



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
I-CHENG CO., LTD. (CAMBODIA)
FINDINGS, RECOMMENDATIONS AND STATUS**

February 13, 2015

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I. Introduction

This report presents the findings and recommendations of the Worker Rights Consortium’s assessment for the City of Los Angeles, California of I-Cheng (Cambodia) Co., Ltd. (“I-Cheng”), a footwear factory located in Takeo, Cambodia that employs approximately 3,000 workers.

I-Cheng has been disclosed as a supplier by Magnum Boots (“Magnum”), a producer of footwear for military and public safety personnel, and a division of Netherlands-headquartered Hi-Tec Sports, Plc./Magnum. In addition to supplying Magnum, I-Cheng also produces footwear for the United Kingdom-based R. Griggs Group, owner of the Dr. Martens brand.

The City purchases men’s and women’s boots produced by I-Cheng for Magnum from Galls Long Beach Uniform (“Galls”), a local distribution company in Southern California, for use by City employees. As suppliers of goods purchased by the City, Galls, Magnum and I-Cheng are subject to the City’s Sweat-Free Procurement Ordinance (“the Ordinance”), which requires that facilities that manufacture clothing and footwear for the City comply with certain labor and human rights standards.¹ The WRC carried out its assessment of I-Cheng pursuant to the WRC’s contractual obligations as the City’s independent monitor of City apparel vendors’ compliance with the Ordinance.

The Ordinance requires City contractors and their subcontractors to comply with all “wage, health, labor, environmental and safety laws, legal guarantees of freedom of association, building and fire codes, and laws and ordinances relating to employment and workplace discrimination,” as well as “all human and labor rights and labor obligations that are imposed by law on the country in which the . . . goods and materials are made or assembled.”² In this case, therefore, the Ordinance requires Magnum to ensure that I-Cheng complies with Cambodian labor laws and regulations and with those International Labor Organization (ILO) Conventions to which Cambodia has bound itself, via either membership in that organization or ratification.

The WRC’s assessment of I-Cheng found violations of Cambodian labor law, relevant international labor standards and, by extension, the City’s Ordinance in the areas of: (1) wages and hours, including payment of a probationary wage that is below the legal minimum, and unlawful involuntary overtime; (2) gender discrimination, including an explicit policy of hiring men on contracts of shorter duration than those under which the company hires women; (3) freedom of association, including the establishment of and compelling membership in a company-controlled labor union, unlawful unauthorized deductions of union dues from workers’ wages, and the illegal retaliatory termination, in May 2014, of 243 employees who were members of an independent union; (4) statutory paid sick leave, including failure to pay such legally-required benefits to employees; and (5) occupational health and safety, including heat levels so excessive that they regularly cause employees to faint on the job. Finally, the WRC also observed that the company had adopted a policy of employing its regular year-round workforce

¹ Ordinance No. 176291 (Nov. 9, 2004) (amending the Los Angeles Administrative Code to establish a sweatshop-free policy for procurement of equipment, materials, goods, and supplies, and to establish compliance procedures for the City’s “Contractor Code of Conduct”).

² Ibid.

on repeating temporary employment contracts, a practice that, while common in the Cambodian garment sector, has been associated with noncompliance with other provisions of the labor law.

To its credit, I-Cheng has carried out many of the actions recommended by the WRC to remedy these violations. The measures the company has taken include: (1) offering reinstatement with back pay to the 243 workers who had been illegally dismissed in May 2014, (2) installing additional ventilation to reduce the heat levels in the factory, (3) shortening the duration of excessively-long probationary periods, (4) ending gender discrimination in duration of employment contracts, (5) ensuring that workers' employment contracts are converted from short term to regular contracts when they have reached two years of seniority, (6) reducing the frequency of mandatory overtime, and (7) eliminating excessive restrictions on employees' use of sick leave and access to factory washrooms. All of these changes have resulted in a meaningful positive impact on working conditions at the factory.

With respect to workers' associational rights, however, the violations identified by the WRC were not fully abated. These unremedied conditions include, most significantly: the continued presence at the factory of a company-created and dominated union; the unlawful deduction of union dues from employees' wages following written requests from workers for their cessation; and excessive delay and restriction in providing the opportunity for reinstatement and back-pay to workers terminated for union activity. The report below discusses the WRC's findings and corresponding recommendations to I-Cheng for corrective and remedial actions, the company's response, and the current status of these issues.

II. Methodology

The WRC initiated its assessment of I-Cheng in August 2013. The WRC's findings and recommendations with respect to I-Cheng are based on the following sources:

- In-depth interviews with current I-Cheng production employees, which were conducted away from the factory at locations chosen by employees themselves;
- Interviews with I-Cheng managers, which were conducted at the factory premises, and email communications with the same;
- Communication with compliance officers of Hi-Tec Sports, Plc./Magnum and R. Griggs Group/Dr. Martens;
- A review of relevant company records;
- Two physical inspections of the factory conducted on September 12, 2013 and May 23, 2014; and two follow up visits on July 23, 2014 and September 30, 2014; and
- A review of relevant Cambodian labor laws.

III. Findings, Recommendations, Remediation and Current Status

A. Wages and Hours

1. Minimum Wage

a. Findings

The WRC found that I-Cheng required all newly hired production employees to complete a probationary period of three to six months, during which it paid these workers a wage that was less than the legal minimum wage for post-probationary employees. Cambodian labor law clearly establishes the maximum probationary periods during which classes of newly-hired employees may be paid less than the standard minimum wage, which are one month for low-skill or “non-specialized” workers, two months for “specialized workers,”³ including sewing machine operators, and three months for non-production employees, such as office staff.⁴

Because I-Cheng required production employees to complete a probationary period whose duration exceeded the legal maximum, while paying them, for this entire period, a wage that was less than the legal minimum wage for post-probationary employees, it violated workers’ right to the legal minimum wage during the period of their probation that exceeded the legal maximum. I-Cheng, therefore, owed employees, for the latter period, the difference between the applicable legal minimum wage for post-probationary employees and the probationary wage that they had been paid during this time.

b. Recommendations

The WRC recommended that, in order to comply with Cambodian law and the City’s Ordinance, I-Cheng should:

- Adopt a clear policy on the duration of employees’ probationary period that is in accordance with Cambodian labor law, including, specifically, that no sewing machine operator should be required to complete a probationary period that is longer than two months; and that cleaners and other lower-skilled workers should have probationary periods of no longer than one month; and

³ See, Cambodian Labor Law, Art. 68 (“[A] contract for a probationary period cannot be for longer than the amount of time needed for the employer to judge the professional worth of the worker and for the worker to know concretely the working conditions provided. However, the probationary period cannot last longer than three months for regular employees, two months for specialized workers and one month for non-specialized workers.”).

