



WORKER RIGHTS CONSORTIUM

**WRC ASSESSMENT
re PCCS GARMENT CO. LTD. (CAMBODIA)**

**FINDINGS, RECOMMENDATIONS AND STATUS REPORT
JANUARY 15, 2008**

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Introduction

This is the first of two reports regarding a compliance assessment undertaken by the Worker Rights Consortium (WRC) of two closely related factories in Phnom Penh, Cambodia known as PCCS Garment and Beauty Silk Screening. The factories presently employ roughly 6,000 and 350 workers, respectively. PCCS Garment is a garment sewing facility and Beauty Silk Screening is a textile screening facility. Both factories belong to PCCS Group Berhad, a Malaysian garment manufacturing conglomerate.

Both PCCS Garment and Beauty Silk Screening currently produce apparel for university licensee adidas, as well as non-licensee brands Gap and Puma. The factory also consistently appeared in university disclosure data reported between April 2000 and October 2007 as a producer of logo goods for VF Imagewear, Lee Sport, and VF Knitwear. The WRC made the decision to initiate the assessment on the basis of this disclosure. However, in the midst of the investigation, the WRC was informed by PCCS Garment management that the factory had never had any business relationship with VF Corporation. As noted in other factory assessment reports, the WRC was concerned by the inaccuracy of the disclosure data supplied by VF and communicated this concern to the company on multiple occasions. In late 2007 VF acknowledged that the disclosure data was in error and supplied updated, accurate information, which does not list PCCS Garment as a supplier.

The assessment was initiated in response to multiple complaints from employees of these facilities. The primary allegations in the complaints were the excessive use of short-term employment contracts and occupational health and safety violations at both factories, as well as violations of workers' associational rights at Beauty Silk Screening. The investigation was carried out in March 2006, with follow-up factory visits in September 2006 and February 2007. The investigation included extensive interviews with employees and managers, physical inspections of the factories, detailed review of relevant documents, and discussions with the factories' key buyer.

This report covers only the WRC's findings and recommendations with respect to PCCS Garment. A subsequent report will focus on Beauty Silk Screening.

The WRC is pleased to report substantial improvements in working conditions at PCCS Garment. Of particular note, PCCS Garment agreed to cease the misuse of short-term contract labor; in 2007 the factory replaced the majority of short-term employment contracts with traditional, permanent contracts. The inappropriate use of short-term contracts is a serious and widespread problem in the Cambodian garment sector that has the effect of denying large numbers of workers the rights and benefits to which they should be entitled by law. PCCS Garment's willingness to address this problem with meaningful corrective action makes the factory a standout among Cambodian garment manufacturers in terms of labor rights compliance. The WRC credits the management of this facility for working constructively with the WRC and key buyer adidas to realize these improvements. The constructive engagement of adidas' local compliance staff was also critical to the progress achieved at this factory.

The WRC would also like to commend PCCS Garment for its very positive approach to freedom of association and industrial relations. Although this was not a subject of the WRC's investigation, the WRC was able to observe in the course of the assessment that

PCCS Garment has demonstrated a strong commitment to working in good faith with representatives of the four unions that represent PCCS Garment employees. In October 2006 factory management decided on its own initiative to hold monthly negotiating sessions with representatives of all unions. This positive practice at PCCS Garment stands in marked contrast with many other Cambodian garment factories, where industrial relations are characterized by frequent strikes.

As noted in the following pages, some issues will require ongoing monitoring to ensure the completion of corrective action measures. The WRC looks forward to working with factory management and buyers to ensure that both facilities achieve and maintain compliance with applicable codes of conduct.

Sources of Evidence

The WRC's findings and recommendations with respect to PCCS Garment are based upon evidence from the following sources:

- Interviews with over 75 current and former PCCS garment employees. The interviews were conducted both on- and offsite.
- Interviews with the general manager, assistant general manager, production managers, personnel managers, and supervisors of PCCS Garment.
- Communications with compliance officers of adidas in Cambodia.
- Communications with representatives of VF in the United States.
- Three onsite factory inspections.
- Collection and review of relevant documents, including minutes from bipartite negotiation sessions, worker pay records, documents pertaining to legal disputes involving PCCS Garment, and factory policies and regulations.
- Analysis of Cambodian law in the areas of industrial relations and workplace standards.

