute Respiratory Illness CoVid-19 [...] should not take this chance to change contract suspension to contract termination or change the type of employment contract, or terminated employment contract by discriminating against union leaders.").

¹² Ministry of Labour and Vocational Training, Instruction 14/2020 re Suspension of Employment Contracts, Registration for Studying Soft Skills and Suspension of NSSF Contributions for the Textile, Garment, Footwear, Travel Goods and Bag Sectors Affected by Lack of Raw Materials due to Acute Respiratory Illness CoVid-19 A – Requests for Suspension of Employment Contracts, clause A ("Based on the spirit of Article 71 and Article 72 of the Labour Law, for factories which severely lack materials or have any special difficulty which results in a suspension of any production activities, these relevant parties must act according to the following procedures: For factory owners or directors, they must: Submit a letter requesting suspension of employment contracts to the Department of Labour Inspections for factories in Phnom Penh, or to the Provincial Department of Labour and Vocational Training for factories in the provinces.")

impact of the pandemic, employers, instead, suspend employees for a period of two months, which they could later extend if needed.¹³

During this meeting, Mr. Ou Rothana, the MOLVT official, noted that the advisory issued to employers by the Cambodian government on April 7, 2020, indicated that employers were only required to pay workers US\$30 per month during the term of such suspensions, which the government would supplement by paying an additional US\$40 per month to each employee.¹⁴

Trax's management responded to the objections voiced by the CATU union, and the advice provided by the MOLVT representative, by agreeing to suspend the 620 workers for two months, beginning on April 27, 2020, rather than terminating them. However, between the April 9 meeting and April 27, Trax management encouraged many of the 620 workers it had originally targeted for dismissal to voluntarily resign, rather than wait to be suspended, offering these employees additional compensation if they did so.

As a result, of the 620 workers whom Trax had originally announced its intention to terminate, 252 chose to resign with compensation before April 27, rather than be suspended by the company. In the case of the remaining 368 workers in this group of 620, who did not resign, Trax renewed their FDCs at the end of April; however, it did so for a period of only two months (i.e., until late June, the expected end of their two-month suspensions) rather than offering them three-month contracts, as had been its prior practice.

3. April – June 2020: Factory suspends, then terminates, 368 employees, including all eight leaders and activists from new independent union

On April 27, Trax suspended the 368 remaining workers, who included all of the key leaders of the CATU union. Trax management informed these workers that they would receive US\$70 per month while they were on suspension and that they could return to work on June 27, 2020, contingent on the company receiving more orders from its buyers in the interim. Two days before the end of the suspension period (i.e., on June 25), however, the factory management told the suspended workers that the company would not renew their FDCs and was thereby terminating their employment.

On July 8, 2020, the eight worker leaders and activists of the CATU-affiliated union, all of whom were among the group of 368 employees whom Trax had just terminated, filed a complaint with the

¹³ Labor Code, Article 71(11) (“The labor contract shall be suspended under the following reasons: [...] when the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labor Inspector.”)

¹⁴ Royal Government of Cambodia, Press Release On The Royal Government of Cambodia’s Instruction on the Additional Measures to Help the Private Sector and Workers Severely Impacted by the COVID-19 Pandemic (Round 3, April 7, 2020), clause 1. The press release was subsequently further detailed by the Ministry of Labour and Vocational Training, Instruction 45/20 re Employment Contract Suspension and Suspension of NSSF Contribution Payment for Factories, Enterprises, Establishments in the Garment and Tourism Sectors Severely Affected by Covid-19 (April 17, 2020).

MOLVT seeking their reinstatement.¹⁵ The MOLVT then convened a reconciliation meeting where Trax refused to reinstate the union leaders and activists.

