



# BARRIERS TO REPRESENTATION: FREEDOM OF ASSOCIATION IN CAMBODIA

Series I  
An assessment of Better  
Factories Cambodia's FOA  
compliance monitoring



# Acknowledgements

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Solidar Suisse is a civil society organization committed to achieving a socially, politically, and economically just society, fighting for decent work, democratic participation, and human rights in the poorest countries of Africa, Asia and Latin America as well as South-East Europe. Its vision is a just and fair world free from discrimination, exploitation, and violence where people’s basic needs are met, their human rights are fulfilled, and everyone benefits from decent work, social justice, equal opportunities, and democratic participation. Founded by the Swiss Federation of Trade Unions and the Social Democratic Party as Swiss Labour Assistance in 1936, it currently operates more than 60 projects in more than 15 countries. The Asia Programme of Solidar Suisse focuses, in particular, on Decent Work, centered on supporting workers and unions across the region.



The Center for Alliance of Labor and Human Rights (CENTRAL) is a Cambodian founded, run, and operated non-governmental organization based in Phnom Penh. Operating since 2016, CENTRAL’s long-term strategic goal is to contribute to transparent and accountable governance for the fulfillment of workers’ and human rights in Cambodia. To work towards this goal, CENTRAL organizes and supports Cambodian working people through legal aid, capacity building and other appropriate means to demand transparent and accountable governance for labor and human rights.



Founded in 2011, the Cambodian Alliance of Trade Unions (CATU) is the first independent union in Cambodia that is led by women and adheres to democratic principles at all levels of the union structure. CATU was formed through a collaboration between CATU union leaders and workers in the garment sector, and the union now represents workers in textile, garment, footwear, travel goods and bag producing factories across Cambodia. Since its formation, CATU has assisted tens of thousands of workers in receiving higher benefits, moving off short-term contracts and into permanent employment, and improving health and safety conditions in workplaces. When necessary, CATU goes beyond direct negotiation to advocate for remedy directly from supplier brands.



The Coalition of Cambodian Apparel Workers’ Democratic Union (C.CAWDU) is an independent and democratic union in Cambodia representing garment workers’ rights and interests, working in affiliation with the Cambodian Labour Confederation (CLC). C.CAWDU was established in the year 2000 with the support of the Cambodia Labor Organization with the specific objective to defend the rights of garment workers and promote better working conditions. Everyday C.CAWDU provides services to their tens of thousands of members across Cambodia, including training, legal consultations, dispute resolution assistance, and collective bargaining in order to improve the working conditions for the workers.





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# List of Abbreviations

<b>BFC</b>	Better Factories Cambodia
<b>CAT</b>	Compliance Assessment Tool
<b>CATU</b>	Cambodian Alliance of Trade Unions
<b>CBA</b>	Collective Bargaining Agreement
<b>C.CAWDU</b>	Coalition of Cambodian Apparel Workers Democratic Union
<b>CENTRAL</b>	Center for Alliance of Labor and Human Rights
<b>FDC</b>	Fixed Duration Contract
<b>FDG</b>	Focus Group Discussion
<b>FOA</b>	Freedom of Association
<b>GMAC</b>	Garment Manufacturers Association in Cambodia
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ILO</b>	International Labour Organization
<b>IFC</b>	International Finance Corporation
<b>MoLVT</b>	Ministry of Labour and Vocational Training
<b>MRS</b>	Most Representative Status
<b>PICC</b>	Performance Improvement Consultative Committee
<b>TAFTAC</b>	Textile, Apparel, Footwear & Travel Goods Association in Cambodia
<b>UDC</b>	Undetermined Duration Contract
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations





# Executive Summary

This report functions as a component of an ongoing project between CENTRAL, CATU, and C.CAWDU to document the extent to which Freedom of Association (FOA) has been contravened across Cambodia's garment, footwear, and travel goods factories, undermining the country's human rights commitments, violating the country's constitution and labor law, and weakening the ability of international brands to undertake robust due diligence within their supply chains.

As the first report issued under this initiative, this publication evaluates Better Factories Cambodia (BFC) and whether their current processes appropriately assess and adequately report on employer-imposed barriers to freedom of association. As part of the International Labour Organization's (ILO) Better Work Program,<sup>[1]</sup> one of BFC's core activities is to monitor export apparel factories' compliance against international labor standards to inform brands and buyers of labor conditions in each factory. BFC currently assesses working conditions in 703 factories across Cambodia, employing approximately 651,000 workers.<sup>[2]</sup>

As part of this process, compliance reports can be purchased by brands and buyers, with summarized

versions made available to workers, representative unions, and the general public on BFC's Transparency Database.

Over a one-year period, our team conducted a series of interviews with union leaders and representatives from 14 BFC registered factories to assess their members' ability to access and understand BFC public data as well as to evaluate the accuracy of the publicly available compliance reports in relation to FOA criteria. Our interviews with factory unions and workers revealed multiple challenges for workers in both accessing and utilizing this data. Workers also identified considerable inconsistencies between the data and their lived experiences. Despite perfect BFC scores on FOA criteria at all the 14 factories included in this study, union representatives at 10 of the 14 workplaces reportedly faced obstructions to FOA including verbal intimidation, threats, harassment, and blacklisting, severely affecting their ability to function.

Drawing from focus groups, a worker survey, and follow-up interviews, we found that:

1) Independent unions included in this study reported that the BFC's Transparency Database and publicly available compliance reports were not useful in addressing FOA compliance complaints. Workers and union leaders included in this study reported that the data remains burdensome for both unions and workers to access, difficult to understand, and lacks sufficiently granular information to be useful in their negotiations with employers and/or brands.

2) A majority of union leaders found the BFC compliance reports for their factories to be inaccurate and not

[1] Better Work is a joint initiative between the United Nations' International Labour Organization (ILO) and the International Finance Cooperation (IFC), a member of the World Bank Group. Better Work programs currently operate in 13 countries. [Better Work - Programme](#).  
[2] As of February 2024. [Better Work - Cambodia](#).



reflective of the reality on the ground. Representatives from 10 of the 14 factories included in this study reported that despite perfect compliance scores for their workplaces according to the BFC Transparency Database, FOA violations are widespread in their workplaces. Public compliance reports also fall short in disclosing FOA compliance details, limiting the reports' utility in negotiations. This raises questions about the accuracy of the reports and/or potential flaws in the data summarization methods.

3) Cambodian union activity is being eclipsed by constant surveillance and monitoring by company-affiliated unions, and a prevailing atmosphere of distrust. There is significant evidence pointing to management's use of "yellow unions" to harass and intimidate independent unions and reports of blacklisting, preventing dismissed unionists from being employed elsewhere. Such practices are seldom captured in conventional social audits, BFC's included.

Because BFC compliance reports are produced by the ILO, they carry substantial weight and credibility in the international arena. While Cambodia legally ensures freedom of association, both structural and operational barriers obstruct workers and unions from fully exercising these rights. Beyond the factory walls, administrative and judicial barriers further hinder union work, exemplified by lengthy union registration and MRS certification processes, and the debilitation of the Arbitration Council. Without being able to rely on the domestic legal system, unions have looked to BFC to assist in documenting non-compliance. In theory, BFC's tripartite structure should allow for robust and accurate documentation of FOA violations for both unions as well as the brands relying on these assessments as part of their due diligence. In reality, this is not possible if the reports are inaccurate. If violations are not being picked up by these reports, the result is unchecked and undocumented union suppression, obscuring the reality of working in BFC factories.

In recognizing the pivotal role that BFC has played in Cambodia, we wish to emphasize that any critiques within this report are not meant to undermine the important work BFC and Better Work have accomplished in improving working conditions, safeguarding worker rights, and ensuring the country's competitiveness as an ethical sourcing destination. Rather, through this publication, we seek to highlight how the BFC's assessment of FOA can be improved to create a safer and more respectful environment for independent unions to operate, which in turn facilitates industrial relations and greater productivity.





# Summarized Recommendations

## **For the ILO, the IFC, Better Work, and Better Factories Cambodia:**

- Make the full compliance report for buyers available to the public, particularly workers and their representatives, for purchase under equitable pricing plans and purchasing conditions.
- Include all 52 issues within the summary reports available to the public, instead of the 21 critical issues currently disclosed.
- Make the latest transparency report for any given factory available within a month of each assessment date, with an alert system to which workers and unions can subscribe.
- Establish a formal BFC-specific grievance mechanism for compliance violations, including FOA, and promote and publicize it widely to address complaints currently meant to be submitted through the QR system.
- Publish a transparent and clear explanation of methodologies used for both full assessments and summarized data.
- Take accountable steps to ensure that workers' interests are fully considered and accounted for within the assessment process, which should include broader direct engagement with a wider spectrum of workers and worker representatives, particularly during assessments.
- Act with more clout and decisiveness when companies are in violation of FOA laws. Workers and worker representatives should be given notice of violations, and the BFC should be equipped to serve as a verifiable source for workers.