Allegations Assessed

Based on preliminary research by WRC staff, the following areas were identified for investigation in the assessment of PCCS Garment: Wages and Benefits, including the alleged inappropriate use of short-term contract labor, restrictions on the use of legally-mandated sick leave, and failure to establish a retirement policy; Harassment and Abuse, including verbal abuse and the use of corporal punishment; and Health and Safety, including fire safety violations, excessive heat, flooding, and inadequate toilet facilities. The following sections summarize the WRC's findings with respect to each of these areas, the status of corrective action on the part of the factory, and where necessary, further recommendations to ensure full remediation of the violations identified.

Findings and Recommendations

1. Wages, Employment Contracts, and Benefits

a) Inappropriate use of fixed duration contracts

Findings

Cambodian Labor Law provides for two types of employment contracts: undetermined duration contracts and fixed duration contracts. As the names suggest, undetermined duration contracts are traditional, permanent employment contracts designed for long-term employment, whereas fixed duration contracts have specified start and end dates and are designed for short-term periods of employment.

In 2003 PCCS Garment began employing all new workers on fixed duration contracts, a change from the factory's previous practice of hiring workers on undetermined duration contracts. Through review of factory records, the WRC found that by early 2006, the number of workers on fixed duration contracts had grown to around 1,000 workers, or approximately 25% of the workforce. The use of fixed duration contracts was particularly pronounced in the night shift, where roughly 60% of the workers were on fixed duration contracts as compared with roughly 10% of day shift workers.

These fixed duration contracts for workers hired in 2003 or later lasted two or three months. Upon expiration of each contract, most workers were instructed to take a short break from work for approximately one week, and upon returning to the factory, were issued a new short-term contract along with a new employment identification card and number. For purposes of calculating legally-mandated wages and benefits that accrue to workers based on seniority, these workers were treated as if they had worked at the factory no longer than the amount of time indicated by their current fixed duration contracts, even though many had been employed at the factory for over a year.

Under Cambodian law, undetermined duration contracts are the preferred form of contract for permanent employment,¹ whereas fixed duration contracts are, by their nature, designed for fixed periods of temporary employment. By using successive fixed duration contracts indefinitely in lieu of undetermined duration contracts for all new production employees—workers who are, for all intents and purposes, regular, permanent employees and who, prior to 2003, would have been hired on permanent contracts—the factory was misclassifying large numbers of permanent production workers as short-term contract laborers. Of great concern to the WRC, by misusing fixed duration contracts in this way, the factory was depriving workers in two ways of key benefits and protections to which they would otherwise be entitled.

First, the use of repeating short-term contracts had the effect of depriving workers of wages and benefits provided by Cambodian law, because workers on repeating fixed duration contracts were not able to accrue seniority and were more likely than workers on permanent contracts to be denied other legally-mandated benefits, including leave and bonuses. The WRC found that workers on fixed duration contracts at PCCS Garment had their benefits diminished in three areas. First, many workers employed on fixed duration

¹ Arbitration Council Award 10/03 (July 23, 2003).

contracts were denied access to sick leave, to which they were entitled under Cambodian law.² Second, contract workers' inability to accrue seniority resulted in their not being eligible for seniority-based production bonuses that provide workers with incremental wage raises over time; as a result, workers on short-term contracts were paid at rates that fell increasingly short of what they would have received by law had they been hired as permanent employees.³ Workers were also unable to access paid maternity leave and annual leave, which employers are obligated to provide by law to workers who have been at the factory for one year or more, because they could not accrue the necessary seniority.⁴ Finally, as noted above, upon being issued a new contract and identification card every two to three months, workers were often instructed by their supervisors not to report to work for several days before beginning work under their new contract; such absences from work for one or more days resulted in the workers losing their legally-mandated attendance bonus for that month (every second or third month of their employment), despite the fact that their absence was required by the factory.

