

# WORKER RIGHTS CONSORTIUM

*Failure to Pay Terminal Benefits  
at Violet Apparel (Cambodia) Co., Ltd.*



June 14, 2023



WORKER RIGHTS  
CONSORTIUM

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## Table of Contents

I.	Introduction and Executive Summary .....	4
II.	Methodology .....	8
	A. Sources of Evidence.....	8
	B. Terms of Reference.....	8
III.	Findings.....	9
	A. Background Information: Ramatex Group and Its Record of Theft of Terminal Benefits from Workers.....	9
	1. Ramatex Is a Major Supplier Partner to Nike and Other Large Brands .....	9
	2. Ramatex Has a Notorious Track Record of Denying Workers Legally Owed Compensation When They Are Dismissed.....	10
	B. Ramatex Suspends, Dismisses, and Fails to Pay Legal Terminal Compensation to Violet Apparel Workers, May–June 2020.....	11
	1. May 2020: Ramatex Suspends Violet Apparel Workers.....	11
	2. June 2020: Ramatex Announces Violet Apparel to be Closed, Workers Terminated, without Payment of Legally Required Damages or Statutory Pay in Lieu of Notice .....	12
	C. Cambodian Labor Ministry Aids Ramatex’s Theft of Terminal Compensation from Workers by Issuing Illegal “Approval” of Failure to Pay Required Benefits, Threatening Worker Leaders, Unlawfully Delaying Arbitration Proceedings.....	13
	1. June 29, 2020: Cambodian Factory Owners Association Solicits and Secures Labor Ministry “Approval” to Ignore Law—Not Pay Full Terminal Compensation....	13
	2. July 1–24, 2020: Labor Ministry Colludes with Military-Backed Body to Intimidate Violet Apparel Workers Protesting Ramatex’s Refusal to Pay Terminal Compensation.....	15
	3. July 25–September 28, 2020: Ramatex Imposes “Voluntary Settlements” on Violet Apparel Workers That Make Workers Give Up 75 Percent of Legal Terminal Compensation .....	16
	D. “Politically Compromised” Arbitration Ruling Fails to Protect Violet Apparel Workers from Ramatex’s Theft of Terminal Compensation .....	18
	1. Arbitrator’s Refusal to Rule on Ramatex’s Underpayment of Compensation in Lieu of Prior Notice Reflects AC’s Loss of Independence and Impartiality.....	18
	2. AC’s Denial of Violet Apparel Workers’ Right to Damages Also Reveals Its Loss of Impartiality—but Cannot Hide Ramatex’s Lawbreaking.....	26

IV.	Nike’s Response to Ramatex’s Theft of Terminal Benefits from Violet Apparel Workers.....	34
A.	While Nike Claims That It Had Not Sourced from Violet Apparel since 2006 and That Its Own Investigation Found No Recent Nike Production at the Factory, Overwhelming Evidence Shows Violet Apparel Made Nike Goods up until 2020.....	34
B.	Nike Has Responsibility to Correct Theft of Terminal Benefits from Violet Apparel Workers Who Made Nike Products—Even If Nike Was Not Aware of This Production.....	36
C.	Nike’s Denial That Ramatex Underpaid Workers’ Terminal Benefits Relies on a Blatantly Biased Decision from a “Politically Compromised Arbitration Council” .....	38
D.	Nike Has Recognized the AC’s “Diminished Role and Reduced Independence”, Yet Relies on the AC’s Politically Biased Decision against the Violet Apparel Workers to Avoid Enforcing Its Code of Conduct against Ramatex .....	39
E.	Nike’s Refusal to Use Its Leverage with Ramatex to Ensure That the Violet Apparel Workers Receive Their Legally Owed Terminal Benefits Contradict Nike’s Human Rights Commitments.....	40
F.	Violet Apparel is one of Several Recent Cases in which Nike Has Failed to Use Its Leverage with Suppliers to Address Mass Wage Theft.....	40
V.	Conclusion and Recommendations for Corrective Action: Nike and Other International Brands Must Require Ramatex to Pay Full Terminal Benefits to Former Violet Apparel Workers .....	42

## I. Introduction and Executive Summary

This report details the findings and recommendations for corrective action of the Worker Rights Consortium (“WRC”) concerning the failure of Ramatex Group to pay terminal benefits to workers at its factory, Violet Apparel (Cambodia) Co., Ltd. (“Violet Apparel”), thereby violating Cambodian labor law. Prior to its closure in July 2020, Violet Apparel was located in Phnom Penh, Cambodia.

According to testimony from factory workers, corroborated by photographs taken inside the facility before its closure and by company records and other documentary evidence gathered by the WRC, Violet Apparel manufactured Nike-branded clothing until 2020. This work was subcontracted from the factory’s sister facility, Olive Apparel. From 2017 to the present, Nike has publicly listed Olive Apparel on its corporate website as a Nike supplier.<sup>1</sup>

At the time of Violet Apparel’s closure, the factory also produced apparel for the UK retailer, Matalan.<sup>2</sup> Since December 2020, Matalan no longer has a business relationship with Violet Apparel’s owner, the Ramatex Group, at any of the latter’s other factories.<sup>3</sup> Matalan nonetheless, along with Nike, is responsible for addressing the labor rights violations that occurred while its goods were on Violet Apparel’s production lines.