## **For employers:**

- As possible, exclude elected union leaders, founders, and activists from layoffs or terminations.

## **For international buyers and brands:**

- Engage with ILO Better Work in all supplier countries to improve inclusion of workers and their representatives in the assessment processes to ensure due diligence is followed.
- Ensure that operational grievance mechanisms are in place throughout their supply chains to better protect freedom of association at the factory level as well as within the context of the country of operation.
- Hold their supply chains accountable in line with international human and labor rights standards, including critical ILO conventions ratified by Cambodia, utilizing their purchasing power to protect workers in their supply chains.



# Introduction

Despite being enshrined in Cambodian law, the recent deterioration of respect for the freedom of association (FOA) of workers has been well documented and widely discussed within the context of broader political concerns in Cambodia.[3] The growing obstruction of FOA – specifically as it pertains to Cambodia’s garment, footwear, and travel goods industry – is marked by several barriers, both through legal and institutional measures as well as at the factory level. In addition, throughout the recent COVID-19 pandemic and recovery period, FOA violations were amplified under the guise of mass layoffs attributed to a shortage of orders, compounding an already fraught environment for Cambodian workers.[4]

The broader legal and institutional obstacles facing unions in Cambodia encompass various systemic challenges, including:

- **Obstacles in Union Registrations:** The process for registering unions is intentionally drawn out and made intricate, often due to minor administrative errors in application forms.
- **Challenges in Achieving Most Representative Status (MRS):** Even for unions that manage to get registered, obtaining MRS, which is crucial for representing workers in disputes, proves to be a strenuous task.
- **Restrictive Strike and Collective Bargaining Policies:** The Trade Union Law imposes strict requirements for organizing strikes, making it a formidable process. The COVID-19 pandemic only complicated matters, further constricting opportunities for collective bargaining.

- **Administrative and Judicial Harassment:** Unions often encounter difficulties in their foundational processes like registration, conciliation, and arbitration. These challenges stem from bureaucratic complexities and the Ministry of Labor and Vocational Training’s (MoLVT) tendency to misclassify disputes, complicating the resolution process.
- **Compromised Functionality of the Arbitration Council:** The effectiveness of the council in dispute resolution has been compromised. The council, tasked with resolving labor disputes, has been met with questions regarding its independence and efficacy as it often refrains from making decisions that would counter the MoLVT’s interpretations.

**Cambodian domestic law contains substantial protections for workers that are supplemented by international conventions and guidelines Cambodia has pledged to adhere to, in addition to domestic policies that are aimed at implementing these legal frameworks to protect freedom of association. Freedom of association entails the right of workers and employers to form and join organizations of their own choosing and is guaranteed by the following international and national instruments:**

- **Article 20 of the Universal Declaration of Human Rights (UDHR), ratified 1955**
- **Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified 1992**
- **Article 22 of the International Covenant on Economic, Social and Cultural Rights (ICCPR), ratified 1992**
- **Conventions 87 and 98 of the International Labour Organization (ILO), ratified 1999**
- **Articles 36 and 42 of the Cambodian Constitution (1993, rev. 2008)**
- **Articles 12, 226, 286-293 of the Cambodian Labor Law**
- **Articles 5, 6, 7, 8, 43, 62, 63, 66, 67, 68 and 79 of the Cambodian Trade Union Law (2016)**

[3] See, e.g. [Human Rights Watch | World Report 2023: Cambodia](#).

[4] [ActionAid & CENTRAL | Stitched under strain: long-term wage loss across the Cambodian garment industry](#).



While the legal and political barriers to FOA in Cambodia fall outside the scope of this report, it is critical to note that before reaching the factory floor, unions already face considerable barriers to their effective functioning. In many cases, these come in the form of administrative and judicial harassment, causing unions to divert time, energy, and resources away from the actual representation of workers. From registration to conciliation and arbitration, legal, bureaucratic, and institutional structures have obstructed the establishment and proper functioning of Cambodian independent unions before they even have a chance to represent their members in the workplace.[5]

At the factory level, workers face an additional set of challenges, including:

- **Verbal Intimidation and Harassment:** This includes sexual and gender-based harassment, threats, coercion, and smearing.[6]
- **Economic Pressures and Incentives:** Bribes, buyouts, and non-renewal of short-term contracts, specifically Fixed Duration Contracts (FDCs).
- **Employment Insecurity:** Tactics like layoffs, suspensions, and dismissals based on fabricated charges, especially targeting workers on Undetermined Duration Contracts (UDCs).
- **Surveillance and Blacklisting:** Constant monitoring of union members and their activities, changes in work teams, and blacklisting of workers.

The use of fixed duration contracts (FDCs) is a particularly notable concern. Cambodian Labor Law specifies conditions for these contracts, but recent instructions from the Ministry of Labor and Vocational Training (MoLVT) have not necessarily favored workers as it permits employers to hire workers on FDCs for up to four years.[7]

Compared to workers on UDCs, those on short-term contracts have fewer protections against dismissals and lose out on seniority benefits calculated based on an uninterrupted length of employment.

Factories frequently keep workers on FDCs beyond the legally permissible time limit for a number of reasons: they can use the constant threat of non-renewal to intimidate workers, especially if they unionize; to avoid paying legally owed severance payments; and to get around the protections that shop stewards and union leaders are guaranteed under the Trade Union Law, who require approval from MoLVT before they can be terminated. Workers who get involved in union activities are therefore regularly dismissed on fabricated grounds when their FDCs end. The deliberate, extended use of FDCs is an unreasonable hiring practice clearly intended to obstruct worker and union rights.

The non-renewal of independent unionists' FDCs is not the only dismissal tactic that factories use to bust unions. Employers have also been accused of making baseless claims, sometimes without any substantial proof, asserting that leaders and active members of unions are involved in misconduct. This has led to the termination of their contracts, bypassing the procedural safeguards required by labor law. In other cases, employers have lodged criminal complaints against union figures based on fabricated charges. Leaders of independent unions have also claimed to be frequently placed on blacklists, effectively barring them from future employment at other factories.

[5] The consensus amongst experts is that the 2016 adoption of the Trade Union Law and its subsequent amendments have made the situation considerably more difficult for unions and workers in Cambodia. A more in-depth legal update is planned for the next report in this series. See: [Amnesty Intl | Cambodia's Law on Trade Unions and Cases Against Union Leaders](#); [Human Rights Watch | Only "Instant Noodle" Unions Survive: Union Busting in Cambodia's Garment and Tourism Sectors](#); [Business & Human Rights Resource Centre | Better Factories Cambodia must do more for garment workers](#).

[6] According to the workers we spoke with, this is often carried out by yellow unions, who work in close collaboration with factory management. But at times, even local authorities - including the police and village chiefs - are involved in exerting pressure and intimidation at the behest of the employer.

[7] In 2019, the MoLVT issued Instruction 050 derogating from Article 67 of the Labor Law by specifying that the initial duration of an FDC cannot be more than two years and that the maximum period of renewal cannot exceed two years.

Collectively, these factors create significant barriers to the efficient operation of unions, impeding workers' freedom of association and their ability to advocate for improved working conditions and rights. As an international program, Better Factories Cambodia (BFC) does not have the authority to dictate how Cambodia creates, amends, or enforces its own laws. However, BFC is, in theory, perfectly placed to assess and report on factory-level FOA violations such as those listed above, which could in theory put pressure on both brands and suppliers to come into compliance. This research is aimed at understanding how well BFC is accomplishing this task.

In this report, we base our understanding of the current state of FOA in Cambodia through the perspective of local branch leaders, activists, and members of two leading independent unions operating within this difficult context: the Cambodian Alliance of Trade Unions (CATU) and the Coalition of Cambodian Apparel Workers' Democratic Unions (C.CAWDU). Comparing primary evidence from these workers' lived experiences to BFC's publicly available factory-level compliance reports, the findings call for more accurate and transparent monitoring of FOA violations and stronger protection of union rights.





# Methodology

This study adopted a mixed methods approach. To capture the lived experience of workers, we began the study with a series of focus groups. Due to the subject matter's nature (not classified as overly sensitive), focus group discussions (FDGs) were optimal to capture a wide range of experiences that enabled us to shape the rest of the study. Three focus group discussions were held with union leaders from CATU and C.CAWDU; one on 2 December 2022, and two on 4 December 2022, with a total of 78 union representatives (including 39 women) from 24 factory-level unions at 22 factories (two factories had two unions each).