Despite the requirement under Cambodia labor law, that, when a reconciliation meeting fails to resolve a union's complaint, the MOLVT must forward that complaint to the country's Arbitration Council to be adjudicated, the MOLVT refused to do this with the CATU-affiliated union's complaint against Trax.¹⁶ Instead, as has been its frequent, though legally questionable, practice for the past several years, the MOLVT classified the complaint as an individual dispute rather than a collective one, thereby rendering it non-arbitrable.¹⁷

In its communications with the WRC, however, adidas has claimed that the MOLVT made a determination that Trax's termination of the workers was legal and nonretaliatory. If so, however, no such determination was ever shared by the ministry with the CATU federation, and neither adidas nor Trax have ever produced evidence of such a determination having been made. In any case, such a determination would have been outside of the MOLVT's statutory remit, which is solely to attempt conciliation of labor disputes, not to adjudicate their merits—a role which is reserved for the Arbitration Council and the courts.¹⁸

4. August – December 2020: Factory offers rehiring to most workers affected by downsizing—but refuses to rehire any of the fired worker union leaders and activists

In August 2020, however, less than one month after Trax refused to reinstate the eight worker union leaders, the company began to rehire other workers among the 368 employees it had terminated at the end of June. According to adidas, Trax began rehiring after adidas reinstated a number of its orders with the factory.

Interviews with factory workers indicate that a majority of the 620 workers who had resigned in return for compensation or were terminated by Trax between April and June 2022 were contacted by their former supervisors and offered rehiring at the factory. This conclusion is also supported by the fact that adidas, itself, acknowledged that no fewer than 207 out of the 620 workers in total who

¹⁵ Labor Code, Article 303 (“If there is no planned settlement procedure in a collective agreement, the parties shall communicate the collective labor dispute to the Labor Inspector of their province or municipality. However, the Labor Inspector can take legal conciliation proceedings upon learning of the collective labor dispute even though he has not been officially notified.”); Article 304 (“The Minister in Charge of Labor shall designate a conciliator within forty-eight hours from the moment he learns of the dispute.”) and Article 305 (“Conciliation shall be carried out within fifteen days from the designation by the Minister in Charge of Labor. It can be renewed only by joint request of the parties to the dispute.”).

¹⁶ Labor Code, Article 308 (“In the absence of an agreement, the conciliator shall record and indicate the key points where the conciliation failed and shall prepare a report on the dispute. The conciliator shall send such record and report to the Minister in Charge of Labor within forty-eight hours at the latest after the conclusion of conciliation.”); Article 309 (c) (“If conciliation fails, the labor dispute shall be referred to settle: [...]by the arbitration procedure provided for in this Section.”); and Article 310 (“In a case covered by paragraph c) of Article 309 above, the Minister in Charge of Labor shall refer the case to the Council of Arbitration within three days following the receipt of the report from the conciliator as specified in Article 308 above.”).

¹⁷ Labor Code, Article 302 (“A collective labor dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers; and where this dispute could jeopardize the effective operation of the enterprise or social peacefulness.”).

¹⁸ Labor Code, Articles 302-312.

resigned or were terminated during this period not only received but also *accepted* offers of rehiring from the factory.¹⁹ However, *none* of the eight employee union leaders and activists who were among those who had been terminated were contacted and offered rehiring.

In early December 2020, the worker union leaders sent a letter of complaint to two of Trax Apparel's customers, adidas and New Balance, requesting that those brands help secure their reinstatement. On December 10, the MOLVT invited the employee union leaders to another conciliation meeting on December 17, 2020. During this meeting, the factory management again refused to reinstate the worker union leaders and activists.

B. Findings of Violation of Freedom of Association

Both Cambodian labor law and university and brand codes of conduct prohibit employers from discriminating on the basis of union membership or activity when hiring or terminating workers.²⁰ The WRC found that Trax violated these standards by discriminatorily both, first, targeting for termination and, later, denying rehiring to the eight worker union leaders and activists.

1. Trax failed to provide any evidence to support the claim that termination of eight worker union leaders and activists was nonretaliatory

According to adidas, Trax management claims that it selected the 620 workers it intended to terminate in April 2020 nondiscriminatorily, based purely on the fact that these workers' FDCs were already due to expire at the end of that month. Trax further claims that the reason it did not offer to rehire the worker union leaders and activists at the same time that it made such offers to other workers who had resigned or been terminated, was due to the worker union leaders and activists having been rated lower than the other former employees in performance appraisals that the company says it conducted of all factory employees prior to April 2020.