The Ramatex Group (“Ramatex”) is a Singaporean and Malaysian conglomerate that operates numerous textile and garment factories in Malaysia, China, Jordan, Cambodia, Thailand, and Vietnam. In addition to Nike, Ramatex supplies Fast Retailing (Uniqlo),<sup>4</sup> Fanatics,<sup>5</sup> and Under Armour.<sup>6</sup> Nike currently sources from 14 other Ramatex facilities globally,<sup>7</sup> including all three of the group’s facilities in Phnom Penh, Cambodia. Although neither Nike nor Ramatex provides sufficient supply chain transparency to allow a definitive conclusion, it is highly likely that Nike is one of Ramatex’s largest buyers, if not the largest.

The WRC’s investigation found that, in June 2020, Ramatex dismissed all of the factory’s 1,284 workers with less than one week’s notice, without paying compensation in lieu of such prior notice, as the law and both Nike’s and Matalan’s stated policies require.<sup>8</sup> The WRC determined that Ramatex also violated Cambodian law and its supplier codes by failing to pay workers full terminal

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<sup>1</sup> Nike, “Supplier List” (manufacturing disclosure, February 2023).

<sup>2</sup> Matalan, “Supplier List” (manufacturing disclosure, February 2023).

<sup>3</sup> Business & Human Rights Resource Centre, “Matalan’s Response,” March 17, 2022, <https://www.business-humanrights.org/en/latest-news/matalans-response-2/>.

<sup>4</sup> Fast Retailing, “Supplier List” (manufacturing disclosure, February 2023), nine Ramatex facilities listed.

<sup>5</sup> Fanatics, “Supplier List” (manufacturing disclosure, February 2023), two Ramatex facilities listed.

<sup>6</sup> Under Armour, “Supplier List” (manufacturing disclosure, February 2023), six Ramatex facilities listed.

<sup>7</sup> Nike, “Supplier List,” February 2023, 14 Ramatex facilities listed. Nike, “Supplier List” October 2022, 16 Ramatex facilities listed.

<sup>8</sup> Cambodian Labor Law, Articles 73, 75, and 77; Nike Inc., “Nike Code of Conduct,” November 2020, [https://media.about.nike.com/files/cb537180-37bf-43ac-a686-8fbb93ce2ddc/Nike\\_2021\\_Code\\_of\\_Conduct.FINAL\\_.pdf](https://media.about.nike.com/files/cb537180-37bf-43ac-a686-8fbb93ce2ddc/Nike_2021_Code_of_Conduct.FINAL_.pdf), “Workers are timely paid at least the minimum wage required by local law ... and provided legally mandated benefits, including ... statutory severance when employment ends.”; Matalan, “Responsible Exit,” accessed May 23, 2023, <https://ml.thcdn.com/design-assets/documents/matalan/ESG%20Design%20Templates%20Responsible%20exit.pdf>; Matalan, “Ethical Supply Chain,” accessed May 23, 2023, <https://www.matalan.co.uk/esg/ethics.list>, “Pays severance compensation according to local law and shows documentation of the settlement”.

benefits, which, in Cambodia, includes a payment for “damages” suffered by workers as a result of termination. Full terminal benefits, including damages, is legally mandatory in all cases, unless the employer can demonstrate that workers were terminated for a legally valid cause, which the WRC has determined Ramatex did not have.<sup>9</sup>

A union representing the Violet Apparel workers and affiliated with the labor federation Cambodian Alliance of Trade Unions (“CATU”), submitted a formal complaint to the Cambodian government, citing the factory’s unlawful termination of its workers without providing full terminal benefits, including prior notice compensation and damages.<sup>10</sup> However, reflective of a trend in Cambodia that has been cited with grave concern by international human rights experts,<sup>11</sup> the country’s labor dispute mediation and adjudication bodies failed to hold Ramatex accountable for its lawbreaking and repeatedly denied workers a fair hearing and meaningful redress. First, the Cambodian government’s Ministry of Labor and Vocational Training (“MLVT” or “labor ministry”) issued an illegal proclamation stripping garment workers of a substantial portion of their notice pay. The proclamation was in direct conflict with Cambodian labor law and had no legal force—but it allowed Ramatex to claim it had a legitimate basis for refusing to compensate workers.<sup>12</sup> The MLVT then tried, unsuccessfully, to intimidate the factory’s workers into acceding to Ramatex’s theft of their terminal compensation. After this, the MLVT violated its mandate under the law to promptly refer unresolved labor disputes to Cambodia’s Arbitration Council (“AC”), delaying referral for two months.

After the case was finally heard, the AC refused to make a ruling on notice pay and, on severance, issued a ruling favorable to Ramatex that had no credible basis in the facts of the case.<sup>13</sup> These actions were a stunning dereliction of the Council’s statutory duty to apply the labor law impartially and independently to employers and workers.<sup>14</sup>

With respect to the issue of Ramatex’s failure to provide workers with compensation in lieu of prior notice of termination, the AC’s refusal to act broke with almost two decades of its own

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<sup>9</sup> Labor Law, Article 91 (rev. 2018), (“Labor contract termination made on a party’s will without proper justifications provides entitlement to the other party to claim damages.”); Nike, “Nike Code of Conduct,” (“Workers are timely paid at least the minimum wage required by local law ... and provided legally mandated benefits, including ... statutory severance when employment ends.”).

<sup>10</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (Violet Apparel (Cambodia)), Nov. 12, 2020.

<sup>11</sup> Human Rights Watch, “Only ‘Instant Noodle’ Unions Survive: Union Busting in Cambodia’s Garment and Tourism Sectors,” November 20, 2022, <https://www.hrw.org/report/2022/11/21/only-instant-noodle-unions-survive/union-busting-cambodias-garment-and-tourism>; CIVICUS, “Country brief: Cambodia Overview of recent restrictions to civic freedoms,” September 19, 2022, <https://civicus.org/documents/CambodiaCountryBrief.September2022.pdf>; Office of the High Commissioner for Human Rights, United Nations, “Cambodia: Stop backsliding and expand freedom – UN expert,” October 6, 2021, <https://www.ohchr.org/en/press-releases/2021/10/cambodia-stop-backsliding-and-expand-freedom-un-expert>.