The objective of the FDGs was twofold: first, to collect detailed information on access to/provision of FOA rights for workers across a range of exporting Cambodian garment factories; and second, to draw preliminary conclusions that helped frame our comparative research with BFC data from the Transparency Database.

Of the 24 factory unions initially interviewed in December 2022, 14 were included in a follow-up survey in June 2023 (six unions had dissolved by that time due to factory closures, and the remaining four either did not have compliance reports available or were not registered with BFC). The follow-up survey consisted of the 25 anti-union discrimination, union-busting, collective bargaining, and right to strike questions taken from BFC's Compliance Assessment Tool (CAT). [8] The survey was conducted through individual interviews with at least one worker representative from each of the 14 unions. A condition of participation was that the worker representative must have also participated in the original FDGs.

The survey component of the study allowed us to make a direct comparison between BFC public data and the lived experiences of worker representatives. Due to the confidentiality of BFC's full monitoring methods and guidelines, we were unable to perfectly replicate their assessment procedures. However, because our survey asked each worker representative to respond to the same questions used by BFC in their assessments, we are confident that our findings represent a reliable comparison.

After conducting the survey, each respondent was shown the latest compliance report for their factory, covering 21 critical compliance issues, six of which pertain to freedom of association and collective bargaining. Their observations were recorded to supplement the survey data. The factory-level data collected through the survey and subsequent interviews was then used as 'shadow data' to the BFC factory-level compliance reports publicly available on BFC's Transparency Database.

## **21 Critical Compliance Issues**

- No unremediated child labour
- No forced labour (freedom of movement)
- No discrimination against workers
- No dismissal of pregnant workers
- No dismissal of workers during maternity leave
- No sexual harassment
- Equal pay for men and women
- No discrimination against workers based on union membership
- Workers join and form unions freely
- No control of union by employer
- Job is not dependent on union membership
- No management interference with union
- Workers are free not to join union
- Regular emergency evacuation drills (every 6 months)
- Emergency exit doors are unlocked during working hours
- Emergency exit doors are sufficient
- Dangerous machine parts have safety guards (not needle guards)
- Clean and sufficient drinking water
- Correctly paid minimum wages
- Correctly paid overtime wages (ordinary overtime hours)
- Bonuses, allowances, leaves count entire employment period

[8] Better Work - Cambodia's Compliance Assessment Tool.

# BFC's Transparency Database

The BFC program was launched in 2001 at the request of the Cambodian government as the foundational program of Better Work to improve working conditions in the garment and footwear sector.[9] It does so by conducting regular assessments of factories to evaluate their compliance with labor standards, including issues related to child labor, forced labor, wages, working hours, and occupational health and safety. The BFC program takes a two-pronged approach: BFC conducts assessments of all BFC-registered factories to check for compliance with Cambodian law and the ILO's core conventions;[10] BFC also offers what it calls 'voluntary advisory services', which entails the creation of worker-management committees tasked with improving compliance.[11]

Assessment results were initially shared only with international brands and buyers sourcing from these factories to create a more transparent supply chain to enable informed decision making. However, increasing demand for more transparency and public access to the data slowly emerged. As a response, in 2014 BFC launched a publicly accessible online platform providing summarized data on assessed factories via summarized compliance reports.[12] The public data referred to in this report all comes from the summarized compliance reports, accessible via the BFC Transparency Database.[13]

BFC assessment is conducted by Better Work Advisors using the BFC's Compliance Assessment Tool (CAT), which

reports on 52 compliance issues using a 276-step questionnaire.[14] Full reports covering all 52 issues are then made available to the buyers who pay to access them.[15] However, only 21 issues are classified as "critical" (or, "Publicly Reportable Issues") and covered in the publicly available compliance reports accessible via the Transparency Database. The publicly available compliance reports provide simple YES/NO information on a factory's compliance for each of the 21 critical issues.

In Cambodia, BFC registration (and consequently, BFC assessment) is only mandatory for factories with export licenses that produce garments, travel goods, and bags.[16] Advisory services are entirely voluntary for all factories in Cambodia. Footwear and other factories have the choice to voluntarily opt-in to either the assessment or advisory programs but are not required by law. Subcontracting factories without an export license only register with the BFC voluntarily (often at the insistence of international brands), which does not require assessment.[17] Factory-level summary assessments are added to the Transparency Database after completing at least two assessments, and currently updated quarterly to reflect recent assessments.[18] Consequently, many factories operating in Cambodia are excluded from the database, including newly opened factories and factories not required by law to register with BFC.

{9} As a result of its success in Cambodia, Better Work now has a presence in 13 countries. Better Work.

{10} Ratifications of ILO conventions: Ratifications for Cambodia.

{11} The voluntary nature of the advisory aspect appears to be unique to Better Factories Cambodia. On the BFC website, the advisory component of the program is clearly stated as voluntary for all factories (Better Work Cambodia: Our programme). However, in other countries with Better Work presence, assessment and advisory services appear to be more linked, through information on Better Work programs available to the public.

[12] More information on the Better Factories Cambodia Transparency Database can be found at: Better Work - Transparency Factsheet.

[13] Better Factories Cambodia's Transparency Database.

[14] Better Work - Cambodia's Compliance Assessment Tool.

[15] Most of the Better Work program's buyer partners hold partnership agreements with the ILO; hence they don't purchase the reports separately, but contribute a fee based on their footprint in the BW countries. In addition, they need Third Party Access from the factory to access a report.

[16] In 2020, Cambodian law expanded registration stipulations to the bag and travel goods sector. Ministry Praka 434/20 dated 31 December 2020.

[17] For this reason, subcontracting factories have historically been used to get around compliance regulations. In the latest renewal of the agreement between BFC and the government of Cambodia in October 2022, it was agreed that BFC requirements would be extended to all subcontracted factories. However, the details of this update and how it will be implemented have not yet been made public.

[18] According to the Transparency Database website, BFC publicly discloses information on all factories against the 21 critical issues after two or more assessments have been completed. BFC also publicly disclosed information on factories with the lowest compliance levels after three or more assessments have been completed. In both cases, factories can request a BFC verification visit before disclosure and post information relevant to their performance.



The most recent publicly available reports for each of the 14 factories included in this study were used as a comparison against our primary data.<sup>[19]</sup> Our findings in relation to the accuracy of these reports come from the perspective of workers, documented through focus group discussions and interviews. To complement this study, CENTRAL conducted two workshops with CATU and C.CAWDU representatives from multiple factory-level unions to demonstrate how to use the Transparency Database. In both workshops, participants were provided instructions and training on how to access and use the Transparency Database. Our findings as relevant to worker usability come in part from these workshops, in combination with in-depth interviews with union leadership.

## Freedom of Association and Collective Bargaining

### Fact-Gathering Questions

- Q 68 (FGQ)**      **What percentage of workers are union members?**
- Q 69 (FGQ)**      **How many active registered unions are there in the factory?**
- Q 70 (FGQ)**      **For each active union, provide:**
- **The name of the union:**
  - **Last registration date:**
  - **The number of union leaders: # (# women)**
  - **Total number of union members: # (# women)**
  - **The name of the federation or confederation with which it is affiliated (if applicable):**
- Q 71 (FGQ)**      **How many collective bargaining agreements are in effect in the factory?**
- Q 72 (FGQ)**      **For each CBA, indicate:**
- **the parties**
  - **the % of the workforce covered**
  - **the duration of the agreement**
  - **an overview of the issues covered**
- Q 73 (FGQ)**      **How many strikes have there been since the last visit?**
- Q 74 (FGQ)**      **For each strike, indicate:**
- **why workers went on strike**
  - **whether the strike complied with legal requirements**
  - **whether the strike resulted in violence**
  - **the number of days workers were on strike**
  - **the number of person days workers were on strike**
  - **the outcome of the strike**

Legal Reference: LL Art. 319, 320, 323, 324

### Freedom to Associate

- Q 75 (CQ)**      **Can workers freely form and join a union?**
- Legal Reference: C87; LL Art. 266, 271.
- Q 76 (CQ)**      **Can the union(s) freely form and join federations and confederations of their choice?**
- Legal Reference: C87; LL Art. 275; Prakas 305/01(5)
- Q 77 (CQ)**      **Does the employer require workers to join a union?**
- Legal Reference: C87; LL Art. 273

[19] The number of reports available on the Transparency Database depends on when the factory opened and/or registered with BFC and received the minimum initial assessments. In this study, we simply compiled the most recent reports available. Because our focus was on FoA, we did not have to grapple with how to condense and/or score multiple reports as almost all showed no signs of non-compliance at all.