University and corporate codes of conduct require that factories pay workers, at a minimum, all wages and benefits required by law. By using fixed duration contracts for regular employees, PCCS Garment was able to effectively evade its legal obligations to workers, rendering meaningless the benefits provided by Cambodian law and the protections provided by applicable codes of conduct.

Second, the use of repeating short-term contracts in lieu of permanent contracts has the effect of undermining workers' employment security and protection from inappropriate dismissal. This problem is of great concern to the labor rights community, particularly as the use of repeating short-term contracts has become increasingly common in the garment industry in a number of countries. The International Labor Organization (ILO) has issued specific guidelines against the use of fixed duration contracts for long-term employment⁵ and has criticized the use of this practice by garment factories in Cambodia.⁶ The concern underlying the ILO's position is the effect of the misuse of contract labor on the exercise of associational rights by workers. Under Cambodian law, an employee on a traditional contract cannot be dismissed without justification, and union leaders are provided special protections from termination. The use of fixed duration contracts, however, allows employers to essentially skirt laws protecting union members from targeted dismissal by simply failing to renew the short-term contracts of workers who choose to associate with a union. As a result, workers employed on fixed duration contracts do not feel free to join unions or exercise other rights out of fear that the employer will retaliate by not renewing their contracts.

² The specific ways in which workers were denied sick leave is discussed in the following section of this report.

³ Notification from Ministry of Social Affairs, Labor Vocational Training and Youth Rehabilitation (MOSALVY) Number 17, 18 July 2000, point 5

⁴ Cambodian Labor Law, Articles 166, 167 and 183

⁵ The ILO's Termination of Employment Recommendation (Recommendation 166, 1982) calls for the enactment of safeguards against the use of short term contracts with the effect of denying workers the protections from termination stipulated in the Convention on Termination of Employment (ILO Convention 158).

⁶ "Better Factories concerned about labour contracts," ILO Better Factories Cambodia Quarterly Newsletter, October, 2006.

Applicable codes of conduct require factories to create an environment in which workers can meaningfully exercise rights of association without fear of retaliation. By using fixed duration contracts in a manner that undermines basic legal protections for workers who exercise these rights, the factory is failing to meet its code obligations in this area.

The WRC also found that some workers at PCCS Garment were employed on repeating fixed duration contracts for a total period of more than two years, and their contracts were not converted to undetermined duration contracts, a violation of the Cambodian Labor Law. According to the law, a fixed duration contract can last up to two years.⁷ Fixed duration contracts can be extended or renewed one or more times, as long as the total length of the employment relationship does not exceed two years; if a fixed duration contract is extended for a total period exceeding two years, it must be converted to an undetermined duration contract.⁸ Because the WRC assessment occurred only slightly more than two years after the factory began using fixed duration contracts, the number of workers who had been unlawfully employed on these contracts for more than two years was very small. However, because it appeared that it was the factory's intent to employ workers on these short-term contracts indefinitely, there was concern that such violations of the letter of the law would increase over time.

Recommendations and Status

The WRC raised the issue of misuse of fixed duration contracts with PCCS management in March of 2006. At this time, factory management acknowledged that the use of fixed duration contracts was undesirable from a worker rights perspective and was not the factory's preference, but stated that it was necessitated by the fluctuations in order levels from the factory's customers. PCCS Garment's general manager explained that the factory regularly experienced a significant drop in orders during the period of March to May each year, and could not afford to retain all employees during this low season. The WRC confirmed that the factory had recently (in late February, 2006) declined to renew the contracts of many employees on fixed duration contracts while converting the contracts of roughly 300 of these workers—the approximate number needed to complete the factory's orders during the low season—to permanent contracts. At the time of the meeting with the WRC, PCCS Garment stated that if its buyers could commit to stabilizing order volumes throughout the year, the factory would be willing to revert to the practice of hiring all employees on undetermined duration contracts.

The WRC viewed the factory's recent decision to convert many fixed duration contracts to unlimited duration contracts as a positive step. Nonetheless, the WRC did not view the fluctuations in order levels as an adequate reason for employing all newly-hired production workers on two- and three-month contracts. The high season lasts nine months (June through February), which does not explain the need for two- or three-month contracts. It is also important to note that Cambodian law allows employers to suspend or terminate undetermined duration contracts if the factory suffers a lack of business. The WRC, therefore, stressed to management the need to establish policies that would limit the use of fixed duration contracts to those workers whose employment was genuinely temporary in nature, to curtail the use of unnecessarily short contracts that had the effect of undermining

⁷ Cambodian Labor Law, Articles 67 and 73.