<sup>12</sup> Ministry of Labor and Vocational Training, Department of Labor Inspections, Letter No. 295 KB/OrK/OrTK, June 29, 2020.

<sup>13</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>14</sup> Labor Law, Article 312.

jurisprudence.<sup>15</sup> Worse, in explaining its refusal,<sup>16</sup> the Council cited the same unlawful labor ministry proclamation that Ramatex has used to defend its actions.<sup>17</sup>

On the question of the factory's failure to pay workers damages for dismissal, thereby reducing workers' terminal compensation by nearly half, the AC accepted, without scrutiny, Ramatex's contention that it *needed* to fire them,<sup>18</sup> due to a decline in orders from European buyers. Cambodian law places a high burden on a company that seeks to avoid paying full terminal benefits when a worker is dismissed through no fault of their own. The law is explicit that even bankruptcy or a complete factory closure is not, in itself, a valid reason to deny damages to workers. To refuse full terminal benefits, including damages, to fired workers, an employer must prove that it had a valid reason to dismiss them. Ramatex provided no evidence to support its claim that it had a valid reason to terminate the Violet Apparel workers; the AC accepted this claim anyway. It did so not only in the absence of evidence but in the absence of any precedent permitting a company, on the basis of an alleged decline in orders, to fire workers without full terminal benefits.

Moreover, even a cursory examination of the facts reveals that no such valid reason existed. The AC failed to call upon readily available evidence that Ramatex, during the same period it was closing Violet Apparel (1) hired more new workers at its other factories in the country than it fired at Violet Apparel, (2) required thousands of workers at its other Cambodian factories to perform overtime, and (3) actually *rejected* orders from at least one European buyer, Matalan.<sup>19</sup>

This is why, in a recently published report on Cambodia's deteriorating human and labor rights environment, Human Rights Watch decried the outcome of the Violet Apparel case as the product of a "politically compromised Arbitration Council" that can no longer be relied upon to render independent and impartial decisions in labor disputes.<sup>20</sup>

As a result, Ramatex, with the connivance of the Cambodian labor authorities, and the acquiescence of its buyer brands, has denied its workers their legal right to an estimated US\$1.4 million in terminal compensation—for nearly three years. The WRC recommends that Nike, and other current business partners of Ramatex, take immediate action to ensure that the Violet Apparel workers finally receive the full terminal compensation legally due to them.

Unfortunately, Nike, the only one of Ramatex's current major buyers whose goods were produced at Violet Apparel, has responded by denying that it sourced from the factory, despite conclusive evidence that its goods were indeed produced there. Nike claims to have left Violet Apparel more

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<sup>15</sup> Arbitration Council, Arbitration Award, Case No. 043/17, (Pou Yuen (Cambodia) Enterprise Ltd.), Dec. 26, 2017); Arbitration Award No. 030/06 (Sport Wear), May 18, 2006; Arbitration Award No. 009/19 (Tak Fook (Cambodia) Garment Ltd.), February 21, 2019); Arbitration Award No. 015/19 (Wai Full Garments (Cambodia) Ltd.), March 19, 2019.

<sup>16</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>17</sup> Ministry of Labor and Vocational Training, Department of Labor Inspections, Letter No. 295.

<sup>18</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>19</sup> Business & Human Rights Resource Centre, "Matalan's Response."

<sup>20</sup> Human Rights Watch, "Only 'Instant Noodle' Unions Survive."

than a decade ago.<sup>21</sup> This claim is contradicted not only by the consistent testimony of the factory’s workers that they made Nike products until 2020 but also factory records documenting the work Violet Apparel did for Nike and photographic evidence showing Nike-branded goods inside the factory. Even Nike’s own public supplier lists show that the company sourced from Violet Apparel after it claims to have stopped.<sup>22</sup>

It is possible that Nike was unaware that Ramatex was producing its goods at Violet Apparel; however, if that was the case, it does not absolve Nike of its responsibility to address abuses suffered by workers who made its clothes. Any unauthorized subcontracting should have been prevented through Nike’s exercise of due diligence in its supply chain, especially since Ramatex is a major, long-term business partner of Nike. When workers’ rights are violated at a factory making a brand’s products, the brand is responsible for addressing those violations, even if the work was supposed to be somewhere else. Nike’s refusal to acknowledge responsibility is inconsistent with the brand’s stated commitments to respecting international human rights norms.<sup>23</sup>

Nike’s other response has been to cite the AC decision—the same one denounced by the world’s leading human rights organization—to defend Ramatex’s actions. Nike is well aware that in Cambodia’s severely degraded environment for human rights and rule of law, the AC no longer maintains the independence and impartiality to render fair and credible decisions in disputes between workers and factory owners.<sup>24</sup> Well before the Violet Apparel case, Nike itself joined other leading apparel brands in publicly engaging with the Cambodian labor minister to raise concerns about the reduced independence of the AC.<sup>25</sup> Despite this, Nike continues to cite a decision of that same compromised AC to justify its refusal to use its considerable leverage with Ramatex to secure remediation for the Violet Apparel workers.