⁴ See, *in re Standard Garment*, Cambodian Arbitration Council, Award 27/03 (“recognizing that although, “sewers and cutting cloth employees . . . perform manual labor,” because “this kind of work requires training and some skill . . . [the] A[rbitration] C[ouncil] understands that they are expert employees[,] [s]o, their temporary [i.e., probationary] employment contract should last two months.”). The Arbitration Council is the entity authorized under Cambodian law to interpret the country’s labor code. See, Labor Law, Art. 312.

- Provide back pay to sewing machine operators who received probationary wages following the end of their second month of employment, and to all other production employees who received probationary wages following the end of their first month of employment, in the amount of the difference between the wages they would have received during this period if they had been paid the legal minimum wage for post-probationary employees, and the wages they actually received.

c. Remediation and Current Status

I-Cheng’s management stated in its initial response to the WRC on July 2, 2014 that it disagreed with the law regarding the maximum probationary period for sewing machine operators. The company explained that it considered the production work performed at I-Cheng to be highly specialized and, therefore, believed that a three-month probationary period was needed in order to permit the company to train and assess newly-hired workers. In an email to the WRC on February 6, 2015 I-Cheng further stated that it considered the three-month probationary period which it required newly-hired workers to undergo to be consistent with Cambodian Law.

The WRC explained to I-Cheng in response that while the company was free to disagree with the law, it was not exempted from the obligation to comply with statutory requirements. The WRC further noted that Cambodia’s Arbitration Council, the country’s leading independent body authorized to interpret its labor law, had already ruled on this issue in a case involving another footwear factory, and affirmed the two-month limit for probationary periods for production workers in such facilities.⁵ Finally, the WRC pointed out that if I-Cheng’s management believed that two months was an insufficient period of time in which to train new employees, the company could, of course, provide additional training after the end of the probationary period.

Despite its stated objections to the law’s requirements in this area, I-Cheng has reportedly begun offering newly-hired workers two-month probationary contracts in accordance with Cambodian law. I-Cheng also has agreed to provide back pay to workers who received probationary wages following the end of their second month of employment. In October 2014, the WRC provided I-Cheng’s management with data to assist the factory in calculating the amount of back pay owed to each worker as a result of the excessive probation. However, in early February, 2015, I-Cheng explained it had not yet provided the necessary back pay to employees, but promised that it would do so. The WRC will follow up on the implementation of this commitment.

2. Involuntary Overtime

a. Findings

The WRC found that while I-Cheng has a formal policy against involuntary overtime, according to workers, the factory’s “line leaders” (forepersons) threatened the employees under their direction with discipline if those employees declined to work overtime. Similarly, although I-

⁵ See, *in re Golden Gain Shoes*, Cambodian Arbitration Council, Award 15/11 (“Based on the foregoing, the Arbitration Council orders the employer to convert the status of specialised workers and non-specialised workers to permanent workers after two months and one month of service respectively.”)

Cheng has adopted a written consent form for employees to sign to document that overtime is performed voluntarily, supervisors reportedly often signed the forms, themselves, on behalf of the employees in their work areas.

Cambodia's labor ministry has issued a legally-binding regulation (*prakas*) mandating that, "[o]vertime work must be conducted on a voluntary basis."⁶ This regulation further states that "[e]nterprise owners shall not coerce or take any disciplinary action against workers/employees who do not voluntarily accept to work overtime." I-Cheng violated this regulation and, by extension, the Ordinance, when the factory's line leaders, acting as agents of the company, threatened employees with discipline for refusing to work overtime, and completed forms stating that overtime was being performed voluntarily by the workers they direct, rather than permitting workers to complete these forms themselves in a truthful manner.

b. Recommendations

The WRC recommended that in order to comply with the City's Ordinance, I-Cheng should ensure that the company's formal policy that overtime must be voluntary was clearly understood by employees and enforced by managers by:

- Posting written copies of this policy prominently in the factory;
- Requiring line leaders to read the policy aloud to the workers under their direction; and
- Directing supervisors to refrain from use of threats, discipline or other means to compel employees to perform overtime.

c. Remediation and Current Status

I-Cheng explained in a written communication to the WRC on July 2, 2014 that "involuntary overtime has never been permissible at I-Cheng, and will never be allowed." The company agreed to train supervisors to refrain from using any verbal threats, discipline or other means to compel employees to perform overtime.

Workers report that since the fall of 2014, due to decreased production volume, there has been a reduction in the amount of overtime work available at I-Cheng. Therefore, it has been difficult to assess whether management's reiteration of its voluntary overtime policy has been effective in remedying its supervisors' practices in this area. However, in December 2014, employees testified that when overtime work has been available in recent months, they did not feel pressured to perform it. The WRC will continue to monitor this issue and may issue further recommendations.

B. Gender Discrimination

⁶ Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation, Prakas 80/99, Art. 4.

1. Findings

The WRC found that I-Cheng discriminated against male workers with respect to the duration of the employment contracts it offered. The company offered female workers six-month contracts, while male workers were offered contracts of only three months in length. Workers reported that they believed the reason for this disparate treatment was that the company felt that male employees would be more likely than female workers to engage in union activity and that employing male workers on shorter contracts facilitated their dismissal on this account through nonrenewal of these agreements.

Whether on account of gender, supposed propensity toward union activism, or both, such differential treatment of employees violates worker rights under both Cambodian law and international labor standards, which both prohibit discrimination on account of either factor.⁷

2. Recommendations

The WRC recommended that, in order to comply with the City's Ordinance, I-Cheng should:

- Amend the duration of the employment contracts of all male employees to be equal to those of the contracts of similarly situated female employees; and
- Going forward, hire male workers under employment contracts whose duration is equal to those under which it has previously hired female employees for similarly situated positions.

3. Remediation and Current Status

When the WRC visited I-Cheng on May 23, 2014, the factory's local management acknowledged that it issued workers employment contracts of different duration based on gender and agreed to consider the WRC's recommendations for revising its practices in this area. In a communication to the WRC on July 2, 2014, I-Cheng claimed that the acknowledgement had been a misunderstanding and that the company had never discriminated against workers based on gender.

⁷ See, International Labor Organization (ILO), Conventions 98 (Right to Organise and Collective Bargaining Convention, 1949), Articles 1, 2(b) ("Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to . . . cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours."); 111 (Discrimination (Employment and Occupation) Convention, 1958), Art. 1 (1) ("For the purpose of this Convention the term discrimination includes -- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation . . ."); and Labor Law, Art. 12 (" . . . [N]o employer shall consider on account of: race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.").