# Key Findings and Analysis



## The efficacy of BFC data

In its early days, BFC, and the public disclosure of individual factory compliance, played a crucial role in raising awareness about labor conditions in Cambodia's garment and footwear industries and encouraging positive change.[20] However, it is telling that, rather than underscoring their commitment to worker rights, the very first statement we see on the BFC Transparency Database landing page declares: "BFC is committed to supporting the competitiveness of the Cambodian garment industry and helping to build the reputation of Cambodia as an ethical sourcing destination." [21]

BFC's position within a tripartite (government, workers, and employers) public-private partnership structure in a crony capitalist state means that it can never operate with complete autonomy.[22] While we acknowledge that

this is a problem endemic to all similar monitoring initiatives whose funding comes in part from corporate actors,[23] we would also argue that the existing reporting system heavily favors factory owners and their clients, disregarding the potential victims of labor rights violations. BFC's hands are tied to its funders' purse-strings and to its host government's expectations. This could be viewed as both a constraint and a pressure point to be leveraged if its non-corporate donors were to take concerted action to demand better transparency and accountability from the suppliers. In practice, workers often find factory interests to be supported more strongly than their own.

For example, one of Better Work's stated aims is to facilitate the engagement of worker-management dialogue to improve factory non-compliance, particularly on issues captured by

[20] See e.g.: [ILO | Transparency drives improvements in factory working conditions](#), Robertson, et al. | [Working conditions and factory survival: Evidence from better factories Cambodia](#).

[21] As of February 2024. [Better Factories Cambodia's Transparency Database](#).

[22] Indeed, BFC's donors include the employer organization the Garment Manufacturers Association of Cambodia (GMAC), now known as the Textile, Apparel, Footwear & Travel Goods Association in Cambodia (TAFTAC), which is often supportive of the Cambodian government.

[23] [Clean Clothes Campaign | 10 Years of the Better Factories Cambodia Project](#).



BFC assessments.[24] The primary approach that BFC takes in establishing this dialogue is through the creation of Performance Improvement Consultative Committees (PICC), enterprise-level committees that are comprised of an equal number of management and elected trade union representatives and/or independent worker representatives. A designated BFC advisor is responsible for establishing a PICC at all factories that have opted-in to the voluntary advisory services program and providing technical support and facilitation for PICC meetings. According to Better Work, PICCs are designed to strengthen trust and dialogue between the factory and workers, while also providing a collaborative setting to address non-compliance issues.[25]

## **‘Of the 14 BFC-registered factories included in this study, representatives of four were not aware of a PICC operating at their workplace’**

At PICC meetings, all instances of non-compliance documented by members of the PICC or through formal BFC assessments are discussed and added to a Performance Improvement Plan that the PICC and BFC advisor maintain throughout the cycle. The buyer can then access this plan to check on the improvements made throughout the cycle. According to our research, this is the only time that workers have access to full BFC assessment reports and compliance data.

In theory, the PICC model is a novel approach to inclusive collaboration that can give workers the opportunity to

access BFC’s full assessment findings, ensure equal representation of workers on critical working condition issues, foster social dialogue, and allow BFC to monitor non-compliance improvements.[26] In practice, the full reports are not shared beyond the committee, and anecdotal evidence from union federation staff suggests that independent unions are prone to being left out of the process entirely, resulting in a much less egalitarian process than BFC intended.

It is important to also reiterate here that although registering with BFC for assessment is mandatory for all exporting garment and travel goods factories, joining BFC’s advisory services program, including the PICC component, is voluntary. And, while factories are often compelled to opt-in due to pressure from their buyers and/or to attract international brands, there is no publicly available data confirming the number of factories in Cambodia that have established PICCs. Of the 14 BFC-registered factories included in this study, representatives of four were not aware of a PICC operating at their workplace at all; which could mean their factory had not yet opted-in to the advisory program, or that their union was not included in the process. Of the remaining ten, representatives reported that the PICC was useful in addressing occupational health and safety issues, but not FOA violations.

Union representatives able to confirm both existence of and inclusion in a PICC expressed reservation towards these committees, as even when they do participate, they often lack the training and experience to stand up to the yellow unions’ support of management proposals, drowning out the minority voices of independent union representatives. In

[24] Better Work Cambodia: Our programme.

[25] There is very limited publicly available information on the methodology behind the PICC process, including how membership is monitored, and how meetings work. BFC representatives have provided supplementary information to inform this report, but there remains confusion within Cambodia on how the advisory services and PICCs work in practice.

[26] The PICC model could be viewed as BFC’s attempt to improve upon the shop steward system mandated in Cambodia’s Labor Law. Shop stewards are mandatory for all companies covered under the Trade Union Law. However, the shop steward system does not work as a committee, nor does it require regular structured meetings with management; the law simply mandates that any company with more than eight employees must elect shop stewards proportionate to total employee numbers. While the law protects shop stewards from dismissal and creates for them a formal legal role in presenting grievances to the employer regarding working conditions, according to unions, the shop steward system has long been dysfunctional in Cambodia. The PICC system, with a mandated equality in number between management and employee representatives, thus has the potential to replace a broken system with one monitored and supported by BFC advisors, which has the potential to vastly improve the current status quo.

addition, representatives within our study suggested that the PICC was largely useful for addressing occupational health and safety concerns, such as access to clean water or exposure to extreme heat, but is not capable of addressing larger concerns, including FOA violations. Study participants overall reported that, while they appreciated its existence, the PICC had not addressed their most pressing concerns, and in some cases, meetings continued to be held irregularly, with employers not providing access to full compliance data as intended.

Outside of the PICC process, it has proven extremely difficult for workers to access BFC data. Although it is possible for any interested party to purchase a full report, none of the unions included in this study have attempted to, citing prohibitive costs (USD 1500) and uncertainty that the factory would grant approval (factory authorization is required before the full report can be purchased by a member of the public). As for the publicly available summary reports, union federation staff reported that the data was difficult and time-consuming to access, and ultimately not useful in negotiating with employers.

Cambodian garment workers, of which nearly 90% are women, often come from low socio-economic backgrounds, with low levels of education and literacy. The average worker does not own a computer and is not able to use one; their only access to the internet is through a smartphone. The majority do not know what an internet browser is, do not have or use email addresses, and primarily use their mobiles to access Facebook and YouTube. Grassroots union leaders and activists are not familiar with online searching, and do not know how to google the BFC website. In training sessions on accessing and interpreting BFC transparency data, it took an hour, on average, for participants just to get to

the BFC landing page, as it was difficult for them to enter the URL in a second language.

Even after attending extensive training on digital literacy to learn how to access the Better Work/BFC websites and how to read the data, both workers and union leaders are also faced with extremely limited time, attention, resources, and motivation to look up this information regularly. It requires a large effort to download a browser, figure out how to access the website (even in Khmer), and navigate it on their smartphones. The average Cambodian garment worker is at work at least 10 hours per day, six days a week. Struggling to survive on limited wages, most workers take on overtime as often as possible, or a second job if they can find one. For most, time is a luxury. As a result, workers and unions alike largely ignore BFC data.[27]

**‘federation staff reported that they found BFC data to be so inaccurate, that it is almost never useful as evidence in negotiating better conditions’**

Even when they can access it, workers have long voiced that their lived experiences are not reflected in the BFC data. In focus group discussions conducted by a union federation in 2019, 90% of the workers interviewed did not agree with the findings of recent BFC compliance reports on their factories, particularly regarding the data on discrimination against unions.[28] In focus group discussions, union representatives also voiced confusion over how BFC defines key criteria, such as discrimination against unions, voicing a perception that this aspect of the methodology was not transparent. As will be discussed in greater detail in the section below, federation staff reported that they found BFC data to be so inaccurate, that it is almost never useful as evidence in negotiating better conditions.

[27] This was also reflected in a previous outcome of Solidar’s ‘Building capacity at grassroots to engage in evidence-based bargaining using publicly disclosed data’ project. Public findings are available at: [Solidar Suisse | Using Public Data Project Public Report 2020](#).

[28] Based on 20 focus group discussions (FGDs) conducted with 208 workers (58% female) at 10 factories carried out by trained C.CAWDU staff and external enumerators from a local research and consultancy firm between May and June 2019. Better Work has taken these findings into consideration in the redesign of the Transparency Portal, which will be launched soon. Ibid.