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<sup>21</sup> Nike, Inc., Letter to Worker-driven Social Responsibility Network, January 7, 2021, “In regard to your inquiry about Violet Apparel, Nike has not sourced from this facility since 2006 and since then the factory has not been authorized to manufacture Nike product... Specific to the situation at Violet Apparel, we have conducted an independent investigation of the allegations that the facility was recently producing Nike products and found no evidence that Nike products were manufactured at Violet Apparel in recent years.” (on file with the WRC).

<sup>22</sup> Nike claims to have stopped sourcing from Violet Apparel in 2006, though its own public supplier lists show the company sourcing from Violet Apparel until 2008. (Nike, “Supplier List,” 2008).

<sup>23</sup> Nike, Inc., “Written evidence submitted by Nike (FL0030),” November 2020, <https://committees.parliament.uk/writtenevidence/13868/pdf/>.

<sup>24</sup> Fair Labor Association, “Delegation to Cambodia,” November 1, 2018, [https://www.fairlabor.org/wp-content/uploads/2022/01/cambodia\\_delegation\\_thank\\_you\\_moef-moc-mol\\_181101\\_0.pdf](https://www.fairlabor.org/wp-content/uploads/2022/01/cambodia_delegation_thank_you_moef-moc-mol_181101_0.pdf); Fair Labor Association, “Brand Letter,” May 2, 2019, [https://www.fairlabor.org/wp-content/uploads/2022/01/cambodia\\_brand\\_ltr\\_190502\\_final.pdf](https://www.fairlabor.org/wp-content/uploads/2022/01/cambodia_brand_ltr_190502_final.pdf); Human Rights Watch, “Only ‘Instant Noodle’ Unions Survive.”

<sup>25</sup> Fair Labor Association, “Delegation to Cambodia;” Fair Labor Association, “Brand Letter.”

## II. Methodology

### A. Sources of Evidence

The WRC’s findings that Ramatex unlawfully failed to pay workers statutory terminal compensation at Violet Apparel are based on the following sources of evidence:

- Detailed interviews with Violet Apparel workers;
- Personnel documents provided by Violet Apparel workers including pay slips and company notices;
- Interviews with workers at Ramatex-owned Olive Apparel, Berry Apparel, and Apple Apparel factories in Phnom Penh;
- Personnel documents collected from Berry Apparel and Olive Apparel workers;
- Photographs and company documents collected by Violet Apparel workers that verify production of Nike apparel at the factory in period from July 2018 until December 2019;
- Minutes and reports from conciliation meetings convened by the Ministry of Labor and Vocational Training (“MLVT” or “labor ministry”);
- Decisions by the Arbitration Council (“AC”) in this case and relevant previous cases;
- Letters and notices issued by the MLVT and its Department of Labor Inspections; and
- Written communications with Nike.

### B. Terms of Reference

The WRC assessed Violet Apparel’s nonpayment to workers of terminal benefits in relation to the company’s obligations under Cambodian labor laws and regulations, international labor standards, and buyers’ codes of conduct. These terms of reference include:

- Labor Law of the Kingdom of Cambodia, 1997;
- Other *prakas* (regulations), notifications, and instructions of the Cambodian labor authorities;
- International human rights codes, including the United Nations Guiding Principles on Business and Human Rights (“UNGP”) and the Organisation for Economic Co-operation and Development (“OECD”) Guidelines for Multinational Enterprises; and
- Nike’s and Matalan’s codes of conduct and responsible exit policies for factory suppliers.



### III. Findings

#### A. Background Information: Ramatex Group and Its Record of Theft of Terminal Benefits from Workers

##### 1. Ramatex Group Is a Major Supplier Partner to Nike and Other Large Brands

The Ramatex Group (“Ramatex”) is a Singaporean and Malaysian textile and garment manufacturing conglomerate that was founded in 1976.<sup>26</sup> Ramatex includes among its subsidiaries: Ramatex Spinning Industries, Tai Wah Garments Industry, Gimmill Industrial, RB (Labuan), and Ramatex Industrial (Suzhou) Ltd.<sup>27</sup> Ramatex was listed on the Kuala Lumpur Stock Exchange (now known as Bursa Malaysia) until 2007 when it was delisted as a result of the takeover of the company by the Ma family through the latter’s venture capital business, Amphoteric Capital Ltd., which took place amid allegations by the Securities Commission Malaysia that the former had breached Malaysian financial regulations.<sup>28</sup> Ramatex is now privately held and operates more than 20 production facilities that perform spinning, knitting, dyeing, and apparel manufacturing, with operations in Malaysia, China, Vietnam, Cambodia, Thailand, and Jordan.<sup>29</sup> It is a key global supplier of textiles and garments for Nike, and it is a significant supplier for other apparel companies such as Fast Retailing (Uniqlo)<sup>30</sup> and Under Armour.<sup>31</sup> Over the past 10 years, Ramatex has increased its annual revenues from 350 million Malaysian ringgit (“RM”) (US\$109 million)<sup>32</sup> in 2010 to RM 1.2 billion (US\$268 million) in 2020.<sup>33</sup>

Following the closure of Violet Apparel, Ramatex continued to operate its other three factories in Cambodia: Apple Apparel, Berry Apparel, and Olive Apparel. The directors of these Ramatex facilities, Ma Wong Ching and Lee Thai Khit, were also directors at Violet Apparel, with the latter serving as the factory’s managing director before its closure.<sup>34</sup> Ma Wong Ching is also the founder and current Chairman of the Ramatex Group.<sup>35</sup> Lee Thai Khit was the first vice chairperson of the Garment Manufacturers Association in Cambodia and a longstanding member of the Executive

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<sup>26</sup> Ramatex Group, accessed July 2020, <http://www.ramatex.com/>; site last active on February 4, 2021.