The WRC has requested on multiple occasions since December 2021 that adidas and the factory provide documentary evidence in support of these claims, including but not limited to employment contracts, rosters of employees, and copies of workers' purported performance appraisals. Although Trax, via adidas, originally promised to provide these documents, to date neither has provided a single document in support of the factory's claims. As a result, since the factory and adidas have had ten months to produce these documents, but have chosen not to do so, the WRC must conclude that these claims are not supported by evidence.

¹⁹ Given that 252 of the 620 terminated employees had accepted their dismissal voluntarily, it is reasonable to conclude that a substantial number of workers were offered to be rehired but declined to accept.

²⁰ Labor Code, Article 12 ("Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of: [...] membership of workers' union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.").

2. Available evidence shows Trax’s explanation for selection of worker union leaders and activists for termination was pretext for retaliatory discharge

Trax claims that it only selected workers for termination whose FDCs were already due to expire in April 2020. However, substantial documentary and testimonial evidence²¹ supports the conclusion that, of the eight worker union leaders and activists whom the company selected for termination, four of these employees (50 percent) did not actually meet this criterion—i.e., they were *not* actually employed on FDCs due to expire in April 2020.

The available evidence indicates that two of these workers, the union’s secretary and treasurer, were employed under FDCs that were not due to expire until *after* April 2020. Moreover, another of the fired worker union leaders was not employed under an FDC at all, but instead had a long-term employment contract (known in Cambodia as an unlimited determination contract or “UDC”) and thus her contract did not even have an expiration date.

Finally, another of the terminated workers, Ms. Ny Thea, who was a union activist, had been employed by the factory, at the time of her dismissal, for more than two years—having started working at Trax in the first part of 2018. Under Cambodian labor laws, after two years of employment, workers must be treated as being employed under a UDC, even if their employer continues to issue them an FDC.²² For this reason, as a matter of Cambodian law, even though this worker’s employment contract was formally an FDC, her legal contractual status was that of being employed under a UDC, as Trax was doubtless aware.

In sum, contrary to Trax’s claim that the company’s sole criterion for selecting employees for termination in April 2020 was that the workers it chose to dismiss were employed under FDCs due to expire at the end of that month, half of the worker union leaders and activists (four out of eight) whom Trax terminated in June 2020 did not actually fit this criterion. This is compelling evidence that Trax’s purported nondiscriminatory reason for including the eight union leaders and activists in the group of workers the factory terminated was pretextual, and that the company’s actual motive was to retaliate against them for their union activities.

3. Available evidence shows Trax’s explanation for refusal to rehire dismissed worker union leaders and activists is also pretext for retaliation

The available evidence indicates that Trax’s explanations for why the company did not offer to rehire the eight union leaders and activists at the same time that it offered rehiring to other workers among the group selected for termination in April 2020 is pretextual as well. Again, Trax’s claim is that the reason it did not offer to rehire the worker union leaders and activists at the same time that

²¹ Employees identification cards and pay stubs reveal the month that the workers started their employment at the factory, from which the month that their contracts were due to be renewed can then be calculated.

²² Labor Code, Art. 67 (2) (“[T]he labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule leads the contract to become a labor contract of undetermined duration.”); and Arbitration Council Award 10/03 (“The Arbitration Council finds that contracts of employment of fixed duration shall automatically be transformed to undetermined duration contracts where the total duration of the employment contract (including the period of the initial contract and any renewals) exceeds 2 years.”).

it offered to rehire other terminated employees was because the worker union leaders and activists supposedly had been rated lower than these other employees in prior performance appraisals.

As noted, Trax has failed to produce any documentary evidence of such performance appraisals having been performed, and workers have testified to having no knowledge of their existence. The latter testimony is persuasive evidence that the alleged performance appraisals were not actually conducted, since there is little value in performing regular performance appraisals if employees are never even informed that they are being evaluated, much less informed of the results.

