WORKER RIGHTS CONSORTIUM

To: International Buyers
From: Bent Gehrt, South East Asia Director; Ben Hensler, General Counsel
Re: Violations of Cambodian Labor Law and Buyer Codes of Conduct at June Textile Company Ltd. (Gimmill Industrial Pte. Ltd. / Ramatex Group)
Date: July 7, 2011

We are writing regarding ongoing serious violations of domestic labor laws and buyer and university codes of conduct by June Textile Company Ltd., Cambodia, which is owned by the Singaporean based apparel firm, Gimmill Industrial Pte. Ltd., part of the Ramatex Group.

On June 22, 2011, the WRC wrote to June Textile's owners urging their compliance with a June 17, 2011 ruling by the Arbitration Council, Cambodia's leading adjudicator of labor disputes in the apparel industry, that June Textile is legally responsible for paying severance and other benefits to its 4,000 former employees. The WRC estimates the amount owed to these workers at roughly US $2.5-3.0 million.[1]

In response to our letter, we received the attached responses from June Textile and the Garment Manufacturers Association in Cambodia (GMAC), the industry organization of which June Textile is a member. As we explain below, these responses from the company and GMAC only heighten our concerns that this company intends to continue to withhold legally-owed severance benefits from its workers, and that industry representatives intend to abet the firm in achieving that end. The WRC has examined this matter closely and reached the following findings:

1. June Textile's Owners (Gimmill Industrial Pte. Ltd.) Have Dismissed 4,000 Workers Without Paying Legally-Due Compensation.

[1] The WRC's estimate of the total amount owed the 4000 former June Textile workers is based on the award of the Arbitration Council and assumes that most workers earned a monthly wage of nearly100 USD, had worked at June Textile for more than five years, and, therefore, under Cambodian law, are each entitled to roughly- 600-700 USD in compensation.

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On March 30, 2011, June Textile's manufacturing facility was completely destroyed by a fire which began inside the factory. Since the fire, June Textile's owners have dismissed and refused to pay legally-owed compensation to more than 4,000 former employees. June Textile's owners persist in this course of conduct despite a ruling on June 17, 2011 by the Arbitration Council, declaring that the company's failure to compensate these workers violates Cambodian labor law.

2. June Textile's Owners Have a Record of Trying to Deny Laid-Off Workers Legally-Owed Compensation Despite their Ability to Pay.

It is important to recognize that this is not a case where the factory's owners cannot be located or lack the funds to meet their obligations to workers. Gimmill Industrial Pte. Ltd. and its parent company, the Ramatex Group, continue to operate two other factories in Cambodia, Berry and Violet Apparel, as well as factories in China, Indonesia and Malaysia.

It is also significant that June Textile's owners are repeat labor law violators on this issue. In March 2008, managers from the Ramatex Group attempted to shut down the company's Ramatex factory in Namibia and flee the country without paying workers their legally-required severance benefits.[2]

In that case, the company's managers sent the workers home early due to a "power cut;" when the workers returned the following day, they found the doors of the factory locked. Only after the government of Namibia intervened, by placing a travel ban on the company's managers, did the factory pay legally-owed severance benefits to its workers.

3. The Cambodian Arbitration Council has Ruled that June Textile Must Pay Compensation to its Former Employees.

As noted above, Cambodia's Arbitration Council ruled on June 17, 2011 that to comply with the country's labor laws, the company must pay June Textile's former workers indemnities, compensation in lieu of prior notice, and compensation for unused annual leave. Moreover, noting that the March 30, 2010 fire that destroyed the factory was not, as the company had claimed, caused by an unforeseeable natural event, but, instead, by faulty electrical wiring, the Arbitration Council flatly rejected the assertions of June Textile's owners that the fire constituted an "act of God" that should excuse them from providing compensation to their former employees.

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[2] *See, e.g.,* Herbert Jauch, "The Ramatex closure in Namibia: Hard lessons to be learned," *SASK*, http://www.sask.fi/english/magazine/ramatex/; for a discussion of Gimmill Industrial Pte. Ltd.'s corporate relationships, *see,* Labour Resource and Research Institute, *Promoting Worker Rights and Labour Standards: The Case of Namibia,* 28-29 (2003), http://www.larri.com.na/files/Labour%20Rights%20Report.pdf.