⁸ Arbitration Council Awards 10/03, 02/04.

employment security and depriving workers of benefits, and to ensure that all workers, regardless of contract status, had access to leave benefits in accordance with the law.

After a prolonged period of discussion between the WRC and factory management, which included constructive intervention by adidas, management agreed in late December 2006 to transfer the majority of fixed duration contract workers to undetermined duration contracts and to provide the remaining workers on fixed duration contracts with contracts of one year in length. The agreement did allow management to use fixed duration contracts of less than one year, but only upon submitting a detailed plan explaining why these shorter contracts were necessary. In the months that followed, a large majority of the approximately 1,000 workers who were employed on short-term fixed duration contracts were transferred to permanent contracts, while a smaller number—less than 200—has been provided with one-year fixed duration contracts. The WRC commends PCCS Garment's new policy as a very important step towards ensuring the proper use of labor contracts.

Subsequent to this agreement, management also confirmed its commitment to provide all legally mandated leave benefits to all workers on fixed duration contracts.

Further recommendations

A clear policy regarding the categories of workers that may be employed on one-year contracts and the status of these workers should they remain employed beyond the one-year period should be formulated to ensure that these one-year fixed duration contracts are not used inappropriately.

b) Access to sick leave

Findings

The worker complaints alleged that some PCCS Garment workers were denied access to the sick leave required by Cambodian law. The WRC found that the factory has a strong policy on sick leave, but that some workers were unable to access this benefit.

PCCS Garment's sick leave policy follows the minimum standard required by Cambodian law, under which workers are annually entitled, if authorized by a doctor, to up to one month of sick leave with full pay, two additional months with 60% of pay, and three additional months of unpaid sick leave. In addition to this, it is the established practice at PCCS Garment to allow workers to take the first fourteen days of sick leave upon reporting their illness to the factory, even if they have not obtained a doctor's authorization. This is a particularly positive policy, as it makes it much easier for workers who are unwell to get appropriate rest, particularly given that many workers may not have ready access to professional medical services.

However, the WRC identified instances of sick workers being unable to access sick leave. Many workers reported to WRC investigators that they were unaware of the factory's sick leave policy and, therefore, had not taken leave when they were ill and unable to visit a doctor. There were also cases in which workers were denied sick leave when they requested time off due to illness. The denial of sick leave was especially pronounced amongst those workers hired on short term contracts before the factory drastically reduced

the use of fixed duration contracts in early 2007. Some workers employed on fixed duration contracts reported that they had been told by the factory nurse that if they requested sick leave, they might face non-renewal of their contracts. According to worker testimony, when workers were assisted by representatives of the trade unions at the factory, they typically did not face any obstacles to being granted sick leave when necessary; however, workers who were not familiar with their worker representatives or did not seek union assistance in the process were less likely to be granted sick leave when they requested it.

Recommendation

The WRC recommended that management make all workers aware of the company's sick leave policy, including the fact that all employees, regardless of contract status, are entitled to sick leave when necessary due to illness. Given the relatively high rate of illiteracy in Cambodia, the policy should be explained to workers verbally over the factory's PA system. It was also recommended that a simple written explanation of the sick leave policy be posted in the factory clinic.

Status

Problems in this area were largely resolved when the factory converted the majority of fixed term contracts to regular contracts in early 2007. In follow-up interviews with WRC investigators, workers no longer reported being denied access to sick leave.

c) Failure to establish retirement age

Findings

Although it is relatively unusual in the garment industry to find production workers nearing retirement age, PCCS Garment employs a number of older workers who were previously employed at the state-owned garment factory that operated in the same building before PCCS Garment began operations in Cambodia. At the time the WRC received the worker complaint in 2006, 87 of these workers were still employed by PCCS Garment. Although a number of these workers are 55 years old or older, they have been unable to access any accrued severance payment upon departure from the company, because PCCS Garment does not have any policy establishing a retirement age.