However, the contracts that I-Cheng presented to the WRC to substantiate this subsequent denial were signed in June 2014, and the WRC has seen no evidence to contradict its initial findings or the factory's earlier statement that its prior practice had been to offer employment contracts of different duration based on gender.

The WRC was able to confirm, however, that the company's current practice in this area is no longer discriminatory. Workers reported that, following the WRC's May 2014 visit to the factory, I-Cheng ceased its practice of providing male workers with three-month contracts and now provides both male and female employees with six-month contracts. Moreover, in, I-Cheng has provided the WRC with several copies of contracts of male workers, dated after May 2014, that are six months in duration.

C. Freedom of Association

1. Unlawful Failure to Cease Deductions of Union Dues upon Employees' Request

a. Findings

In December 2013, at least 326 I-Cheng workers submitted written notices to the company informing it of their resignation from certain unions present in the factory and requesting that the company cease deducting dues for those unions from their wages. I-Cheng, however, failed to comply with this request and continued the dues' deductions.

Cambodian labor law requires that union dues may only be deducted from a worker's wages with written authorization by the worker, herself, and gives workers the right to revoke such authorizations at any time.⁸ I-Cheng violated this legal requirement, and, by extension, the Ordinance, when it refused to recognize and implement employees' revocations of their dues deduction authorizations.

b. Recommendations

The WRC recommended that, in order to comply with the City's Ordinance, I-Cheng should:

- Inform workers by verbal announcement and written posting in the factory that the company will only deduct union dues from workers' wages with written authorization and that workers may revoke such authorizations and have dues' deductions cease at any time;
- Reimburse any employee who has had union dues deducted without written authorization, or following revocation of such authorization, in the amount of dues deducted without a valid authorization being in effect; and

⁸ Labor Law, Art. 129 (. . . "[T]he worker can authorize deductions of his wage for dues to the trade union to which he belongs. This authorization must be in writing and can be revoked at any time.").

- Going forward, initiate deduction of union dues from workers' wages only with written authorization, and cease dues' deductions promptly upon receipt of notice of revocation of such authorization.

c. Remediation and Current Status

In its written communication to the WRC on July 2, 2014, I-Cheng claimed that it deducted dues from employee salaries on behalf of unions based on the membership lists it received from each respective union, and that, while the company would forward any written requests from employees requesting cessation of dues withdrawal to the relevant unions, it would not cease dues' deductions simply on this basis. At a meeting with I-Cheng on July 23, 2014, the WRC reiterated that the law granted workers the sole right to withdraw authorization of dues' deductions. Subsequent to this meeting, I-Cheng reported to the WRC that it had reviewed the requests previously submitted by workers, and found that at least 57 lacked sufficient information for processing. With respect to the remaining 269 requests, while I-Cheng began deducting dues for the unions to which these workers had sought to shift their affiliations, it reportedly failed to cease deducting dues for the unions from which these workers requested to resign. As a result, recent paystubs issued to these workers show deductions for two unions. When WRC raised this issue with I-Cheng, the factory stated that it would continue to respond to requests from workers to cease dues deductions by forwarding these requests to the relevant unions—leaving it the unions, themselves, to authorize such cessation. As a result, workers report I-Cheng continues to deduct union dues even when workers have submitted written requests to the company to cease them.

The company has also refused to reimburse workers for prior dues deductions taken from their pay after workers requested that these be ceased. The company's stated position is that since it merely forwards the dues it deducts to the various unions, any reimbursement should be sought by workers from the unions, themselves. This position ignores the fact that it is the company that, contrary to workers' express instructions, deducted these funds from their pay, and is in a far better position than individual workers to secure reimbursement from the unions for improperly forwarded funds.

2. Establishment and Compulsion of Membership in a Company-Dominated Union

a. Findings

On January 22, 2014, supervisors at I-Cheng established a pro-management union in the factory, the "Union for I-Cheng Workers," to compete with existing independent labor organizations the plant. Company supervisors reportedly instructed new employees still on probationary status to join this union rather than the other unions at the factory that were not controlled by the company.

Management's involvement in the establishment of a union at the factory, and its supervisors' direction of workers — particularly those whose employment was still subject to the company's discretion — to join this organization, clearly violated workers' rights, under both Cambodian

labor law and international labor standards, to exercise free choice of union membership. ILO Convention 98 (Right to Organize and Collective Bargaining), which Cambodia has ratified, states that,

Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents ... in their establishment, functioning or administration.

In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations ... with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.⁹

In this case, company supervisors, who are the employer's direct agents, were involved in the establishment of the new union, which had the direct result of placing it under the employer's control, thereby constituting a clear case of such interference.

Workers' allegations that this union had been created by the factory management were confirmed by the founding president of the company union, who explained to the WRC that he had been asked by the factory management to lead the union as I-Cheng needed "an inside union" to counter the "outside unions." The union president underscored the company's control over the organization by explaining that it was not given the dues deducted from the wages of workers who were its members by the company, but that, instead, these funds were retained by the factory management, itself.

Moreover, by directing probationary employees to join the new union, the company also violated workers' rights under ILO Convention 87 (Freedom of Association and Protection of the Right to Organize, 1949), also ratified by Cambodia, which establishes that workers, "shall have the right to ... join organisations of their own choosing without previous authorisation."¹⁰ In a factory where multiple labor organizations exist, this right is not respected when company supervisors direct employees as to which union they should join.

b. Recommendations

The WRC recommended that, in order to comply with the City's Ordinance, I-Cheng should:

- Direct its supervisors to formally dissolve the Union for I-Cheng Workers as an organization, and extend no further recognition to it as a representative of employees, including ceasing deduction of dues for it from employees' wages;

⁹ ILO Convention 98, Art. 2.

¹⁰ ILO Convention 87, Art. 2.

- Reimburse employees who are current or former members of the Union for I-Cheng Workers for all dues deducted from their pay, and inform them of the organization's dissolution and non-recognition by the company; and
- Issue a statement to all employees, via verbal announcement and written posting in the factory, recognizing that employees have the right to join the union of their own choice without discrimination or penalty, and that the company, its managers and its supervisors will not interfere with the establishment of unions by employees.

c. Remediation and Current Status

On July 23, 2014, I-Cheng told the WRC that because the union in question had received registration from the Ministry of Labor, the company could not formally dissolve the union. I-Cheng also disputed the claims that the union had been set up by its management, and asked who had made these allegations. The WRC explained that this fact had been confirmed by the union's president, himself. Further, the WRC informed the company of the process for determining whether workers truly wished to be a member of a particular union, which is known as union verification, through which the union could be dissolved if it did not truly represent workers.