<sup>27</sup> Ramatex Group, “Annual Report 2006,” May 2007, (on file with the WRC).

<sup>28</sup> Securities Commission Malaysia, “Administrative Actions in 2011,” <https://www.sc.com.my/regulation/enforcement/actions/administrative-actions/administrative-actions-in-2011>; “News in Brief,” *The Star*, January 17, 2007, <https://www.thestar.com.my/business/business-news/2007/01/17/news-inbrief>.

<sup>29</sup> Ramatex Group, “Annual Report 2006”; Ramatex Group, “Brand Supplier Lists 2023,” (on file with the WRC).

<sup>30</sup> Fast Retailing, “Supplier List,” February 2023, nine Ramatex facilities listed.

<sup>31</sup> Under Armour, “Supplier List,” February 2023, six Ramatex facilities listed.

<sup>32</sup> Exchange Rates, “Malaysian Ringgit to US Dollar Spot Exchange Rates for 2010,” <https://www.exchangerates.org.uk/MYR-USD-spot-exchange-rates-history-2010.html>, “Average exchange rate in 2010: 0.311 USD.”

<sup>33</sup> Malaysian Investment Development Authority, “Ramatex: Leading by Example in Advocating ESG,” January 2023, <https://www.mida.gov.my/ramatex-leading-by-example-in-advocating-esg/>.

<sup>34</sup> Business Registration Department, Cambodia Ministry of Commerce via Open Corporates, “Violet Apparel (Cambodia) Co., Ltd.,” <https://opencorporates.com/companies/kh/00013193>.

<sup>35</sup> Bloomberg, “Ma Wong Ching,” accessed May 23, 2023, <https://www.bloomberg.com/profile/person/1995579?leadSource=verify%20wall>.

Committee of the Garment Manufacturers Association in Cambodia,<sup>36</sup> which has since been renamed the Textile, Apparel, Footwear & Travel Goods Association.

## **2. Ramatex Has a Notorious Track Record of Denying Workers Legally Owed Compensation When They Are Dismissed**

### **a. Namibia, 2008: Ramatex Managers Attempt to Cheat Workers of Severance, Flee Country**

From 2001 to 2008, Ramatex operated factories in Namibia for which the company received subsidies from the Namibian government equal to the salaries of all the factory's workers for almost three years,<sup>37</sup> as well as exemptions from taxes on its profits, imports of raw materials and equipment, and exports of finished goods. During the period the factories operated, Ramatex faced allegations of environmental violations, discriminatory treatment of workers based on race, and exploitation of migrant workers.<sup>38</sup>

In March 2008, Ramatex managers attempted to shut down the company's operations in Namibia and flee the country without paying workers their legally mandated severance benefits.<sup>39</sup> One day, the company's managers sent workers home early due to an alleged 'power cut', and when workers returned the following day, they found the doors of the factory locked.<sup>40</sup>

Only after the Government of Namibia took legal action against Ramatex and placed a travel ban on the company's managers leaving the country, did the company finally pay legally owed severance benefits to workers.<sup>41</sup> After Ramatex's subsidiary in Namibia subsequently filed for bankruptcy, the protracted process of liquidating its assets concluded with the country's Supreme Court ruling that Ramatex had breached obligations of its agreement with the city of Windhoek where the factory had been located.<sup>42</sup>

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<sup>36</sup> Suy Bunthan, *The Garment Manufacturers Association in Cambodia*, September 2004, [http://gmac-cambodia.org/public/pdf\\_file/1505178988.pdf](http://gmac-cambodia.org/public/pdf_file/1505178988.pdf); *The Garment Manufacturers Association in Cambodia*, edited by Ken Loo and Ly Tek Heng, Issue 2, October 2005, [https://gmac-cambodia.org/public/pdf\\_file/1505179144.pdf](https://gmac-cambodia.org/public/pdf_file/1505179144.pdf); and Khuy Sokhoeun, "Factory Owners Agree to Provide Vacations," *The Cambodia Daily*, April 6, 1998, <https://english.cambodiadaily.com/news/factory-owners-agree-to-provide-vacations-7465/>.

<sup>37</sup> Herbert Jauch, "Africa's Clothing and Textile Industry: The Case of Ramatex in Namibia," in *The Future of the Textile and Clothing Industry in Sub-Saharan Africa*, eds. Herbert Jauch and Rudolf Traub-Merz, (Bonn: Friedrich-Ebert-Stiftung, 2006, 212–226, <https://library.fes.de/pdf-files/iez/03796/15namibia.pdf>.

<sup>38</sup> Frank Flatters and Paulina M. Elago, *Ramatex Namibia: Government Policies and the Investment Environment*, March 2008, [https://pdf.usaid.gov/pdf\\_docs/pnadx265.pdf](https://pdf.usaid.gov/pdf_docs/pnadx265.pdf); and John Grobler, "Namibia: Ramatex Raked in Millions," *The Namibian*, March 13, 2008, <https://allafrica.com/stories/200803130449.html>.

<sup>39</sup> See, e.g., Herbert Jauch, "Namibia: The Ramatex Closure in Namibia - Hard Lessons to Be Learned," *The Namibian*, <https://allafrica.com/stories/200803140483.html>; for a discussion of Gimmill Industrial Pte. Ltd.'s corporate relationships, see, Herbert Jauch, "The Struggle for Workers' Rights in Namibia," *Labour Resource and Research Institute*, April 2006, <https://www.yumpu.com/en/document/view/24285331/promoting-worker-rights-and-labour-standards-viva-workers>.

<sup>40</sup> Jauch, "The Ramatex closure in Namibia."