If these reports are not truly accessible to all relevant stakeholders and/or reflective of the actual working conditions on the ground, then everyone is participating – whether willingly or not – in a large-scale whitewashing scheme. For instance, during this research, union representatives mentioned a case in which a brand used BFC compliance data to deny that there had been an FOA violation at the factory they had been sourcing from, even after hearing directly from union representatives. In their decision to continue business with the factory, the brand directly cited the factory’s high compliance record according to BFC data in support of their decision. This calls into question how workers are meant to trust BFC compliance data at all and who the public reports are really assisting.

Finally, there remains a lack of clarity regarding the relationship between the goal of improving working conditions in the garment industry and that of making the sector more competitive. The BFC has not publicly articulated whether the Transparency Database’s priority is to provide assurance of legal compliance to international buyers and brands, or to be used by workers and unions as a driver to improve labor conditions. BFC’s stated objective is twofold – “[t]he programme engages with workers, employers and governments to improve working conditions and boost competitiveness of the garment industry.” [29] However, these results exist within a framework which implicitly assumes that both goals are always complementary, glossing over which gets prioritized and why in instances where they are at odds with each other. As far as unions and workers are concerned, this tension is not being sufficiently addressed by Better Work.

By virtue of being produced by an ILO program, BFC compliance reports are considered reputable, internationally recognized assessments, possessing the

kind of legitimacy with buyers and adjudicating bodies that evidence presented by unions and workers themselves may lack. This has long been acknowledged by Cambodia’s independent garment unions: “The BFC’s credibility means that its reports and input are respected throughout the international community. International buyers want a factory that is monitored by the BFC and is ILO approved,” a federation official previously noted. [30]

However, if the “[p]romotion and realization of freedom of association and the effective recognition of the right to organize are at the heart of the ILO mandate,” [31] BFC is not doing enough to protect these fundamental freedoms by publishing data that is often inaccurate and/or not relevant, accessible, or usable by workers for negotiating better working conditions.

**A note on using BFC data as evidence for worker negotiations relates to how improvement of working conditions is defined. There are two ways in which working conditions can be improved: by bringing non-compliant practices up to legal standards, or by improving conditions beyond the legal minimum, as collective bargaining agreements and advocacy often seek to do. When accurate, compliance reports have enormous potential as a bargaining tool to rectify instances of factory non-compliance. However, the reports cannot serve as a basis for collective bargaining to confer benefits to workers beyond legal compliance as they are not designed to capture anything beyond explicit violations of the law. When the law is flawed – as seen through the current legal constraints around FOA in Cambodia – the compliance reports have the potential to become less useful to workers even when given full access to the reports and bargaining opportunities.**

[29] [Better Work - Cambodia](#).

[30] [Clean Clothes Campaign | 10 Years of the Better Factories Cambodia Project](#).

[31] [ILO | Freedom of association in practice: Lessons learned](#), p. xiii.

# Case Study I: ML Intimate Apparel (Cambodia) Ltd.

**ML Intimate Apparel** is a factory based in a Special Economic Zone in Poipet, a border town in the northwest of Cambodia, employing approximately 500 garment workers. This summary outlines the series of events involving the formation and challenges faced by the Workers' Right Protection Union of ML Intimate Apparel (Cambodia) Ltd:

**Formation and Early Challenges (January 2022 - March 2022):** The union was initiated in January 2022 by Keo Vanvannak and his colleagues with the aim to protect workers' rights. Despite successfully notifying the employer and legally applying for registration after being elected union president, the company resisted the unionization efforts by summoning union leaders and pressuring them to resign, resulting in verbal harassment, temporary detainment, and the illegal dismissal of Vanvannak in March. A second founding union member was forced to resign just a few days later.

**Legal and Administrative Hurdles (April 2022 - September 2022):** Following Vanvannak's reinstatement after MoLVT intervention in April, the company continued its attempts to dissolve the union by pressuring Vanvannak to resign. The Ministry of Labor's fluctuating responses further complicated the situation, with initial support for Vanvannak turning into a rejection of the union's registration on the grounds of his dismissal. During this period, the company also illegally dismissed Kim Tonich, the elected vice president of the union.

**Continued Efforts and Second Union Formation (October 2022 - November 2022):** Despite ongoing challenges, the workers remained determined, electing new leaders and attempting a second union registration. After conciliation at the MoLVT, Kim Tonich accepted reinstatement with partial back pay and subsequently took over as president after holding a new set of elections and submitting a new request for legal registration at the MoLVT.

**Escalation and Company Counteractions (December 2022 - March 2024):** The company almost immediately retaliated in response to renewed union activity, dismissing the newly elected vice president Yun Seyha in December 2022. The MoLVT then rejected the union's second attempt at registration on the same grounds. In November 2023, in the midst of a near factory-wide protest against irregular wages, 12 workers, including one union member were dismissed.

**Current State and Union Persistence (June 2024):** Despite the company's continuous attempts to undermine it, the union, supported by its members and external labor rights organizations, remained steadfast in its efforts to secure fair treatment and recognition, in the face of both legal battles and direct interference from the employer. The union's members and leadership continued to seek official recognition and the ability to represent their members' interests effectively despite the difficulties. In May 2024, a confidential agreement was reached between workers and the factory.

**Observations on Compliance and Public Record:** At the time of data collection, the most recent BFC assessment (dated 1 November 2022, which covered the period during which some of the events described above took place), reported that no violation of the FoA compliance points were found. Despite Vanvannak's illegal dismissal, in the public record, there was no record of FoA violations at ML Intimate. Since then, a new assessment (dated 27 December 2023) has been added to the public summarized report. In this report, one FoA violation does appear, but according to our data, several more FoA-related issues should have also been included.



## \* ML Intimate Apparel (Cambodia) Ltd.

Home / Critical Issues Factory List / ML Intimate Apparel (Cambodia) Ltd.

- The boxes show the last 4 assessments since the start of the transparency program, with the most recent assessment on the left.
- The Compliance column show the factory's performance on each indicator for up to four assessments

Address: N/A

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* ASSESSMENT #5 (27-12-2023) <b>✗ 2 ✓ 19</b>	* ASSESSMENT #4 (01-11-2022) <b>✗ 0 ✓ 21</b>	* ASSESSMENT #3 (23-04-2021) <b>✗ 0 ✓ 21</b>	* ASSESSMENT #2 (12-07-2018) <b>✗ 1 ✓ 20</b>
-------------------------------------------------	-------------------------------------------------	-------------------------------------------------	-------------------------------------------------

ISSUE	COMPLIANCE	▼ RESPONSES
No unremediated child labour	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
No forced labour (Freedom of movement)	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
No discrimination against workers	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
No dismissal of pregnant workers	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
No dismissal of workers during maternity leave	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
No sexual harassment	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Equal pay for men and women	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
No discrimination against workers based on union membership	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Workers join and form unions freely	#5 ✗ #4 ✓ #3 ✓ #2 ✓	
No control of union by employer	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Job is not dependent on union membership	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
No management interference with union	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Workers are free not to join union	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Regular emergency evacuation drills (every 6 months)	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Emergency exit doors are unlocked during working hours	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Emergency exit doors are sufficient	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Dangerous machine parts have safety guards (not needle guards)	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Clean and sufficient drinking water	#5 ✓ #4 ✓ #3 ✓ #2 ✗	
Correctly paid minimum wages	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Correctly paid overtime wages (ordinary overtime hours)	#5 ✓ #4 ✓ #3 ✓ #2 ✓	
Bonuses, allowances, leaves count entire employment period	#5 ✗ #4 ✓ #3 ✓ #2 ✓	



**‘worker representatives at 10 out of the 14 factories described the BFC compliance reports as inaccurate’**

## The accuracy of BFC data on FOA

In Cambodia, violations against freedom of association exist in varying forms and severity, but local unions and federations simply do not have the resources and capacity to document and track each individual violation. Despite workers’ difficulty in accessing the actual data, the sector has to date largely relied on BFC to report FOA compliance, as guaranteed by the Cambodian Constitution. This project was created to address the mounting concern from unions that BFC data is inaccurate and/or incomplete.

To evaluate how well the BFC data reflects workers’ experience of FOA, this study replicated the assessment process by asking union leaders from 14 factories the same FOA questions included in actual BFC assessments.<sup>[32]</sup> While the limited sample size does not allow us to extrapolate across the industry, the findings point to a gap in reported compliance and lived experience: at 10 of the 14 factories included, one or more FOA violations had taken place during the most recent assessment cycle. However, within the BFC compliance reports available to the public, there appears no trace of

violation against any of the critical issues relevant to FOA at any of the 14 factories included in this study.

In fact, the reports for all 14 factories<sup>[33]</sup> show perfect scores on all six of the following BFC compliance points related to FOA:

- No discrimination against workers based on union membership;
- Workers join and form unions freely;
- No control of union by employer;
- Job is not dependent on union membership;
- No management inference with the union;
- Workers are free not to join union.