June Textile's decision to force its former workers – who are now without any income – to take their case to the Arbitration Council has led to needless delay in these workers gaining their legally-owed compensation.

The Arbitration Council's finding that June Textile's failure to compensate these workers violated the law was to be expected. It followed a prior case against another factory addressing exactly the same issue: compensation owed to workers dismissed after a major factory fire.

The Arbitration Council in that case reached exactly the same result – finding that the employer was liable for indemnities and prior notice pay to its former workers.[3] Not surprisingly, then, the panel of arbitrators that heard the case against June Textile, *including the member of the panel chosen by June Textile, itself*,[4] ruled unanimously against the company.

4. June Textile's Owners Are Improperly Avoiding Compliance with the Arbitration Council's Decision.

As previously stated, June Textile's owners have refused to accept the Arbitration Council's decision. As discussed further below, at June Textile's request, the Arbitration Council issued its award as a nonbinding decision. The Arbitration Council only issues binding decisions if both the employer and worker parties agree; nonbinding rulings can be rendered unenforceable by filing a statement of opposition at the Ministry of Labour.[5] After the Arbitration Council issued its decision against the company on June 17, 2011, June Textile filed a statement of opposition with the Labour Ministry.

The Garment Manufacturers Association of Cambodia (GMAC), however, has committed on behalf of its members – who include June Textile's owners – to opt for binding decisions from the Council in all labor rights disputes. The GMAC made this commitment in a Memorandum of Understanding (MOU) which the GMAC signed on September 28, 2010 with worker representatives, including the National Independent Federation of Trade Unions of Cambodia (NIFTUC), which represented the former June Textile employees at the arbitration hearings. As

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[3] *See,* Arbitration Council Award 86/09 (2009) (Wilson Garment), available in Khmer at: http://www.arbitrationcouncil.org/awards/A_8609_K.pdf.

[4] Under the Arbitration Council's rules, cases are heard by three-person panels, with one arbitrator each chosen by the worker and employer parties. The two arbitrators selected by the parties then choose the third member of the panel. *See,* Appointment of Arbitration Panel, http://www.arbitrationcouncil.org/InformationforParties/OverviewoftheArbitrationHearingProcess/tabid/64/language/en-US/Default.aspx.

[5] *See*, Arbitration Council Procedures, http://arbitrationcouncil.org/InformationforParties/OverviewoftheArbitrationHearingProcess/tabid/64/language/en-US/Default.asp.

the MOU prescribes that both parties must opt for binding arbitration in rights disputes, requesting nonbinding arbitration clearly violates this accord.

In their June 25, 2011 reply to the WRC's letter, June Textile's owners claim that they did not choose a nonbinding decision from the Arbitration Council, but that, instead, it was the worker representatives who requested a nonbinding decision. The WRC made inquiries concerning this issue to the Arbitration Council's staff, who indicated that, contrary to the company's claims, it was June Textile that insisted on a nonbinding decision. The staff reported that when the former workers were asked for their opinion on this issue, they simply replied, "What choice do we have now since the employer already insisted on nonbinding arbitration?" As noted previously, binding arbitration can only take place if both parties accept it. This eyewitness account by the Arbitration Council's staff members, who had no grounds for bias, was confirmed by the former June Textile workers who also were present at the proceedings.

The WRC also notes that the lawyer for June Textile, who asserts that it was the workers who requested a nonbinding decision, was not present at the hearing where the issue of binding or nonbinding arbitration was addressed. This being the case, the company's claim is based solely on self-interested hearsay, while the unbiased eyewitness testimony of the Arbitration Council's staff points to the contrary conclusion, and is corroborated by the eyewitness testimony of the workers. The WRC, therefore, concludes that the only reasonable finding is that it was the company that insisted on a nonbinding decision, not the workers.

5. The GMAC's Excuses for June Textile's Owners' Refusal to Comply with Arbitration Council's Decision and the Labor-Industry MOU Are Unsupported by Fact or Logic.