<sup>41</sup> Denver Isaacs, "Ramatex – Money, Hopes, Livelihoods Down Drain," *The Namibian*, March 7, 2008, <https://allafrica.com/stories/200803070208.html>.

<sup>42</sup> Supreme Court of Namibia, CASE NO: SA 33/2016, January 17, 2018, <https://media.namiblii.org/files/judgments/nasc/2018/1/2018-nasc-1.pdf>.

## **b. Cambodia, 2011: Ramatex Unlawfully Attempts to Deny Terminal Benefits to Former Workers of Its Factory, June Textile**

In March 2011, the Ramatex-owned facility, June Textile, in Cambodia was destroyed by a fire which began inside the factory. Following the fire, June Textile—whose factory director was Lee Thai Khit, who was also the director of Violet Apparel—dismissed and refused to pay legally owed compensation to more than 4,000 workers.<sup>43</sup> Only after extensive engagement with the WRC, Ramatex’s buyer brands, and multiple international labor groups, did the company finally pay its workers their legally due terminal benefits in July 2011.<sup>44</sup>

## **c. Thailand, 2022: Partnership with Hong Seng Group, Another Manufacturing Conglomerate with a Record of Denying Workers Legally Owed Compensation**

Ramatex recently entered into a partnership with Hong Seng Knitting, the Thai subsidiary of the Malaysian conglomerate, the Hong Seng Group, to jointly operate a factory in Bangkok, Thailand, Cassia Garment,<sup>45</sup> which currently supplies Nike.<sup>46</sup> Hong Seng has repeatedly violated Thai labor laws, including in 2013, when a WRC investigation found that the factory had discriminated against pregnant workers.<sup>47</sup> More recently, in 2021, the WRC uncovered an illegal wage theft scheme<sup>48</sup> that deprived workers of more than US\$600,000 in legally mandated wages, or more than two weeks’ wages, per worker. This case remains unresolved, and workers continue to seek their unpaid wages from Nike and Hong Seng, now amounting to more than US\$800,000 with the addition of legally owed interest.<sup>49</sup>

## **B. Ramatex Suspends, Dismisses, and Fails to Pay Legal Terminal Compensation to Violet Apparel Workers, May–June 2020**

### **1. May 2020: Ramatex Suspends Violet Apparel Workers**

In May 2020, against the backdrop of the Covid-19 pandemic, Ramatex halted operations at Violet Apparel and suspended workers’ employment contracts.<sup>50</sup> In accordance with then-current

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<sup>43</sup> Scott Nova and Ben Hensler, “Update: More Than \$2 Million to Be Paid to Workers at June Textile,” Worker Rights Consortium, July 25, 2011, <https://www.workersrights.org/communications-to-affiliates/update-more-than-2-million-to-be-paid-to-workers-at-june-textile/>.

<sup>44</sup> Nova and Hensler, “Update: More Than \$2 Million to Be Paid.”

<sup>45</sup> Department of Business Development, Ministry of Commerce, Kingdom of Thailand, Cassia Garment Registration April 2022, (on file with the WRC).

<sup>46</sup> Nike, “Supplier List,” February 2023.

<sup>47</sup> Worker Rights Consortium, *Assessment: Hong Seng Knitting*, January 23, 2013, <https://www.workersrights.org/wp-content/uploads/2016/02/WRC-Assessment-re-Hong-Seng-Thailand-1.23.2013.pdf>.

<sup>48</sup> Worker Rights Consortium, *Assessment: Hong Seng Knitting*, April 5, 2021, <https://www.workersrights.org/wp-content/uploads/2021/04/Hong-Seng-Report-2021-04-05.pdf>.

<sup>49</sup> Scott Nova, “Update: Hong Seng Knitting,” Worker Rights Consortium, April 19, 2022, <https://www.workersrights.org/communications-to-affiliates/update-on-hong-seng-knitting-thailand/>.

<sup>50</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (“The employer suspended employees’ employment contracts for two months starting from 1 May until 30 June 2020.”).

instructions issued to garment factories in Cambodia by the MLVT,<sup>51</sup> the factory paid workers US\$30 for each month they were suspended, supplemented with US\$40 per month from the Cambodian government. This suspension with partial pay left workers receiving only US\$70 per month—barely one third of the country’s legal minimum wage. As a result, the Violet Apparel workers were both highly vulnerable to, and severely affected by, Ramatex’s subsequent theft of legally owed terminal compensation when the factory then closed.

## **2. June 2020: Ramatex Announces Violet Apparel to be Closed, Workers Terminated, without Payment of Legally Required Damages or Statutory Pay in Lieu of Notice**

On June 26, 2020, while Violet Apparel’s operations and employees remained suspended, Ramatex announced to its workers that the factory would cease operations permanently and their employment would be terminated, effective July 1, 2020.<sup>52</sup> Workers received this notification from the company primarily through Facebook.

The notice specified that Violet Apparel would provide employees with the following elements of terminal benefits compensation:

- Compensation in lieu of prior notice;
- Employment seniority indemnities for January 2020–June 2020;
- Payment for unused annual leave; and
- Final wages.<sup>53</sup>

However, the terminal compensation that the company committed to provide fell significantly short of the full amount required under Cambodia’s labor law in two key aspects. First, the factory did not commit to provide pay in lieu of prior notice based on workers’ entire length of service at the factory, as the labor law requires. Rather, it committed to provide pay only for the period since workers began being employed by the factory under long-term contracts, a substantially shorter length of service for most workers.<sup>54</sup> This had the effect of denying many workers, a significant

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<sup>51</sup> Ministry of Labor and Vocational Training, Instruction No. 045/20, (Suspension of Employment Contract and Postponement of NSSF Contribution Payment for the Textile and Tourism affected by the Covid-19 pandemic), April 17, 2020.