When surveyed, worker representatives at 10 out of the 14 factories described the BFC compliance reports as inaccurate after review. And while an informal system for workers to report compliance issues to BFC was recently implemented, <sup>[34]</sup> representatives have expressed no noticeable change in the public reports.

One of the factory union representatives who deemed the

<sup>[32]</sup> Using the CAT, see methods section.

<sup>[33]</sup> At one factory, there are 13 unions, 11 of which are management-controlled or affiliated. Only the CATU and C.CAWDU factory unions are independent. This does show up in the summary report but is not flagged as a violation.

<sup>[34]</sup> As of 2022, there is a QR system through which unions and federations can upload documentation directly to the BFC. However, there is limited information available on what is done with this information, and representatives told us that they have not noticed any net benefit to the system so far.



report a fair assessment was a union leader who had been active in the factory for 17 years, and he said it was only after many years of conflict that the union and management had reached a certain level of understanding with each other, allowing for better working conditions there. Similarly, the other three enterprises whose union leaders indicated accurate reports are ones with powerful, long-standing unions, suggesting a correlation if not causation between strong FOA compliance and improved working conditions.

## **‘there is a strong pattern of non-compliance with FOA international norms and domestic law’**

Based on the data collected, within the 10 factories with unions reporting inaccurate compliance reports, there is a strong pattern of non-compliance with FOA international norms and domestic law. The findings indicate that while a majority (nine out of 14) of the factories permit workers to form and join unions, a notable 36% do not comply with this basic standard. In addition, a significant portion of the factories (11 out of 14, or 79%) do not treat unions equally, giving pro-government or company-backed unions (or “yellow unions”) preferential treatment. It was also found that 29% of the factories require workers to be union members, which could indicate the existence of employer-controlled unions, and half of the surveyed factories fail to provide a space for workers to convene without management oversight.

The survey findings also revealed a concerning trend where nearly half of the factories (six out of 14) either refuse to engage in collective bargaining or do not do so in good faith with union representatives. Six out of 14

factories also do not consult with unions as legally mandated. Additionally, in five factories, union membership or activities factor into hiring decisions, while 50% (seven out of 14) have been reported to discipline or terminate employees over union membership or activities. Almost half of the factories (six out of 14) are also accused of trying to manipulate or control unions, with an overwhelming 86% (12 out of 14) attempting to prevent strike participation.

The presence and enforcement of Collective Bargaining Agreements (CBAs) is also an area of concern. Most factories (11 out of 14) did not have a CBA in place, impacting their score on related questions. For the three factories with CBAs, only one had an agreement with provisions that were as favorable for workers as the law requires; another was deemed to have failed to enforce its CBA provisions.

This survey paints a picture of varied compliance levels across the factories, with compliance percentages ranging from 14% to 96%, indicating a mixed adherence to legal FOA standards. Despite some factories meeting certain FOA criteria, significant issues persist, especially regarding employer interference, discriminatory treatment towards unionized workers, and negative reactions to union activities and strikes. However, without access to the detailed compliance reports compiled for international buyers and other purchasers, it is difficult to ascertain whether the BFC audits are failing to accurately assess FOA across the board, or if the methodology for condensing the full reports into the 21 compliance points for public access is flawed.

Part of the problem is that the assessment methodology employed has not been comprehensively revealed to the public or workers and their representatives, leaving ambiguity around several key aspects of the evaluation process. Specifically, the exact number of individuals interviewed at each factory remains ambiguous as well as their job titles, the criteria for their selection, the representativeness of these

individuals, and the method by which their responses are analyzed and ultimately represented as green checks or red crosses in the factory reports. These symbols indicate the presence or absence of critical issues, but do not provide room for nuance or scale. And, because the Compliance Assessment Tool (CAT) used by BFC includes multiple questions related to each compliance point, it's unclear how BFC consolidates responses from various interviewees across all questions to derive a conclusive indication of factory compliance on each of the specific issues.

The website states that, "(a) Green row indicates that no – or insufficient – evidence was found of non-compliance on the specific labour issues we profile here on the Transparency Portal." However, it does not reveal how discrepancies are resolved when workers or unions provide conflicting information compared to management responses to the same queries nor does it provide a definition of sufficient evidence. BFC mentions that approximately 30-40 workers are interviewed for each assessment, with the selection process being somewhat organic, focusing on issues initially identified and that any reported or observed non-compliance during on-site assessments is thoroughly investigated and must be corroborated by three different parties before being officially recorded. However, this approach does not ensure that a representative sample of workers is interviewed, nor does it account for the possibility of FOA violations that may impede corroboration, such as harassment or intimidation of workers during the audit.

BFC asserts that all these considerations are factored into the assessment process, yet the detailed methodology remains undisclosed to the public. This lack of transparency has hindered our ability to accurately replicate their full monitoring procedure in this report. While BFC did finally upload a Khmer language copy of their CAT to their website in 2021, this study illustrates that there is still room for further transparency regarding their assessment methodology, without which a fully accurate and independent evaluation is impossible.[35]



[35] Worker Rights Consortium and the Stanford Law School's International Human Rights and Conflict Resolution Clinic's 2013 report, "Monitoring in the Dark", contains details on BFC's monitoring process, a copy of the "BFC Factory Visit Questionnaire" used at the time, as well as a redacted copy of a full assessment report in the Appendices. However, these instruments and documents are from ten years ago and the current CAT used by BFC follows a different format with fewer questions. Worker Rights Consortium | Monitoring in the Dark: An evaluation of the International Labour Organization's Better Factories Cambodia monitoring and reporting program.



# Case Study 2: TRAX Apparel (Cambodia) Co., Ltd.

**TRAX Apparel is a factory located on the outskirts of Phnom Penh, Cambodia's capital city. Employing over 1,500 workers, TRAX produces clothing for some of the world's most famous sporting brands, including Adidas and Puma, and has been the subject of intense media scrutiny since 2020. This summary outlines the series of events involving union leaders and activists at TRAX Apparel, focusing on dismissals, negotiations, and efforts towards reinstatement:**

**Initial Dismissals and Contract Changes (April 2020 - June 2020):** Amidst the COVID-19 pandemic, in April 2020, TRAX Apparel cited a lack of orders as the reason for laying off 620 workers, including 8 union leaders and activists. 368 workers were eventually convinced to resign, only to have their contracts renewed for a shorter duration and ultimately terminated. Management did not extend rehiring offers to any of the 8 union members.

**Challenges in Reinstating Union Leaders (April 2020 - April 2022):** Over nearly three years, TRAX Apparel employed various tactics to avoid reinstating the 8 dismissed union leaders, in violation of freedom of association (FOA) principles. After extensive international pressure, four of the eight dismissed leaders were reinstated in April 2022 with partial back pay. However, each of the four returning workers reportedly faced discrimination upon their return, and were not allowed back to their original positions.

**Final Reinstatements and Back Pay (February 2023):** After continued engagement with stakeholders including Adidas and pressure from the international #payyourworkers campaign, in February 2023 TRAX agreed to unconditional reinstatement for the remaining four union leaders and to provide full back pay to all eight leaders dismissed in June 2020. The Workers Rights Consortium, who were instrumental in the remediation process, reported that the remediation amount won was one of the largest back payments per worker ever won in a case involving collegiate apparel, demonstrating a clear 'win' for the union as well as a clear record of violations.

**Observations on Compliance and Public Record:** At the time of data collection, the two most recent BFC assessments (dated 29 March 2022 and 21 March 2023, covering the period during which the events described above took place), reported that no violation of the FoA compliance points were found, despite the ongoing dispute and involvement of worker rights groups and buyers. Even with significant media pressure, ongoing negotiations, and international attention, one union leader reported difficulties in organizing throughout this period, citing management attempts of bribery, which she refused.

The Trax case demonstrates the complexities of labor disputes in the garment industry, where union leaders face significant challenges in advocating for workers' rights amid company resistance and legal loopholes, while external assessments do not always reflect the on-ground realities of such conflicts. Despite the widespread record of dispute and an eventual settlement worth thousands of dollars, in the BFC public record, there remains no trace of FOA violations at Trax Apparel.

## \* Trax Apparel (Cambodia) Co., Ltd.

Home / Critical Issues Factory List / Trax Apparel (Cambodia) Co., Ltd.

- The boxes show the last 4 assessments since the start of the transparency program, with the most recent assessment on the left.
- The Compliance column show the factory's performance on each indicator for up to four assessments

Address: Building #99, Phlaur Lum,Sangkat Dangkor, Khan Dangkor, Phnom Penh, Cambodia.