The WRC also reviewed the receipts signed by management and representatives of the five unions showing the amount of dues paid to each union in the factory. The WRC found that for each of the four non-management-controlled unions, the receipts were countersigned by their respective union leadership, while there was no countersignature on the dues receipt for the management-established union. The lack of evidence of any transfer of dues confirmed the explanation previously given to the WRC by the president of the company union that his organization did not receive any of its members' dues and that these were retained by the factory.

While I-Cheng's management did issue a statement to all employees, via verbal announcement and written posting in the factory, affirming that employees have the right to join the union of their own choice without discrimination or penalty, and that the company, its managers and its supervisors would not interfere with the establishment of unions by employees, it has not taken any steps to dissolve the Union for I-Cheng Workers. According to workers, the company union continues to be present at the factory. According to worker testimony, supervisors continue to tell newly-hired workers to join this organization during their introductory training, and the factory continues to deduct dues for this union from the wages of approximately 500 employees.

Recently hired employees have informed the WRC that they were asked by their supervisor to join the Union for I-Cheng Workers *prior* to signing their employment contracts. These workers explained that they felt pressured to join the organization out of fear that if they did not, the company would revoke its offer to them of employment.

3. Unlawful Retaliatory Dismissal of and Threats against Employee Union Leaders and Workers

a. Findings

On May 9, 2014, I-Cheng unlawfully terminated 243 employees, including leaders of one of the independent unions at the factory, in retaliation for their participation in a strike that had begun the previous month. During the strike, the police, who were present at the factory at the company's behest, threatened employee union leaders and other workers with unlawful retaliation, including arrest. Members of the Collective Union of Movement of Workers (CUMW) at I-Cheng began a walkout on April 21 as part of a national job action called by Cambodian unions in support of an increase in the country's minimum wage and in protest of an ongoing crackdown on labor rights by the country's government — including the detention of 23 garment workers and union leaders from other factories.¹¹ On April 23, when the national job action ended, the union's members offered to return to work if I-Cheng agreed not to deduct wages and benefits from their pay for the period when they were on strike.

When the company rejected this condition for employees' return to work, the CUMW union members decided to continue their strike in support of other demands concerning their working conditions and terms of employment. On April 24, the CUMW submitted these demands to I-Cheng as new conditions for its members ending their strike. On the same day, however, the local Provincial Court, in response to a petition from the factory's management, declared the union's strike illegal.

The court's order, which was not officially entered — and, thereby, did not take legal effect — until May 7, required employees to return to work within 48 hours or be considered to be engaging in serious misconduct, for which they could be subject to discipline by their employer. As the court entered its order at 9:30AM on May 7, the 48-hour period for workers to return to work without penalty was set to end at 9:30AM on May 9.

Prior to the entry of the court's order, many workers remained on strike; however, on May 6, roughly half of the striking employees decided to return to work. Also, on the same day, the factory management announced that it would ask police to come to the factory the following day to intervene in the dispute. The management subsequently claimed to the WRC that it made this announcement because one of the striking workers had made threats to non-striking workers that, if the latter did not join the strike, they might be “hit by thrown rocks.”

I-Cheng provided videotaped evidence to the WRC of workers' strike activities, including the verbal threat by the individual worker. Upon reviewing the video footage, the WRC confirmed that it documented the statement alleged by the management, but that, otherwise, the strike activities shown were nonviolent.

On May 7, around 130 military police and 30 additional civilian police officers arrived at the I-Cheng factory. Some of these officers threatened to arrest the CUMW union leaders, who then left the area to avoid arrest. I-Cheng's management has claimed that its decision to request the police presence at the factory was motivated solely by security concerns, and not by any intention to see the union leaders arrested. But while the company's decision to request *some*

¹¹ See, WRC, *Crackdown in Cambodia: Workers Seeking Higher Wages Meet Violent Repression* (Mar. 2014), <http://www.workersrights.org/Reports/WRC%20Report%20-%20Crackdown%20in%20Cambodia%203.24.14.pdf>.

civilian police presence may be understandable in light of a threat by one employee to throw rocks at non-striking workers, the insertion into the dispute of more than 100 military police is deeply troubling, particularly given the latter's then-recent role in a January 2014 government crackdown on worker protests that resulted in at several deaths and dozens of injuries.¹²

After the CUMW union leaders left the area, I-Cheng's management met with the leaders of three other unions that have members in the factory, along with representatives of the factory employers' group, the Garment Manufacturers Association in Cambodia, the country's labor ministry, and other government authorities. At this meeting, I-Cheng's management reportedly agreed that if the striking workers returned to work the next day, it would take several measures to improve workplace conditions. The company also stated, however, that it would discipline any striking employee who did not return to work the following day (May 8) – even though the deadline set by the court for employees to return to work was not due to expire until the day after (May 9).

On May 8, although some striking employees did return to work, 243 of the factory's workers did not. On the morning of May 9, however, even though the deadline set by the court for striking employees to return to work did not expire until 9:30AM – well after the start of the regular workday – I-Cheng's factory security guards did not allow any of the returning striking workers to enter the factory in the morning. Instead, the company posted a list of the names of the 243 still-striking workers on the factory bulletin board with a notice stating that they had been dismissed.

Subsequently, however, the company did permit some of these workers to return to work. In particular, on May 10, the company agreed to permit seven leaders and activists in the CUMW union to return to work after they signed letters agreeing not to lead any illegal strikes, and to comply with the factory's internal work rules, as well as Cambodia's labor laws.

I-Cheng's termination of the 243 employee union leaders and other striking workers violated Cambodian labor law, which only permits employers to terminate or otherwise penalize workers for going on strike under certain limited circumstances.¹³ Under Cambodian law, except in cases where employees personally have engaged in strike-related violence, workers can only be dismissed for striking *after* a court has found the job action illegal¹⁴ *and* the court has issued an order requiring the employees to return to work within 48 hours,¹⁵ *and* the employees have failed to comply with this deadline.¹⁶ I-Cheng violated the law when it terminated the 243 striking

¹² Ibid.

¹³ See, Labor Law, Art. 333 (“[T]he employer is prohibited from imposing any sanction on a worker because of his participation in a strike. Such sanction shall be nullified and the employer shall be punishable by a fine in the amount set in § 369 of Chapter sixteen.”).

¹⁴ See, id., Art. 337 (1) (“[T]he Labour Court or, in the absence of the Labour Court, the general court, has sole jurisdiction to determine the legality or illegality of a strike”).

¹⁵ See, id., Art. 337 (2) (“[I]f the strike is declared illegal, the strikers must return to work within forty-eight hours from the time when this judgment is issued. A worker who, without valid reason, fails to return to work by the end of this period is considered guilty of serious misconduct.”).