<sup>52</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (“On 26 June 2020, the employer gave notification through an electronic phone message to employees about the closure of the factory .... from 1 July 2020.”).

<sup>53</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (“On 26 June 2020, the employer gave notification through an electronic phone message to employees about the closure of the factory with the employer to pay final wages, unused annual leave, employment seniority indemnities and compensation in lieu of prior notice to employees, but not damages.”).

<sup>54</sup> Labor Law, Articles 73 (“If a contract of unspecified duration replaces a contract of specified duration upon the latter’s expiration, the employment seniority of the worker is calculated by including periods of the both contracts.”); 75 (“The minimum period of a prior notice is set as follows: Seven days, if the worker’s length of continuous service is less than six months; Fifteen days, if the worker’s length of continuous service is from six months to two years; One month, if the worker’s length of continuous service is longer than two years and up to five years; Two months, if the worker’s length of continuous service is longer than five years and up to ten years; Three months, if the worker’s length of continuous service is longer than ten years.”); and 77 (“The termination of a labor contract at will on the part of the employer alone, without prior notice or without compliance with the prior notice periods, entails the obligation of the

number of whom had worked at the factory for more than 15 years, large sums of legally owed compensation. Secondly, the factory did not commit to pay workers legally required damages for terminating them without valid cause.

### **C. Cambodian Labor Ministry Aids Ramatex’s Theft of Terminal Compensation from Workers by Issuing Illegal “Approval” of Failure to Pay Required Benefits, Threatening Worker Leaders, Unlawfully Delaying Arbitration Proceedings**

#### **1. June 29, 2020: Cambodian Factory Owners Association Solicits and Secures Labor Ministry “Approval” to Ignore Law—Not Pay Full Terminal Compensation**

On June 23, three days before Ramatex announced the closure of Violet Apparel, the country’s main factory owners’ organization, the Garment Manufacturers Association in Cambodia (“GMAC”),<sup>55</sup> (which Ramatex is a member of, and on whose executive committee Violet Apparel’s Managing Director, Lee Thai Khit, had previously sat), submitted a request to the country’s labor ministry to “clarify” whether, in light of the ongoing Covid-19 pandemic, employers who shut down their factories and terminated their employees were still required to pay workers damages and provide pay in lieu of prior notice.<sup>56</sup>

One week later, on June 29, the director of the labor ministry’s Department of Labor Inspections, sent an “open letter” to the GMAC in response to their request for “clarification” of employers’ legal obligations in cases of factory closure, stating:

[Due to] the serious crisis occasioned by the global spread of COVID-19, damages and payment in lieu of prior notice are not to be implemented for [i.e., required to be paid by] factories and enterprises fully closing operation[s] after attempting to resolve this crisis through ... various legal measures, including suspension of employment contracts and/or [for] employment contracts [that are] already dissolved.<sup>57</sup>

On June 30, one day after publication of this “open letter”, Lee Thai Khit—the Managing Director of Violet Apparel, and a senior manager at Ramatex’s other factories in Cambodia, Olive Apparel, Apple Apparel, and Berry Apparel—issued a notice posted on the factory gate.<sup>58</sup> The notice stated that, per the letter issued the previous day by the director of the Department of Labor Inspections,

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employer to compensate the worker the amount equal to the wages and all kinds of benefits that the worker would have received during the official notice period.”).

<sup>55</sup> In November 2022, the GMAC renamed itself the Apparel, Footwear & Travel Goods Association in Cambodia (TAFTAC). “Cambodia’s textile body GMAC is now officially renamed TAFTAC,” *Fibre2Fashion*, November 23, 2022, <https://www.fibre2fashion.com/news/textile-news/cambodia-s-textile-body-gmac-is-now-officially-renamed-taftac-284276-newsdetails.htm>. In his report the association is referred to as the GMAC, as this was its name at the time of the events discussed herein.

<sup>56</sup> Garment Manufacturers Association in Cambodia, Letter to Ministry of Labor and Vocation Training, June 23, 2020.

<sup>57</sup> Ministry of Labor and Vocational Training, Department of Labor Inspections, Letter No. 295.

<sup>58</sup> Lee Thai Khit, Notice to Violet Apparel Employees, June 30, 2020, (“According to Letter No. 295 KB/AK/ATHK, signed 29 June 2020, of the Ministry of Labor and Vocational Training, General Department of Labor, Department of Labor Inspections, the company is required to pay three points of compensation as below: 1. Employment seniority indemnity (January 2020 to June 2020); 2. Unused annual leave entitlements; 3. Final wages.” (translation by the WRC), (on file with the WRC).

the company would not be providing workers with pay in lieu of prior notice nor damages for termination without valid cause.<sup>59</sup> The notice also said that the company’s prior communication about the factory’s closing, stating that workers *would* be provided pay in lieu of prior notice, which was sent to employees on June 26, 2020, was thereby voided.<sup>60</sup>

However, the “open letter” from the Labor Inspections Department Director—that the Cambodian factory owners’ association solicited and Ramatex cited in refusing to provide its workers compensation in lieu of prior notice and damages—was issued without legal authority and, as the labor ministry, itself, later acknowledged, stated a position that was contrary to the law.<sup>61</sup> Under Cambodian law, members of the Council of Ministers (in this case the labor minister) can issue official communications, such as regulations, decisions, circulars, and instructions, so long as such communications are consistent with the law.<sup>62</sup> Conversely, any official action that derogates from the obligations to workers under the labor law is legally null and void.<sup>63</sup> For this reason, as a legal matter, the letter from the director of the Department of Labor Inspections—which Ramatex cited to workers in its June 30, 2020, announcement to the Violet Apparel workers as its justification for refusing to pay compensation in lieu of prior notice and damages for dismissal without valid justification—was, to the extent it conflicted with the labor law (which, as explained below, was quite substantial), completely null and void.