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\* ASSESSMENT #10 (21-03-2023)

✘ 0 ✔ 21

\* ASSESSMENT #9 (29-03-2022)

✘ 0 ✔ 21

\* ASSESSMENT #8 (23-06-2021)

✘ 0 ✔ 21

\* ASSESSMENT #7 (13-02-2020)

✘ 1 ✔ 20

ISSUE	COMPLIANCE	▼ RESPONSES
No unremediated child labour	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
No forced labour (Freedom of movement)	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
No discrimination against workers	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
No dismissal of pregnant workers	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
No dismissal of workers during maternity leave	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
No sexual harassment	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Equal pay for men and women	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
No discrimination against workers based on union membership	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Workers join and form unions freely	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
No control of union by employer	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Job is not dependent on union membership	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
No management interference with union	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Workers are free not to join union	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Regular emergency evacuation drills (every 6 months)	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Emergency exit doors are unlocked during working hours	#10 ✔ #9 ✔ #8 ✔ #7 ✘	
Emergency exit doors are sufficient	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Dangerous machine parts have safety guards (not needle guards)	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Clean and sufficient drinking water	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Correctly paid minimum wages	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Correctly paid overtime wages (ordinary overtime hours)	#10 ✔ #9 ✔ #8 ✔ #7 ✔	
Bonuses, allowances, leaves count entire employment period	#10 ✔ #9 ✔ #8 ✔ #7 ✔	

# Evidence of persistent violations of FOA

**“we don’t have full rights and power to bargain for our workers”**

**- union representative**

Many of the workers we spoke with during this research described FOA in Cambodia’s garment, footwear, and travel goods sector as hampered by constant surveillance and monitoring by company unions, other workers, and management, creating a pervasive atmosphere of fear and distrust in the workplace and hindering unionizing efforts. For example, among the 24 factory unions included in the initial focus group discussion stage of this study, there were at least three protracted cases of union-busting which took place over the last two years.

In each of these three cases, local dispute resolution attempts failed, and a solution would not have been found without brands stepping in on behalf of the workers. With FOA rights dwindling in the face of restricted civil space in Cambodia, local unions frequently rely on interventions by brands as their best and safest recourse.[36] When brands refuse to help, they are left with no other option. CENTRAL, along with our union and other partners, have been working closely to advocate against the many legal and administrative obstructions and delays currently hindering the local dispute resolution processes, including the weakened

role and autonomy of the Arbitration Council. However, this is a lengthy process, with little promise of concrete improvements. Until these concerns are addressed, compliance reports are unable to reflect our concerns, as they are not designed to assess labor conditions that fall outside legal requirements.

In addition to more serious disputes, most study participants also reported day-to-day discrimination against union leaders, activists, and members. Most frequent was the report that yellow unions are often given preferential treatment and used by management to harass, intimidate, or interfere otherwise with the work of independent unions. As stated above, within the survey, a significant portion of the 14 factories’ representatives (79%) reported that their employers do not treat unions equally, giving yellow unions preferential treatment over independent unions.

Within focus group discussions, similar findings came out. Union members described significant discrimination and restrictions within their factory, contrasting starkly with the freedoms enjoyed by members of yellow unions. Unlike yellow unions, which can conduct union activities during work hours, union members are restricted to lunch breaks or other breaks, facing threats and surveillance if they attempt otherwise. The factory management also relies on yellow union members to exert pressure, limiting independent unions’ bargaining power and deterring workers from joining due to fears of retribution. From their perspective, this has made organizing increasingly difficult, particularly during

[36] In recent years, strikes and other union activities have become heavily regulated in Cambodia, frequently resulting in arrests and detention. See, e.g.: Cambodia: Union leaders arrested after over 1000 workers protest outside Adidas supplier over alleged violations incl. delayed payment of wages.



during the COVID-19 recovery period, which remains ongoing in Cambodia. Frequent threats to terminate employment for those resisting highlights the ongoing struggle for union rights and fair treatment within the workplace.

“All the other unions can do whatever they want and move around to different stations – but for C.CAWDU, even if you go to the bathroom for five minutes there will be a big problem. Ever since COVID our factory has had problems with orders, so we have to play it safe because if there are no orders or people get fired, these people won’t be able to find jobs.”

“It’s an unfair situation, the other [yellow] unions can do union work during work hours, but we are told we can only do it during lunch or on a break.”

“They use the factory union to put pressure on us and we are not equal (unions) the factory union always has more power than us – we don’t have full rights and power to bargain for our workers – the right to become a union member, actually, they only allow factory union ... workers are afraid to join the C.CAWDU union.”

“If workers come to me with a problem or just a question, we normally would say we can’t discuss during working hours, the factory (supervisors from other unions) will take photos or use security footage and tell us that they will go to the government and say we are spreading false information or propaganda and threaten us”.

“Regarding organizing in the factories, our factory has a lot of challenges especially the admin and HR, they create different sections like security and supervisors and when activists and C.CAWDU do some work, they try and attack our activity so when we try and organize the workers, HR always calls us to prevent our activities – there isn’t enough work for workers to do, and they leave at 4 so it’s really difficult for us to gather more workers in the factories, so either short-term contract workers do not understand the conditions and are scared to join the unions so the same challenges are attacks from factories (they have lawyers, and HR, and gangsters – especially Chinese and translators) so the organizing new members is challenging – we have also been threatened by other unions.”

“At my factory we have a lot of problems, we want to have a good connection with the factory, but they don’t want to play nice with us, they always just take sides with the other union – there’s always excuses and bad understanding until we bring the government into it. But even then, we will file for a CBA but they won’t accept it – we really need to pressure them for anything, like signing contracts for a negotiation, but even then it just goes back to how it was. Recently, regarding the pension money, it has caused problems and all the other unions are really accepting of the factory position, but we have said no, and it has caused a lot of problems within the factory – the factory threatened C.CAWDU and said they would fire us all if we don’t back down.”

Harassment and intimidation were themes that came up repeatedly in our interviews. This is particularly distressing because all the workers participating in this study worked in factories with perfect FOA scores according to BFC compliance reports. Dismissed union activists, members, and leaders also believe that union-related dismissal results in being placed on a “blacklist”; preventing them from being rehired later or finding work at other factories.

“in our factory, when workers want to become CATU members they are discriminated – so when workers want to join our union, we have to give the factory a list of names, and so they know clearly and then discriminate against those workers – every CATU member, when they stop work, they will not be allowed to work there again ... if CATU brings a new worker to be interviewed, they will be rejected, other unions can bring them though.”

These are workers’ daily lived experiences, and facets of anti-union discrimination and union-busting which are not being captured by BFC’s assessments but do clearly constitute infringements to the freedom of association. Because BFC focuses its monitoring efforts strictly on factory-level conditions and does not, for instance, assess the adequacy of the minimum wage, it is understandable that the reports are unable to cover FOA concerns beyond the law (such as prolonged union registration processes or MRS certification, or the criminalization of union leaders and activists). Less understandable is the lack of representation reflecting the evidence presented above pointing to clear factory-level infringement on FOA in multiple workplaces. While our report does not claim sector-wide assessment failure, the evidence presented points to the need for BFC to reexamine its methodology for identifying FOA violations and structures for including independent unions within its processes.



# Conclusion



This study substantiates much of what has already been asserted for years by workers and unions through independent research on the BFC Transparency Database, as opposed to more statistical data. While BFC is a key institution necessary for the protection of core labor standards such as freedom of association, it needs to do more to effectively, responsively, justly, and meaningfully uphold labor and human rights in the factories under its auspices. To do otherwise is failing to uphold its mandate, and failing the workers it claims to be in service of. We urge BFC and its stakeholder institutions to ensure that the improvement of labor conditions remains at the absolute center of all their efforts. By focusing specifically on freedom of association within this initial report, our goal is to bring

to light the difficulties independent unions have in being equally represented in BFC compliance data, which is ultimately undermining the entire program.

For our part, CENTRAL intends to continue collecting FOA data for the garment, footwear, and travel goods industry in collaboration with CATU and C.CAWDU, with plans to interview union leaders and activists from more factories, and to eventually include other critical issues beyond FOA. We view this project as falling under our broader objective to systematically monitor labor rights violations across Cambodia and view this report as a starting point for a broader dialogue to continuously improve compliance assessment mechanisms moving forward.

## Recommendations

Numerous recommendations have been made to BFC over the years, many of which overlap and echo each other. In particular, Human Rights Watch recently laid out a comprehensive set of actions for all stakeholders to take towards improving the respect for FOA in Cambodia in its 2022 publication, *Only “Instant Noodle” Unions Survive: Union Busting in Cambodia’s Garment and Tourism Sectors*.<sup>[37]</sup>

[37] Human Rights Watch | *Only “Instant Noodle” Unions Survive: Union Busting in Cambodia’s Garment and Tourism Sectors*.