It is the position of PCCS Garment management that Cambodian law does not stipulate a retirement age, and the factory is, therefore, not required to have a retirement policy. However, in 2002 the Cambodian Government issued the Law on Social Security Schemes, which establishes a retirement age. Although the Social Security program called for in the law is not yet fully operational pending further action by the government, the law specifies that the retirement age for private sector workers is 55 years.⁹

In August 2006 four PCCS Garment workers over the age of 55 became too ill to work and were eventually provided with ten months' severance pay after their medical records were

⁹ Law on Social Security Schemes, 2002, article 8

presented to management.¹⁰ Management told the WRC that this severance pay was given on humanitarian grounds and should not be interpreted to reflect any official company retirement policy.

Recommendation

Given the number of older workers at the factory who have reached or are nearing retirement age and are likely to become unable to work in the near future for age- or illness-related reasons, PCCS Garment should formulate a retirement policy for its employees in accordance with the Law of Social Security Schemes of 2002. The terms of the policy should be the subject of collective negotiation with the unions representing PCCS workers.

2. Harassment and Abuse

a) Verbal and physical abuse

Findings

While many workers reported that harassment and abuse were generally uncommon at the factory, the WRC did find serious problems with verbal and physical abuse in the embroidery division of PCCS Garment. According to mutually corroborative worker testimony, the line supervisor in this division would pinch workers' ears as a means of discipline and regularly shouted at workers who made production mistakes or left the factory at the end of their shifts without having completed their daily production targets.

One result of the verbal abuse in this division was that workers sought to avoid any trips to the restroom during work hours out of concern that the time lost would prevent them from meeting their production targets. Most workers in this division reported that they would use the toilet at their homes before work began at 6:30 AM, once again during their lunch break at 10:30 AM, then again after leaving work at 3:30 PM. To avoid the need to use the toilet during working hours, workers reported that they would drink as little water as possible during the workday. Female workers reported that they felt unable to use the restroom at work even during menstruation, resulting in serious physical discomfort for some workers.

Unions representing PCCS Garment workers were told by the embroidery supervisor not to attempt to complain to senior management about conditions in this division because it was under the sole control of its supervisor.

Recommendation and Status

After the WRC recommended in 2006 that management address this issue with the line leader in question, the behavior of this supervisor improved. Workers report that the supervisor no longer shouts at workers who do not fulfill their production targets before

¹⁰ It may be worth noting for the North American reader that the average life expectancy in Cambodia is 58 years (United Nations Development Program, Human Development Report 2007/2008). Thus, a 55-year old Cambodian worker is more likely than his or her counterparts in the developed world to be near the end of his or her life and in poor health.

leaving the factory at the end of the work day. The workers also report they can use the toilets freely without fear of reprimand, as long as they do not spend more than ten minutes in the restroom. While the line leader's behavior has improved markedly, there are still reports of unduly harsh questioning of workers who request leave, which has caused some workers to be fearful of asking for leave when they need to be absent from the factory. The WRC recommends continued training for this line supervisor in order to ensure that harassment and abuse do not continue or recur in this division. PCCS Garment should also provide training for workers in the embroidery section about their rights and duties in order to correct any misunderstandings that may have resulted from past verbal and physical abuse.

3. Occupational Health and Safety

a) Fire safety

Findings

PCCS Garment has many exit doors, but all except one are locked during working hours. For one of the largest doors, a key is available in a sealed box nearby; in an emergency a worker can access the key by breaking the glass front of this box with an attached hammer. The smaller doors are sealed with a plastic strip designed to break if the doors are forced open. PCCS Garment management informed the WRC that the doors are kept locked because management is concerned about theft.

While PCCS Garment does hold fire drills, these have occurred only during the day shift. The night shift workers have not received any fire training. Furthermore, the fire drills only provide practice extinguishing fires and never include evacuation procedures. Because factory doors are sealed during the work day, and because procedures for evacuating the factory have not been tested, it is not known whether the doors will open as anticipated in the case of a fire or other emergency.