Running counter to Trax's claims that the terminated union leaders and activists were worse performers than the terminated employees whom the company offered rehiring, several of the dismissed union leaders and activists had more than a decade of experience as sewing machine operators. Moreover, in the case of all eight of the worker union leaders and activists that the factory terminated, Trax had renewed their FDCs at least three times prior, before terminating and refusing to rehire them. This is an indication that the management had not previously found their work to be unsatisfactory.

Given their level of experience in the industry, the fact that the factory management clearly had found their work acceptable in the past, and the complete absence of any actual evidence of negative job evaluations, it is highly unlikely that these employees' job performance was at all, much less substantially, worse than that of other workers whom the company did offer to rehire. Therefore, the available evidence also favors the conclusion that Trax's stated explanation for refusing to rehire the worker union leaders and activists was pretextual as well, and that the real reason for the company's refusal to permit their return to the factory was retaliatory in nature.

4. Statistical analysis shows near certainty that Trax's terminating and refusing to rehire worker union leaders and activists had discriminatory motive

Finally, the WRC consulted a professional statistician to calculate the probability that, in Trax's layoff of 620 out of 2,583 workers in 2020, all seven of the workers who comprised the leadership of the newly formed union could have been, first, included in the group of 620 workers selected for termination, *and*, second, excluded completely from the group of 207 workers who ultimately were rehired by the company—absent an attempt to target these employees based on their union activities. The statistician determined that the chance of both of these outcomes occurring, absent an intent to discriminate against the union leaders, was less than *one hundredth of one percent*. In other words, the statistical likelihood that Trax *did* intentionally target the union leaders first for termination and then for refusal to offer rehiring, is *more than 10,000-to-1*.

Based on the totality of both this statistical evidence, and the testimonial and documentary evidence discussed above, the WRC finds that Trax discriminatorily terminated and then, refused to rehire the eight union leaders and activists in retaliation for their exercising their right of freedom of association—and thereby violated this right as protected under Cambodian labor law and university and brand codes of conduct.

C. Recommendations for Corrective Action, and Factory and Licensee Response

The WRC wrote to adidas on October 31, 2021, sharing the initial findings of our investigation and recommending that adidas require Trax to either reinstate the union leaders and activists to their original positions with full back pay from the date of their termination, or, alternatively, provide credible countervailing evidence to dispute these preliminary findings.

1. adidas and Trax deny violations, but fail to provide any evidence to support their claims

adidas responded to the WRC on November 29, 2021, by forwarding the series of factual assertions by Trax management discussed above, by which the factory management claimed that its terminations of and refusal to rehire the eight union leaders and activists were nondiscriminatory. As noted above, the WRC in December 2021 and on several subsequent occasions, asked adidas to require Trax to provide documentary evidence in support of its assertions. However, to date neither Trax nor adidas have provided *any* documentation in support of these claims.

2. At adidas-sponsored ‘mediation’, Trax agrees to reinstate some dismissed workers, partial back pay—if other fired workers forfeit jobs, remaining owed back wages

At the same time, adidas asked Trax and the CATU labor federation to participate in a mediation process as an attempt to reach a resolution to this dispute.²³ During this mediation process, however, Trax demanded that the union agree to settle the dispute on terms that would fall far short of correcting the factory’s violations of workers’ freedom of association rights (and, by extension, its violations of university labor standards), as they would not provide offers of reinstatement and full back pay to all of the fired union leaders and activists.

Specifically, Trax refused to reinstate half of the terminated worker union officers and activists, and only agreed to reinstate the other four workers to their jobs on the condition that they pass a company-devised test of their abilities as sewing machine operators (even though they had been previously employed by the factory in exactly the same position under multiple employment contracts). In addition, Trax only offered to pay the dismissed workers US\$2,000 each in compensation—just 50 percent of the back pay that the WRC calculated was legally owed to each of them at that time.

3. Trax attempts to bribe labor federation to abandon fired workers seeking reinstatement—in exchange for illegal monthly payments to federation from factory

Most disturbingly, parallel to the mediation process initiated by adidas, Trax also pressured the CATU labor federation and offered it financial inducements (i.e., a bribe) to accept a settlement that would forfeit the fired workers’ rights under university codes of conduct. The WRC obtained

²³ In subsequent communications with the WRC, adidas has claimed that the CATU labor federation requested mediation; however, this is inaccurate. The CATU federation agreed to participate in the mediation, at adidas’ request, in the expectation that this process would permit Trax to remediate the violations without admitting wrongdoing.

multiple sources of evidence confirming that Trax offered the CATU federation illegal payoffs to stop seeking reinstatement of the fired workers.