¹⁶ See, id., Art. 330 (“[A] strike must be peaceful. Committing violent acts during a strike is considered to be serious misconduct resulting in punishment, including work suspension or disciplinary layoff.”).

employees without giving them an opportunity to return to work on the morning of May 9, prior to the 9:30AM deadline set by the court when it entered its order at 9:30AM on May 7.

I-Cheng also violated workers' rights to freedom of association when it threatened striking employees with other retaliation that violated workers' rights under Cambodian law¹⁷ and/or international labor standards. Such conduct included the company's introducing into the dispute the military police, who threatened to arrest employee union leaders for continuing the strike on May 7, and, itself, threatening disciplinary action if employees did not return to work on May 8 – even though the court had only authorized I-Cheng to take such action if employees did not return to work by May 9.

b. Recommendations

The WRC recommended that, in order to comply with the City's Ordinance, I-Cheng should:

- Offer reinstatement to all striking employees terminated on May 9 who attempted to return to work prior to the 9:30AM deadline that morning; and
- Provide back-pay to all striking employees terminated on May 9 who attempted to return to work prior to the 9:30AM deadline that morning for the period between their termination and their receipt of an offer of reinstatement from the company.

c. Remediation and Current Status

On July 23, 2014, the company provided the WRC with figures showing that 64 of the 243 striking workers who had been terminated had been permitted to return to work, leaving 179 who had not been reinstated.

While the company initially agreed to offer reinstatement to the remainder of the striking workers, in subsequent meetings, its management often appeared to revert to its initial position that the terminations did not need to be reversed. However, after two months of discussion with the WRC and the company's buyers, as well as negotiations with the CUMW, the union representing the striking workers, I-Cheng ultimately agreed to offer reinstatement to all of the dismissed workers.

On October 1, 2014, an agreement was reached between the company and the union whereby the striking workers would receive back wages in the amount of 100 USD per month for the period between May 8 and October 1, 2014 — a figure amounting to 476.80 USD per employee. These back wages would be paid to employees following their reinstatement in five equal monthly installments. The striking workers would be permitted to return to I-Cheng on any Monday between October 1 and November 15, 2014.

¹⁷ See, id. Arts. 12 (“... [N]o employer shall consider on account of: ... 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.”), 333.

After some initial complications on the first day that the former strikers were due to return to work, the reinstatement process proceeded smoothly. Altogether 47 workers returned to the factory, although six of these employees resigned shortly thereafter. The union reported that all of the former workers, who had indicated within the agreed timeframe that they still wished to return to I-Cheng, were reinstated, and the WRC has not received reports of any subsequent discrimination against or non-payment of back wages to these workers.

While I-Cheng ultimately offered them reinstatement, its four month delay in permitting the striking workers to return to the factory may have had a permanent chilling effect on workers' associational rights, as evidenced by the fact that only 26% of the eligible employees ultimately returned to the factory. Moreover, the associational rights of those workers who did not return to the factory were further harmed by the requirement that the company's provision of back pay was made contingent on the employees returning to work. Since these employees' loss of wages was directly attributable to the company's unlawful refusal to permit them to return to work, its obligation to make them whole for this loss should not have been conditioned on the employees' willingness to resume working for the company.

D. Use of Statutory Sick Leave

1. Findings

Workers reported that even when they submitted medical certificates documenting illnesses, and even when they missed more than two days of work due to these illnesses, I-Cheng provided them with only two days' sick pay. Cambodia's labor law requires any company with more than eight employees to formulate and implement internal work rules,¹⁸ which must include provision of sick leave to employees.¹⁹ These work rules must be approved by the labor ministry,²⁰ whose established practice is to only approve rules that provide sick leave that is paid, thereby mandating this benefit as a *de facto* legal requirement.²¹

I-Cheng's internal work rules state that workers who are unable to work on account of illness will receive sick leave which will be paid according to standard local practice.²² As established by the labor ministry, the standard local practice is to require payment of 100% of the worker's usual wages for the first month of sick leave, and 60% of wages for the second and third months

¹⁸ See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Notification No. 14 (Aug. 16, 2002) (On the Internal Work Rules of the Enterprise), Clause 1; (“[T]he owners or directors of the above mentioned [businesses] which employ at least 8 employees shall have internal rules for their enterprises.”).

¹⁹ See, *id.*, Clause 4; (providing model rules for “[W]orking hours including both night work and work shifts; - Weekly time off; - Annual leave, public holidays and special leave; - Maternity leave; - Sick leave”).

²⁰ See, *id.*, (“[T]he internal rules shall be organized by the owners or directors of the enterprise after discussion with the staff representatives within three months after the opening of the enterprise. After their creation, the owners or directors of the enterprise shall send two copies of these internal rules with the written ideas and opinions of the shop stewards in order to apply for a visa from the labour inspector before applying the rules.”).

²¹ See, *id.* (establishing that the standard rate for sick leave payment is 100% of the wages for the first month of sick leave, 60% of the wages from the second and third month of sick leave, and for the fourth to sixth month the sick leave is unpaid, but the position will be kept open pending the employee's return).

²² See, I-Cheng Internal Work Rules, § 5.6.3 (on file with the WRC, unofficial translation from Khmer version).

of sick leave.²³ The company violated standard local practice, its internal work rules, and, thereby, the law, when it failed to provide sick pay to workers for absences of more than two days due to illness

2. Recommendations

The WRC recommended that, in order to comply with the City’s Ordinance, I-Cheng should:

- Cease its current practice of only providing paid sick leave for workers’ first two days of absence due to illness, and comply with its own internal work rules on this subject; and
- Compensate workers for any sick pay that they previously have been unlawfully denied by the company on account of this practice.

3. Remediation and Current Status

I-Cheng’s management claimed that it had provided employees with legally-mandated sick leave and also offered several examples of workers who had received more than two — i.e., three — days of paid sick leave. Workers at the factory, however, continued to report that I-Cheng rarely grants employees more than two days of sick leave, even when warranted by the illness or injury. According to worker testimony, the only exception to this practice is when workers need an operation, in which case the factory will usually approve one week of sick leave. I-Cheng management has provided the WRC with documents showing that, in two cases, workers were provided with sick leave for periods longer than three days.

Given the consistent reporting from workers that sick leave is difficult to access, I-Cheng should formulate and announce clear guidelines for the workers regarding the approval of sick leave. The guidelines should state what documentation is needed and explain workers’ rights regarding the provision of sick leave, including its duration. These guidelines should also be given to worker representatives and the unions.