Here, we narrow our focus to a targeted set of recommendations to enhance actionability. Because this publication primarily functions as a shadow report of BFC transparency data on FOA, our recommendations are directed to those best able to address these concerns: the ILO, the IFC, Better Work, BFC, employers, and buyers. We intend to direct our recommendations to government bodies, including the Royal Government of Cambodia and the MoLVT in a separate report to follow, which will focus more directly on the legal and institutional barriers to FOA.

## **For the ILO, the IFC, Better Work, and Better Factories Cambodia:**

**1. Make the full compliance report for buyers available to the public, particularly workers and their representatives, for purchase under equitable pricing plans and purchasing conditions.** Members of the public, including workers and their representatives, can technically purchase a full compliance assessment report for USD 1500 if the factory gives authorization for the purchase. Although this is available to independent unions, the price point is inaccessible for data that the unions perceive as inaccurate/not effective for negotiation. As a result, we are not aware of any independent unions which have attempted to purchase a full report and cannot report on whether factories would approve their purchase or not. We would like to reiterate that there is interest on the part of unions and workers in accessing these full reports as they could prove useful for dispute resolution, ensuring compliance with the law, and in negotiations to improve working conditions. The only instance in which unions and workers can access full reports is when participating in the voluntary advisory program (PICC); a novel program, but one rife with equitability concerns. In contrast, through a separate Report System Portal, brands can access the full assessment reports on the factories they source from as soon as the relevant reports are completed and uploaded, which according to BFC is typically one month after the assessment is conducted. As brands can easily purchase access to the reports for each of the factories they source from, workers and unions should have an equal right to access the reports on the factories who employ their members, and workers the right to know what the reports say about their working conditions. Unaffordable pricing coupled with factory sign-off provisions place an undue burden on the most vulnerable stakeholders involved, which we strongly recommend be removed.

**2. Include all 52 issues within the summary reports available to the public, instead of the 21 critical issues currently disclosed.** Make data for the remaining 31 low compliance issues publicly available to improve compliance across the board, rather than focusing only on the 21 critical issues. While not strictly related to freedom of association - the focus of this report - it would widen the range of data available to workers for collective bargaining, a fundamental union right upheld by ILO C.98. According to BFC, this has been discussed several times, but requires the approval of the tripartite Project Advisory Committee, consisting of representatives from the Cambodian government (MoLVT), trade unions and manufacturers.

**3. Make the latest transparency report for any given factory available within a month of each assessment date, with an alert system to which workers and unions can subscribe.** As explained, workers and union staff are overworked and simply do not have the free time to keep visiting the Transparency Portal to look up their factory data, a search process which is arduous enough for many workers who do not speak English, are not functionally literate in Khmer, and/or may not be familiar with using an internet browser and search engine.

**4. Establish a formal BFC-specific grievance mechanism for compliance violations, including FOA, and promote and publicize it widely to address complaints currently meant to be submitted through the QR system.** Even when unions and workers can access their relevant BFC compliance report, if they find inaccuracies or missing information, there currently exists no straightforward process for them to report these concerns. Currently, BFC states that they are available to support both the unions and factories in the case of disputes but have argued that the ILO's role is not to address individual disputes through investigation or resolution of individual grievances. Despite having been in existence for more than 20 years and despite this issue having been repeatedly raised in previous recommendations, it is surprising that BFC has not established a procedure

for handling direct complaints from workers in a more formal manner. The informal system set up in 2022 in which unions and federations can send information to BFC through a QR code system has been described by our partners as ineffective. It has also not been widely publicized, and there is no mechanism through which submissions can be followed up. Without a widely known and well-understood formal mechanism through which workers can report inaccuracies, compliance reports fail to represent the interests of Cambodian working people equitably.

**5. Publish a transparent and clear explanation of methodologies used for both full assessments and summarized data.** Stronger transparency of BFC's assessment and reporting methodology would improve stakeholders' and the general public's understanding of the monitoring process. All Better Work / BFC tools and guidance documents should be available and accessible to all stakeholders. This should include a full explanation of how data is condensed into the public reports and information related to data collection (such as the number of workers consulted and/or unions included in interviews).

**6. Take accountable steps to ensure that workers' interests are fully considered and accounted for within the assessment process, which should include broader direct engagement with a wider spectrum of workers and worker representatives, particularly during assessments.** This should include guaranteeing full anonymity to workers who are interviewed at all factory visits and ensuring that all unions are represented within each assessment. In addition, cases of FOA violations that are submitted to the MoLVT should be noted in both BFC's full assessments and in the public reports. It is possible that FOA violation submissions are not currently showing up in reports because BFC enterprise assessors are simply not speaking to independent unions during their factory visits. The "yellow" unions they interview will assure BFC officials that all is well at the factory since they are working in tandem with the management. Even if workers are randomly selected by the BFC enterprise assessors, the assessment usually takes place during working hours without privacy for interviewees, which may bias their responses. In some cases, the factories themselves also help to select the workers.

**7. Act with more clout and decisiveness when companies are in violation of FOA laws. Workers and worker representatives should be given notice of violations, and the BFC should be equipped to serve as a verifiable source for workers.** We advocate for a coordinated strategy, fully backed by Better Work's donor governments, to bolster the efficacy of in-country programs in redressing the widespread union busting that is taking place. We urge higher-level interventions to dismantle institutional, structural, political, and perceptual barriers or constraints to prioritize the rights and welfare of workers within the Better Work framework. To this end, it is imperative for BFC to intensify its dialogues with independent unions and workers' rights organizations about what they need to facilitate a closer collaboration to fully address workers' rights and concerns. If achieving this synergy requires a more hands-on approach from Better Work headquarters or other novel interventions, we ask that Better Work rises to this challenge.

### **For employers:**

**8. As possible, exclude elected union leaders, founders, and activists from layoffs or terminations.** Even when it is financially necessary to suspend or terminate workers, union officials should be retained in observance of the right to freedom of association so that they can continue to protect the rights of the remaining workers at the factory. While the economic crisis does threaten business, it ultimately threatens all livelihoods, and union rights must still be respected amidst financial uncertainties.

### **For international buyers and brands:**

**9. Engage with ILO Better Work in all supplier countries to improve inclusion of workers and their representatives in the assessment processes to ensure due diligence is followed.** There is enough evidence to suggest that BFC assessments are potentially being conducted without the full inclusion of independent unions at each factory. Workers and their

representatives, particularly from independent unions, should be ensured a voice in the full spectrum of BFC activities, which should be ensured through brands' due diligence process. Current inclusion of yellow unions could be obstructing independent unions to cooperate fully and should be countered through protective measures to ensure workers and their representatives are given equitable participation in compliance assessment processes.

**IO. Ensure that operational grievance mechanisms are in place throughout their supply chains to ensure freedom of association is respected at the factory level as well as within the context of the country of operation.** Brands have a responsibility to consistently monitor and adjust their human rights due diligence in response to the evolving nature of their operations and context. It is also their duty to either create or meaningfully participate in operational-level grievance mechanisms to address concerns of individuals and communities. Such mechanisms play a vital role in identifying potential human rights violations throughout due diligence processes. In line with the UN Guiding Principles, these Operational Grievance Mechanisms should adhere to standards of legitimacy, accessibility, predictability, fairness, transparency, compatibility with human rights, and continuous enhancement. Their development and effectiveness should be shaped through active engagement and communication with all relevant stakeholders.

**II. Hold their supply chains accountable in line with international human and labor rights standards, including critical ILO conventions ratified by Cambodia, utilizing their purchasing power to protect workers in their supply chains.** Brands operating internationally should be holding their suppliers accountable to the highest standards possible, which should include ensuring the ILO BFC process is aligned with its intended goals. This should include ensuring respect for the ILO's Freedom of Association and the Right to Organize Convention, 1948 (No. 87), and its Right to Organize and Collective Bargaining Convention, 1949 (No. 98), both of which Cambodia has ratified and entered into force. Instead, brands often purchasing from factories operating at lower standards by referencing local laws and legal rulings in production countries under the guise of "respecting the rule of law," or by citing BFC data, which many workers have disputed the accuracy of. Brands must recognize that to be ethical buyers, they need to go further in respecting the rights of workers at the factories they source from than what is legally decided or mandated in a country known for its corrupt judiciary, where the rule of law is notorious for its weakness. Further, as paying clients, brands need to hold BFC accountable for robust assessment which accurately identifies FOA violations, enabling their ability to provide remedy.