Recommendation

Fire drills should be held during the night shift and all fire drills must include an emergency evacuation simulation in which workers are required to force open the doors. If it is found that opening the doors sealed with plastic is difficult, an alternative means of locking the doors must be devised.

b) Heat

Findings

Workers reported excessive heat in the cutting area. Workers explained that the fans in that area were positioned to cool the machinery but not the workers themselves. At the time of the WRC's first factory visit in March 2006, it was confirmed that the cutting area lacked a water cooling system, unlike the sewing division, where such a system was in place. In the sewing division, it was found that the water cooling system was effective in significantly lowering the temperature as compared with the rest of the factory.

Status

Subsequent factory inspections by the WRC found that a cooling system has been installed in the cutting section and that the temperature was significantly reduced as a result. Workers no longer report any heat problems in the cutting division.

c) Flooding

Findings

The WRC found persistent problems with flooding of work areas at PCCS Garment. In interviews with WRC investigators, workers explained that certain low-lying areas of the factory would flood whenever the area experienced heavy rain, causing a number of problems for workers. The water often became mixed with machine oil and sewage overflowing from the toilets. Workers were required to bail the water out of the factory and multiple workers reported developing skin rashes as a result of exposure to this contaminated water. It took between one hour and one-half day to clear the factory of water after a flood. WRC investigators found that management maintained only one pump to assist workers in removing the water. Workers in the flooded areas also reported fear of suffering electric shocks as their machines were flooded.

Management told the WRC that it was aware of the problems caused by flooding. By way of explanation, PCCS Garment management described several challenges faced by the factory. The factory building is old and since its construction the surrounding area has been developed into a residential community. Due to a lack of proper urban planning, the surrounding homes were built on artificially elevated land, and as a result, PCCS Garment, which once stood on the highest ground in the area, is now the lowest point in the community. Furthermore, the surrounding community has illegally used PCCS Garment's drainage pipes for their own drainage.

PCCS Garment management also explained a number of steps that had been taken to attempt to solve the problem. The factory had provided funds for the local community to improve their own drainage system and had started to elevate the floor level of the factory. Management stated that it expected these measures to reduce flooding significantly.

Status

This construction was completed and has helped to eliminate flooding of the work floor. However, as a result of raising the factory floor, the walkways, the health clinic, and some of the toilets located outside the factory building are now more prone to flooding. After a heavy shower, it takes up to two hours to drain some of these areas.

Recommendation

The factory should explore the possibility of relocating the clinic to an area less prone to flooding; if relocation is deemed infeasible, management should identify and implement measures that will reduce the risk of flooding of the clinic. The WRC also recommends the purchase of an additional pump machine to reduce the time needed to drain the area after flooding, as the factory currently only maintains one large pump for this purpose.

d) Inadequate toilet facilities

Findings

Worker interviews revealed numerous problems with the toilet facilities at PCCS Garment. Workers interviewed by the WRC testified that a large number of the factory's toilets (between 20 and 30) are not functioning properly. For example, workers reported there are problems with the water supply to the toilets such that toilets are regularly without water for one or two hours each day. Other problems included toilets whose doors do not have functioning locks, so workers are unable to keep the door closed while using the toilet, and ceilings over the toilets on the lower floor that leak from the toilets on the upper floor. Workers also reported that the bowls used for scooping water to flush the toilets are of poor quality and are frequently broken, making it difficult and time consuming for workers to flush the toilets after use.

Prior to the WRC's assessment, the unions representing PCCS Garment workers had raised the issue of inadequate toilet facilities with factory management on multiple occasions, but the factory had unfortunately been slow to implement any improvements.

Recommendation

PCCS Garment management should form a joint labor-management working group with representatives of the unions for the purpose of conducting an assessment of all the toilets in the factory and developing a remedial action plan to address all deficiencies identified. At a minimum this action plan should include the repair of leaky ceilings, installation of missing door locks, and replacement of broken water scoops with more durable metal scoops.

Status

Management has taken steps to address each of the problems identified and has consulted with the unions during the process. The WRC has confirmed that the problems with the leaky ceilings, the door locks, the inadequate water scoops, and the supply of water to the toilets have all been fixed.