E. Occupational Health and Safety

1. Excessive Heat Levels

a. Findings

The WRC’s September 2013 inspection of I-Cheng found that heat levels in the factory violated the requirements of Cambodian labor law, which mandates that workplace temperatures must be maintained at levels that do not impair workers’ health or interfere with their productivity.²⁴

²³ See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, *supra*, n. 18.

²⁴ See, Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation, Prakas 147, §1

(“[E]mployers of enterprises and establishments . . . must arrange in whatever way to make the heat temperature in the workplace to be an acceptable level. The heat temperature must be appropriate for the health of workers and it

Although I-Cheng installed additional exhaust fans in the factory after the plant opened, workers reported that temperatures inside the plant remained very high. The factory has not added any other ventilation or cooling devices, such as evaporative cooling pads. Moreover, despite the fact that it is required to do so under Cambodian law,²⁵ I-Cheng had not posted thermometers inside the factory to record daily peak temperatures in the plant.

I-Cheng's management also explained to the WRC that the architectural design of the factory employed a passive cooling system, using solar reflective materials on the roof and a convex roof shape. The purpose of this design was to allow hot air, when it rose, to recirculate against the cooler surface of the interior side of the roof to help to offset and mitigate the high daytime temperatures in Cambodia.

Despite the passive cooling design, in September 2013, the WRC measured temperatures of 35 and 36 degrees Celsius (95 and 97 degrees Fahrenheit, respectively) in the factory's southern building, which clearly fails to comply with the legal standard. In the northern building, the WRC measured temperatures of 32 degree Celsius (90 degrees Fahrenheit). The lower temperature was likely due to a heavy downpour that had started fifteen minutes before the measurements were taken. That temperatures were generally excessive was also indicated by workers' reports of almost weekly incidents involving one or two employees fainting on the job as a result of the excessive heat, which I-Cheng itself has acknowledged

b. Recommendations

The WRC recommended that, in order to comply with the City's Ordinance, I-Cheng should:

- Install thermometers in each of the factory's work areas and measure and record daily peak temperatures in accordance with Cambodian law;²⁶ and
- If temperatures in the factory continue to affect employees' health and productivity, then the factory should take measures such as installing additional exhaust fans, ventilation fans, and/ or evaporative cooling pads to lower the temperature to a legally permissible level.

c. Remediation and Current Status

Following the WRC's initial report, I-Cheng added more exhaust fans to the building, which the WRC verified during its July 23, 2014 follow-up visit. However, in response to the WRC's findings, I-Cheng's management also showed the WRC pictures of workers wearing knitted hats and long-sleeved thick clothing inside the factory to illustrate that not all workers apparently found the temperatures excessive.

must not interrupt their work. The heat temperature is measured by thermometer or 'temperature measurement device' which is placed in the workplace.'").

²⁵ Ibid.

²⁶ Ibid.

In addition, both I-Cheng's management and the representatives of Magnum/Hi-Tech have queried the WRC as to, given the lack of specifics in the Cambodian law, what temperature level inside the factory would be considered to legally compliant. In response, the WRC cites the guidelines for appropriate workplace temperatures provided by the Occupational Safety & Health Administration of the U.S. Department of Labor.²⁷ Taking into account Cambodia's general humidity levels of at least 75%,²⁸ the relevant temperature classifications under these guidelines are as follows: Below 28 degree Celsius (83 Fahrenheit), low risk; between 28 and 31 degrees Celsius (84-87 Fahrenheit), moderate risk; between 31 and 34 degrees Celsius (88-93 Fahrenheit), high risk; and at or above 35 (94 Fahrenheit), extreme risk. Using these guidelines, temperatures above 31 degrees Celsius should be avoided, and temperatures above 34 degree Celsius, which equals high risk, cannot be considered as conforming to the legal standard. These guidelines are also consistent with the legal standards adopted by other countries in the region, including Thailand, where the legal maximum temperature is 34 degrees Celsius (93 Fahrenheit), and Indonesia, where the legal maximum temperature is 31 degree Celsius (88 Fahrenheit).²⁹

I-Cheng installed thermometers in the plant's production areas and began to record daily temperature readings. Records from August 2014 showed temperatures in the factory ranging from 30 to 33 degrees Celsius (86 to 91 degrees Fahrenheit). Workers reported to the WRC that the temperatures in December averaged approximately 30 degrees Celsius and that although the installation of additional fans in some areas of the factory had helped reduce temperatures in those locations, there were still some areas of the plant where temperatures were significantly higher.

As the additional fans were installed in June and July 2014, after the end of the country's hottest time of the year, which runs from March through May, it remains to be seen whether they will adequately reduce peak temperatures in the facility. The WRC will continue to monitor this issue and may issue further recommendations.

2. Restricted Access to Toilets

a. Findings

At the time of the WRC's initial visit to the factory, the company restricted access by employees to the plant's washrooms through a system that required workers to obtain and show to factory guards, who were posted outside the toilets, one of a limited number of "pass-cards" in order to enter. The WRC explained to I-Cheng's management that this system violated employees' rights to a safe and healthy workplace since restricting toilet use has been linked to a variety of

²⁷ See, Occupational Safety & Health Administration of the US Department of Labor, *Using the Heat Index: A Guide for Employers*. https://www.osha.gov/SLTC/heatillness/heat_index/pdfs/all_in_one.pdf.

²⁸ Weather and Climate.com, "Average humidity over the year, Phnom Penh," <http://www.weather-and-climate.com/average-monthly-Humidity-perc.Phnom-Penh,Cambodia>.

²⁹ See Occupational Safety and Health Bureau (Thailand), Ministerial Regulation on the Prescribing of Standard for Administration and Management of Occupational Safety, Health and Environment in Relation to Heat, Light and Noise B.E. 2549 (A.D. 2006); Regulation of the Minister of Manpower and Transmigration (Indonesia) No. PER.13/MEN/ X/2011 On the threshold Limit Value of Factors Physical and Chemical factors in the workplace.

occupational health problems, including dehydration (from employees limiting intake of liquids in order to avoid needing to use the toilets) and urinary tract infections (from workers excessively delaying toilet use).³⁰

b. Recommendations

The WRC recommended that the company discontinued the “pass-card” system for the toilets.

c. Remediation and Current Status

Workers report that the company implemented the WRC’s recommendation and discontinued the “pass-card” system for the toilets.