First, Trax requested a meeting with key officers of the CATU federation outside the mediation process, and in this meeting Trax's administrator and human resources managers tried to persuade the labor federation's officers to push the fired worker leaders and activists to accept compensation in lieu of reinstatement. After the CATU officers refused to accede to this demand, Trax then tried to bribe the union federation to abandon the workers' efforts to get their jobs back.

At the end of December 2021, a "Mr. Kong," who had accompanied Trax's administrator to previous meetings with the CATU labor federation and had been introduced to the union's representatives as the manager's "friend," left several voice messages on the phone of the CATU's president. In these voice messages, Mr. Kong explained that the "factory [Trax] decided to cooperate with you and wants to support ... your office's equipment to encourage you, and they will [contact you] soon." Trax's administrator later called the CATU's president again and told her that she "should consider receiving a monthly contribution from Trax" in exchange for pressuring the terminated workers to accept the company's offer of compensation in lieu of reinstatement.

The WRC has not previously encountered such unethical conduct at a factory producing university goods. By attempting to bribe the union federation to cease supporting reinstatement of the fired worker leaders and activists, Trax deliberately sought to undermine remediation of a violation of university codes of conduct.

The CATU labor federation did not accept the bribe offered by Trax's management. However, even attempting to bribe a workers' organization in order to influence its policies and collude in a violation of workers' rights is, in itself, a very serious violation of freedom of association, and, by extension, university labor standards.²⁴

4. adidas-sponsored 'mediation' results in coercive 'settlement' that fails to correct violations

However, the federation, in consultation with the dismissed workers, decided that, given that the union's entire leadership at Trax had now been kept outside the factory for nearly two years, the only way for the workers' union to survive was for the CATU federation to accept Trax's offer to reinstate half of the union's leaders and activists. On April 4, 2022, as part of the adidas-sponsored 'mediation' process, the CATU and Trax signed an agreement whereby four of the eight dismissed union leaders and activists would be reinstated and all eight workers would receive US\$2,000 each (as noted, roughly 50 percent of the back wages they were owed at the time).

International labor standards governing the right of freedom of association—and, by extension, university codes of conduct—require that when workers are discriminatorily terminated on account

²⁴ ILO Convention 98 ("Right to Organize and Collective Bargaining"), Article 2 ("Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. In particular, acts which are designed to ... support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute [such] acts of interference....").

of their union activities, the *minimum* corrective action required is reinstatement of the workers to their original positions with full seniority and back pay from the date of termination to the effective date of reinstatement.²⁵ In this case, the *maximum* corrective actions that Trax was willing to take fell far short of this standard, since the company refused to reinstate four out of eight of the fired union leaders and activists, and withheld from all of these workers half of the back pay they are owed.

adidas has claimed that the four workers whom Trax refused to reinstate accepted this outcome voluntarily. adidas deliberately ignores the fact that these workers only agreed to the factory's demand that they forgo reinstatement under duress, having been told by the company that, if they did not agree to forfeit reinstatement, the company would refuse to reinstate *any* of their dismissed co-workers. Indeed, of the four terminated union leaders and activists whom Trax refused to reinstate, three have recently confirmed to the WRC that they *still* wish to return to the factory.

Similarly, Trax conditioned payment of *any* of the back pay it owed the workers (who desperately needed these funds) on those workers forfeiting their claim to the rest of the money they were owed. Imposing on workers, as a condition of *some* workers receiving *some* remediation of violations of their rights to freedom of association, that they and other workers forego the rest of the remediation they are due is a further violation by the company of its obligations to respect this right under international labor standards and university codes of conduct.