The WRC also received a letter from Ken Loo, the Secretary-General of the GMAC indicating that, despite the GMAC's commitment on behalf of its members in the September 28, 2010 MOU, it was supporting June Textile's owners' refusal to comply with the Arbitration Council's ruling. Loo's letter cites supposedly illegal demonstrations by some former June Textile employees on May 5 and May 25, 2011 as a justification for the company's position, claiming that these two demonstrations constituted a violation by the unions representing the former June Textile employees of a clause in the MOU, stating that both parties agree to respect the law. Mr. Loo further claims that this alleged violation of the MOU by these unions excuses June Textile from complying with any of the other terms of the MOU.

Mr. Loo's claim that demonstrations by some former June Textile employees on May 5 and 25, 2011 excuses June Textile's owners' refusal to comply with the Arbitration Council's order for the company to comply with the labor law and compensate its 4,000 former workers lacks support in logic or fact. First, while the MOU states that unions should submit rights disputes to the Arbitration Council rather than resorting to strikes, it is simply farfetched for Mr. Loo to suggest that the demonstrations by the former employees of June Textile actually constitute a "strike." Cambodian Labor Law defines a strike as "a concerted *work stoppage* by a group of

workers that takes place within an enterprise or establishment to satisfy their demands from the employer as a condition of their *return to work*."[6] (emphases added).

In this case, the former June Textile workers had not been employed by the company since April 1, 2011, when the company dismissed them following the factory fire. It should be more than obvious that one cannot *dismiss* one's own employees, and then accuse them of engaging in an illegal "work stoppage" – *one month later*.

Second, even if one chose to overlook this logical fallacy and treat demonstrations by *former employees* as a "work stoppage," this would in no way excuse June Textile from its obligation under the MOU to comply with the decision of the Arbitration Council. The workers who brought the claim at the Arbitration Council shared no affiliation with the workers who demonstrated on May 5 and May 25, except for their status as former employees of June Textile.

The worker plaintiffs at the Arbitration Council were represented by the National Independent Federation of Textile Unions of Cambodia (NIFTUC), and the demonstrators were members of two unions that are rivals to the NIFTUC, the Khmer Youth Federation of Trade Unions (KYFTU) and the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC).

To excuse June Textile from complying with the MOU and implementing the Arbitration Council's decision in favor of workers represented by NIFTUC – *who followed the MOU by taking their grievances to the Arbitration Council* – just because members of other unions, that are not parties to the arbitration, organized protests is simply nonsensical. If, according to Mr. Loo's logic, each union that is party to the MOU is to be held responsible for the actions of any other union, then, by the same token, each employer in the GMAC should also be held liable for the actions for any other GMAC member.

In that case, rather than making excuses for June Textile's illegal conduct, Mr. Loo should be urging the other members of the GMAC to assume the company's obligations to its former workers. That Mr. Loo makes no effort at logical consistency suggests that he sees the GMAC's role as one of making excuses for its members' lawbreaking, rather than holding them accountable to any standard of lawful or ethical conduct.

6. Conclusion: Buyers and the GMAC Must Require June Textile's Owners to Pay Legally-Owed Compensation to Former Workers.

The WRC finds that June Textile's owners are refusing to pay its workers their legally-owed – and, much-needed – compensation, not because they cannot afford to pay, nor because there is any doubt about the illegality of this conduct, but because they think they *can*. Yet the only way June Textile's owners could believe this is the case is if they also think that buyers will tolerate

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[6] *See,* Cambodian Labor Law §318.

such blatant lawbreaking. For this reason, the case of the June Textile workers raises fundamental questions about the commitment of international buyers to the rule of law and respect for worker rights in Cambodia.

The WRC recommends that both former buyers from June Textile, and any buyers currently doing business with June Apparel, Berry Apparel, or other factories owned by Gimmill Industrial Pte. Ltd. should:

- Direct June Textile's owners to comply with the Arbitration Council's June 17, 2011 decision by paying legally-owed compensation to the factory's former employees; and

- Urge the GMAC to require compliance with the terms of the September 28, 2010 MOU by implementing the Arbitration Council's decision.

The WRC looks forward to working with all concerned stakeholders to reach a fair and appropriate resolution to this matter.