3. Sanitary Washroom Facilities

a. Findings

Workers reported and the WRC’s physical inspection of the factory confirmed that the factory’s washrooms were not well supplied or maintained. Washrooms in the plant often lack sufficient running water and are not kept in a clean or sanitary condition. Some toilet stalls do not have functioning door latches or water scoops, and sinks sometimes lack hand soap for use by employees.³¹

b. Recommendations

The WRC recommended that, in order to comply with the City’s Ordinance, I-Cheng should:

- Ensure that the factory’s washrooms are maintained in a clean and sanitary conditions and toilets have functioning latches and water scoops; and
- Supply sufficient running water and adequate soap for workers’ use.

c. Remediation and Current Status

I-Cheng’s management committed to conduct regular inspections of washrooms to ensure that broken fixtures are repaired in a timely manner and to ask workers to report to the management

³⁰ See, WRC, *Assessment re New Wide Garment (Cambodia)* (2008), pp. 23- 25, http://workersrights.org/Freports/New_Wide_Garment_Report_3-6-08.pdf; WRC, *Assessment re Zongtex Garment Mfg. (Cambodia)* (2014), pp. 20-22, <http://www.workersrights.org/Freports/WRC%20Assessment%20re%20Zongtex%20%28Cambodia%29%203.13.2014.pdf>.

³¹ See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Prakas 52, Clause 6: (“[W]ater for use in the bathroom must be sufficient, clean, and clear. There must be sufficient soap in each bathroom. Each bathroom must be cleaned at least once a day.”). In Southeast Asia, water taken from buckets with small scoops or pitchers is typically used in toilets in lieu of both flushing and toilet paper.

any unsatisfactory facilities. The management also agreed to install soap dispensers in the washrooms to ensure a reliable supply of hand soap.

Workers confirmed that the factory's toilets are now well-maintained, and that the latches on the toilet stalls are now functional, and that washroom soap dispensers have been installed and are regularly refilled, though they still often become empty in the afternoons.

4. Inadequate Access to Onsite Healthcare and First Aid Facilities

a. Findings

In accordance with Cambodian law, I-Cheng maintains an onsite health clinic inside the factory. According to workers, however, the factory violates the law by failing to adequately staff or equip this facility. Workers reported that only one nurse is on duty during normal working hours³², and the clinic often lacks required medicines and supplies.³³ Moreover, the clinic has only two beds, fewer than are required by law.³⁴

In addition, I-Cheng unlawfully restricts workers' access to the clinic. The company requires employees, before seeking treatment at the clinic, to obtain permission from both their line leaders and their supervisors, as well as to submit a written request to the factory's administration. Workers report that these restrictions sometimes cause them to avoid seeking treatment at the clinic, even when they are feeling unwell. I-Cheng's restrictions on its employees' access to the onsite health clinic violate Cambodian labor laws.³⁵

Finally, the factory fails to adequately stock the first aid kits that, by law, it is required to have in each of its various work areas. During our inspection of the factory, the WRC found that many of these kits were half empty and did not contain the supplies and equipment required by law.³⁶ According to workers, these kits are only restocked when other parties visit the factory.

b. Recommendations

³² See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation and Ministry of Health, Joint Prakas 330, Clause 3 (2000) (“[T]he number and quality of health care staff shall be determined according to the number of workers working at the enterprise/establishment as prescribed in the table below: [...] Number of workers: Over 2000, Number of Nurses: Three on duty, Number of Physicians: One Doctor for 8 hours”).

³³ See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation and Ministry of Health, Joint Prakas 330, Clause 7 (2000) (“[F]or enterprise/establishment that has less than 50 workers, there shall be a means of relief as follow: There shall be a first aid box and a relief assistant for the number of workers less than 20. There shall be a bandaging room and a nurse for the number of workers from 20 to 49. Furniture and medical equipment must be available as determined in the Annex of this Prakas.”), and Annex 1 (specifying that factory first aid kits should contain “one pair of scissors, one roll of Scotch tape, 10 compress, Alcool Iodé 200ml, two pairs of pincers, one roll of bandage, 100 mg of cotton, Eau Oxygéné 200 ml, 20 gloves, 5 rolls of gauze, 1 bottle of medical oil, 50 ml of Ether, 1 bar of soap, 4 rolls of three-corner white cloth, 1 bottle of medical balm, Analgésiques, Anti-diarrhéiques”).

³⁴ Ibid.

³⁵ See, id., Art. 2 (“[T]he infirmary shall be located near the workplace with convenient access to the patients . . .”).

³⁶ See, id., Clause 7.

In order to comply with the City's Ordinance, I-Cheng should:

- Maintain fully stocked first aid kits in the plant at all times;
- Staff and equip the factory health clinic in accordance with the requirements of Cambodian labor law; and
- Provide employees with reasonable and convenient access to the onsite clinic.

c. Remediation and Current Status

Since the WRC's visit in May 2014, I-Cheng has added beds to its clinic and maintained fully stocked first aid kits in the factory.

In July 2014, I-Cheng provided documents to the WRC that showed that four medical staff members - two doctors and two nurses - are employed at the company. However, according to workers, only one nurse is actually stationed at the clinic, with a doctor only visiting occasionally.

Despite assurances from I-Cheng management that the system of requiring workers to obtain multiple permissions before visiting the clinic has been abolished, workers report that such permissions are still required.

The WRC recommends that I-Cheng publicly announce to workers that these restrictions have been removed by posting it in writing on the announcement board and communicating it verbally over the company's public address system, as well as providing training to its supervisors.

5. Chemical Storage Labeling and Safety Information

a. Findings

The WRC found that I-Cheng had contravened Cambodian law by failing to make available Material Safety Data Sheets (MSDS), which contain important instructions on the safe handling of chemicals used in the factory, available to employees in Khmer, the Cambodian language.³⁷ In addition, containers in which chemicals were stored in the factory were not properly labeled with their contents and instructions on safe handling, storage and clean-up procedures.

b. Recommendations

³⁷ See, Labor Law, Art. 230 ("All establishments and work places must be set up to guarantee the safety of workers. . . . [P]roducts used must be organized properly for guaranteeing the safety of workers."); *also*, ILO Convention 170 (Convention Concerning Safety in the Use of Chemicals at Work), Art. 7 (1-2) (Labeling and Marking) ("[A]ll chemicals shall be marked so as to indicate their identity. . . . Hazardous chemicals shall in addition be labelled, in a way easily understandable to the workers, so as to provide essential information regarding their classification, the hazards they present and the safety precautions to be observed."). ILO Convention 170 is the leading international labor standard on chemicals handling and storage. Note, however, that Cambodia has not ratified Convention 170.

The WRC recommended that, in order to comply with the City’s Ordinance, I-Cheng should:

- Post copies of MSDS in Khmer for all chemicals used in the factory in the respective areas where they are employed or stored; and
- Label all containers in which chemicals are stored with instructions on their safe handling and storage, and proper procedures in case of spillage or exposure.

c. Remediation and Current Status

I-Cheng’s management committed to add labels in Khmer to all chemical storage containers and to provide safety information to employees in Khmer and provided the WRC with photographs showing that MSDS were posted in the factory in Khmer. Workers interviewed by the WRC also confirmed that containers for chemicals used in the factory are now labeled in Khmer.