For this reason, the WRC has informed adidas that, in order to correct the discriminatory dismissals of the eight union leaders and activists in July 2020, and comply with university labor standards, adidas must require Trax to offer reinstatement to the three union leaders and activists who remain outside the factory but have indicated they wish to return, and pay the remaining back pay that is due to all eight of the fired workers. For the four workers who have been reinstated and the one worker who elected not to return to the factory, the outstanding amount is the average wages they would have earned had they not been terminated, minus the \$2,000 each that they already received from the company under the April 2022 agreement (which is estimated to total US\$10,900 for all five workers). In the case of the three workers who want to return to the factory but whom Trax has refused to reinstate, the additional back pay they are owed is equal to the average wages they would have earned, if they had not been fired, from the date of their termination to the effective date when Trax provides them reinstatement, minus the US\$2,000 each that the company already paid.

5. Trax reinstates some dismissed workers—then retaliates against them again in factory

On April 25, 2022, Trax reinstated the four union leaders and activists it had promised to take back under the coercive April 22 agreement. However, Trax did not return these workers to their original jobs, which were on the main sewing line on the second floor of the factory, as international standards for remedying violations of freedom of association required it to do. Instead, the company segregated these four workers in a separate area of the factory, away from nearly all of the plant's

²⁵ ILO, Compilation of Decisions of the Committee on Freedom of Association, § 1169 (“If it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay.”). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO:70002:P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3947478,2.

other workers, where only roughly 40 other employees worked (out of a workforce of more than 2,800).

The factory management's segregation of the dismissed union leaders and activists upon their return to the factory was entirely contrived and deliberate. Indeed, just prior to the four fired workers' reinstatement, Trax's management transferred four other workers *away* from the smaller work area to the factory's main production area in order "to make room" for the reinstated workers in this isolated area of the plant.

Furthermore, during the months following the workers' reinstatement, Trax's management, while claiming that it would "consider" returning these employees to their original jobs on the factory's main production floor, in fact, acted to further isolate them from other workers. The company deliberately transferred some of the other employees who were working with the reinstated union leaders *away* from the isolated area of the factory and back to the plant's main production floor.

As a result, the company managed to segregate the four fired union leaders whom it had reinstated from all but a handful of other workers in the factory. Isolating workers from other employees on account of the former's association activities, as Trax has done in the case of the four reinstated union leaders, is a further violation of the freedom of association under international labor standards and university codes of conduct.²⁶

Indeed, even after the CATU federation protested the company's segregation of the reinstated worker union leaders to Trax and adidas, the factory management still refused to return these workers to their original jobs in the main production area. Instead, most recently, Trax has chosen to transfer a modest number of other workers from the main production area *into* the isolated area



Figure 1: Room where reinstated worker leaders are segregated

of the factory where it is keeping the reinstated employees, so as to be able to claim that the latter are not being wholly segregated from other employees.

However, to date, the reinstated worker union leaders are still being kept in an area where they are isolated from more than 95 percent of the factory's other employees. Photographic evidence reveals the obvious contrast between the relatively small and sparsely occupied area where the reinstated union leaders have been assigned (*Figure 1*), and the much more expansive, but densely populated, main production floor of the factory (*Figure 2*).

Trax's management further enforces its segregation of the four reinstated union leaders from the rest of the factory's workforce by prohibiting them from entering the main

²⁶ Labor Code, article 12 ("Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of: [...] membership of workers' union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.").

production floor outside of their regular work shift, thereby limiting their ability to converse with other employees.²⁷ Trax's ongoing segregation of the reinstated worker union leaders from its other employees represents not only a further act of retaliation against these four workers for their associational activities, but a violation of the freedom of association of all of its other employees as well (in further violation of university codes of conduct).²⁸

Figure 2: Main production floor where other employees work



6. Trax continues to refuse to reinstate dismissed worker leaders who are still outside factory and to pay remaining back wages it owes

In addition, Trax continues to refuse to reinstate the three remaining union leaders dismissed in July 2020 who are still outside the factory and seeking to return to their jobs. In a written communication to the CATU federation, dated August 1, 2022, Trax's management made it clear that it continues to deny these workers reinstatement, saying that they must apply for work as "new employees," at which point the company will consider their applications.

Unfortunately, adidas, in its most recent communications with the WRC, dated October 11, 2022, has endorsed the factory's position, even though it blatantly contradicts the requirements of international labor standards (and university codes of conduct). International labor standards on freedom of association require that employees terminated for exercising associational rights be *reinstated* to their original jobs, with full seniority, rather than just being offered the *possibility* of being *rehired* as new employees, at the company's discretion.²⁹

²⁷ adidas, for its part, defends Trax's segregation of the reinstated union leaders, asserting that the company permits them to leave the isolated area to which they have been assigned, for the purpose of attending grievance meetings. Allowing a detainee to occasionally leave their place of detention does not alter the fact that they have been detained.

²⁸ Collegiate Licensing Company, Special Agreement Regarding Labor Codes of Conduct, July 2016, Labor Code Standards ("CLC Labor Code Standards"), Schedule I, B.9. "Freedom of Association and Collective Bargaining: Licensees shall recognize and respect the right of employees to freedom of association and collective bargaining."

²⁹ ILO, Compilation of Decisions of the Committee on Freedom of Association, § 1169.

IV. Conclusion: Recommendations to Remediate Outstanding Violations

As detailed above, Trax Apparel severely violated its employees' rights under international labor standards and university codes of conduct when it targeted for termination, and then refused to offer reinstatement to, the eight workers who were the core leaders and activists of the newly established CATU union at the factory in 2020. Since that time, Trax has not only failed to remedy these violations, but has also further exacerbated them, by:

- Refusing to reinstate any of the eight discriminatorily dismissed employees, unless half of these workers agreed to forfeit their own reinstatement rights and all of these employees agreed to sacrifice a substantial part of their owed back wages;
- Attempting to bribe the CATU federation to abandon the fired worker union leaders who were seeking reinstatement, in exchange for illegal payoffs from the company; and
- Segregating inside its factory the four discriminatorily dismissed worker union leaders whom the company did agree to reinstate and isolating them from more than 95 percent of the factory's other workers.

Given this record of ongoing bad faith and blatant misconduct, the WRC concludes that Trax is in gross violation of university codes of conduct—and that adidas, by failing to take necessary steps to remedy this non-compliance, is in breach of its obligations to its university licensors as well.

To remedy these violations of university codes of conduct, adidas must ensure that Trax acts immediately to implement the following:

- Offers of unconditional reinstatement to the three fired union leaders and activists who are still outside the factory and seeking to return;
- Full payment of all outstanding back wages to all eight union leaders and activists dismissed in 2020, including: (1) an estimated US\$10,900 in back pay for the four workers who have now been reinstated and the one worker who elected not to return to the factory; and (2) additional back pay for the three workers who want to return to the factory, but to whom Trax has not, to date, offered reinstatement, in the amount of the average wages they would have earned, if they had not been dismissed, from their date of termination in June 2020 to their eventual effective date of reinstatement, minus the US\$2,000 already paid to each of them in April 2022;
- Assignment of all of the reinstated workers to their original jobs within the factory's regular production area, with the same degree of contact with their fellow workers as had typically been allowed in the facility prior to their dismissal;
- Issuance of a statement, reviewed and approved in advance by the WRC and the CATU, and read aloud to all workers by their line supervisors in the presence of representatives of the WRC and CATU, that: The company does not oppose employees joining the CATU-

affiliated union at the factory; will not discriminate or retaliate against employees for their participation in that union's activities; and will impose discipline on managers and supervisors for acts of discrimination or retaliation against workers on account of their associational activities; and

- Commitment in writing to the CATU from Trax that the latter will not attempt, by any inappropriate means, to influence union and labor federation leaders in their representative roles.

Freedom of association—the right of workers to form and participate in unions in order to advocate on their own behalf concerning conditions in their workplace—is a fundamental labor and human right, as recognized under international labor standards and university codes of conduct. It is incumbent on adidas, as a company that has pledged to universities to ensure respect for this right in the factories that produce its licensed collegiate apparel, that, after more than two years, it ceases enabling Trax Apparel to violate this right, and instead require the violations described in this report to be fully corrected and remedied immediately.