6. Machine-Guarding

a. Findings

The WRC found that sewing machines in the factory lacked eye guards, a necessary safety feature.³⁸

b. Recommendations

The WRC recommended that, in order to comply with the City’s Ordinance, I-Cheng should ensure that, wherever needed, eye guards were installed on sewing machines and properly maintained.

c. Remediation and Current Status

Representatives from Hi-Tech/Magnum explained to the WRC that installation of eye guards on sewing machines is not feasible in the footwear industry because, unlike in garment manufacturing, footwear components often do not lie flat while being sewn, and, therefore, eye guards could obstruct their proper assembly.

As an alternative, I-Cheng committed to investigate whether safety glasses could be used to reduce risks to workers of eye injuries. As of February 6, 2015, I-Cheng was still in discussion with other factories in the area to identify the best option for protecting workers’ eyes while operating sewing machines, as it had concerns that the use of glasses might obstruct workers vision.

³⁸ Labor Law, Art. 230 (“All establishments and work places must be set up to guarantee the safety of workers. . . . [E]quipment and machines must be installed and maintained in the best possible safety conditions. Management of technical work utilizing tools, equipment, machines, or products used must be organized properly for guaranteeing the safety of workers.”).

7. Failure to Provide Employee Canteen

a. Findings

In its September 2013 inspection of the factory, the WRC found that I-Cheng did not have a proper employee canteen, whose provision, although not a legal requirement, is required under the supplier codes of conduct of many major footwear brands.³⁹ I-Cheng had erected an open air roof cover with the purpose of having a canteen there. However, no chairs and tables had been added yet. As a result, workers were sitting on the ground while eating their lunch.

b. Recommendations

The WRC recommended that I-Cheng provide employees with a canteen with adequate space, tables and chairs for employees to eat their meals.

c. Remediation and Current Status

Since the WRC's September 2013 inspection, the factory finalized the establishment of an employee canteen; however, this facility lacks a sufficient number of chairs for employees and, as a result, many workers sit on the canteen floor while eating.

Following WRCs visit in May 2014, I-Cheng added more chairs and tables as well as discussed with the unions present at the factory the possibility of having two staggered lunch breaks to ensure that there would be sufficient chairs and tables available for all employees. Workers raised concerns, however, that they might be unable to share their lunch with their family members or friends.

Following this, management and unions agreed to expand the canteen area into a covered space previously used for motorcycle parking. I-Cheng's engineering department is currently making additional chairs and tables for the canteen, and the factory management expects the expansion to be completed by March 2015.

F. Employment Contracts

a. Findings

I-Cheng, like many other Cambodian garment factories, employs all of its post-probationary workers under successive temporary contracts (known in Cambodia as "Fixed Duration Contracts" or "FDCs"). When one FDC expires, workers are offered another of equal duration. Cambodian labor law requires that after two years of employment with the same firm, workers

³⁹ See, e.g., Puma, AG, *Handbook for Occupational Health and Safety*, §11.1(Hygienic and Healthy Workplace, General Conditions) (2010) ("A restaurant, canteen or dining area with sufficient space should be provided for all employees."). Unlike nearly all major footwear brands, Hi-Tec Sports and Magnum Boots do not appear to feature a labor code of conduct for suppliers on their websites.

employed under FDCs must be provided with open-ended contracts (known in Cambodia as “Undetermined Duration Contracts” or “UDCs”).⁴⁰

At the time that the WRC initiated its investigation at I-Cheng, the factory had been in operation for less than two years and thus, at that time, was not legally required to offer UDCs to its employees since all of them had been employed for less than two years with the company. International labor standards and labor and human rights experts who have studied Cambodian garment factories’ practice of employing their year-round workforces on temporary contracts criticized such arrangements as linked to violations of other labor standards.

For example, the ILO’s Termination of Employment Recommendation (Recommendation 166, 1982) disfavors use of short-term contracts that have the effect of denying workers the protections from termination stipulated in that body’s Convention on Termination of Employment (ILO Convention 158).⁴¹ Moreover, use of successive FDCs to employ factories’ regular workforces has been criticized by the ILO’s Better Factories Cambodia factory monitoring program as undermining labor law compliance.⁴²

In 2011, Yale Law School’s Lowenstein International Human Rights Clinic published an in-depth report detailing how factories’ practice of employing their workers almost exclusively on repeated short-term FDCs is linked to a myriad of labor rights violations, including discrimination against pregnant employees, denial of statutory maternity benefits, and retaliation against employees for union activities.⁴³ The report recommended, therefore, that international apparel firms doing business in Cambodia require their suppliers to restrict use of FDCs to employment that is truly short-term or seasonal in nature, and to employ all other workers on UDCs.⁴⁴

b. Recommendations

The WRC recommended to I-Cheng that in order to promote and facilitate compliance with Cambodian law:

⁴⁰ See, Cambodian Labor Law, article 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.”).

⁴¹ ILO Convention 158 is the leading international labor standard on employment contracts, however, it has not been ratified by Cambodia.

⁴² See, ILO Better Factories Cambodia, “Better Factories concerned about labor contracts” (Oct. 2006), <http://betterwork.com/cambodia/wp-content/uploads/2013/05/Better-Factories-Newsletter-No.6-en.pdf>.

⁴³ See, Allard K. Lowenstein International Human Rights Clinic, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry* (Yale Law School: Aug. 2011), http://www.law.yale.edu/documents/pdf/Intellectual_Life/Cambodia_TearingApartattheSeams.pdf.

⁴⁴ Ibid.

- All workers who have completed their probationary periods should be employed on UDCs. The factory should only use FDCs for employees hired to perform work that is truly temporary or seasonal in nature; and
- All workers currently on FDCs, whose work is not clearly temporary in nature, should immediately have their contracts converted to UDCs.

c. Remediation and Current Status

In July 2014, I-Cheng's management agreed to provide workers with UDCs after they complete two years of employment with the factory, which is the minimum legal requirement. Workers report that I-Cheng has implemented this commitment. While the company's practices in this area still do not meet the WRC's recommendations for best practice, the WRC also acknowledges that, unlike the majority of garment and footwear factories in the country, I-Cheng is currently complying with Cambodian law in this respect.⁴⁵

⁴⁵ See, WRC, *Update on Ongoing Abuse of Temporary Employment Contracts in the Cambodian Garment Industry* (April 11, 2014)

<http://www.workersrights.org/freports/WRC%20Update%20on%20Misuse%20of%20FDCs%20in%20Cambodia%204.11.14.pdf>