Unlike the Minister of Labor and Vocational Training, the director of the Department of Labor Inspections is not a member of the Council of Ministers but, instead, serves in a sub-ministerial position within the Ministry of Labor and Vocational Training. Therefore, he had no lawful authority to issue this communication, and, as such, the communication had no legal effect, even if it did *not* contradict the labor law (which it clearly did).

Furthermore, while the Department of Labor Inspections has the power to inspect workplaces and enforce the labor law, it does not have any statutory authority to *interpret* the labor law’s

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<sup>59</sup> Lee Thai Khit, Notice to Violet Apparel Employees, June 30, 2020.

<sup>60</sup> Lee Thai Khit, Notice to Violet Apparel Employees, June 30, 2020.

<sup>61</sup> Ministry of Labor and Vocational Training, “Clarification on the Payment of Compensation in Lieu of Prior Notice and Damages When Terminating Unspecified Duration Employment Contracts,” August 14, 2020.

<sup>62</sup> Cambodian Law on the Organisation and Functions of the Council of Ministers, Article 47 (“Ministers have the right to issue Prakas, decisions, circulars and instructions. Ministerial Prakas, decisions, circulars and instructions cannot state about affairs which do not fall within the competencies of that Ministry *and cannot conflict with the various legal standards of the Royal Government.*”) (emphasis added).

<sup>63</sup> Labor Law, Article 13, (“The provisions of this law are of the nature of public order, except for derogations expressly provided for. Consequently, all rules resulting from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void.”).

requirements.<sup>64</sup> Under the Cambodian labor law, that authority is explicitly reserved for the Arbitration Council and the judiciary.<sup>65</sup>

Indeed, nearly two months later, on August 14, the labor minister, himself, who *does* have the legal authority to issue communications concerning the requirements of the labor law, issued his own letter that *reaffirmed* employers' obligations, under Article 77 of the labor law, to provide prior notice to workers in cases of dismissal as per the law or—in the absence of such notice—pay compensation in lieu of prior notice.<sup>66</sup> This legally valid notice corrected the erroneous assertions concerning employers' obligations made by the director of the Department of Labor Inspections in his June 2020 “open letter”.

## **2. July 1–24, 2020: Labor Ministry Colludes with Military-Backed Body to Intimidate Violet Apparel Workers Protesting Ramatex's Refusal to Pay Terminal Compensation**

On July 1, the day after the factory posted a notice revising its terminal benefit payment terms, Violet Apparel workers began protesting in front of the factory, calling for full payment of their legally mandated terminal compensation, including damages for dismissal without a valid cause and compensation in lieu of prior notice. On July 6, these workers submitted a collective formal complaint to the labor ministry regarding Ramatex's refusal to provide this legally required compensation.<sup>67</sup>

Soon afterward, the labor federation representing the Violet Apparel workers, CATU, and its president, Ms. Yang Sophorn, received letters of warning from the labor ministry ordering the labor federation to cease supporting the workers' protests and threatening to legally deregister CATU if the federation did not comply with this order.<sup>68</sup>

On July 23, the Department of Labor Inspections convened a meeting for the purpose of questioning the Violet Apparel workers who had submitted the complaint against Ramatex and organized the protests outside the factory. The meeting was attended by a range of government representatives including the director of the Department of Labor Inspections, the same official who issued the illegitimate “open letter” that Ramatex cited as its justification for denying workers their legally owed compensation.

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<sup>64</sup> Labor Law, Article 344, (“The [Department of] Labor Inspection shall have the following missions: a. to ensure enforcement of the present Labor Law and regulatory text that is provided for, as well as other laws and regulations that are not yet codified and that relate to the labor system; b. to provide information and technical advice to employers and to workers on the effective ways of observing the legal provisions; c. to bring to the attention of the competent authority any improprieties or abuses that are not specifically covered by the existing legal provisions; d. to give advice on issues relating to the arrangement or restructuring of enterprises and organisms that have been authorized by the administrative authorities and covered by Article 1 of this law; e. to monitor the enforcement of the legal provisions regarding the living conditions of workers and their families.”).

<sup>65</sup> Labor Law, Article 312, (“The Council of Arbitration legally decides disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement.”).

<sup>66</sup> Ministry of Labor and Vocational Training, “Clarification on the Payment.”

<sup>67</sup> Cambodian Union of Violet Apparel, “Letter requesting and appointing bargaining representatives of employees of Violet Apparel (Cambodia) addressed to the Head of the Department of Labor Disputes on the Request for Conciliation of the Labor Dispute between Us and the Company”, (July 6, 2020).

<sup>68</sup> Letters on file with the WRC.

Both this meeting and a second meeting held with the workers the following day were led by two representatives from the government’s Committee for Resolving Strikes and Demonstrations in All Areas (“K.K.B.”), an inter-ministerial body that has long included military and police officials who have been implicated in severe human rights violations.<sup>69</sup> Given the role that K.K.B.’s representatives played in these meetings, it is clear that the purpose of convening them was to intimidate the Violet Apparel workers who were protesting Ramatex’s unlawful refusal to provide them terminal compensation.

### **3. July 25–September 28, 2020: Ramatex Imposes “Voluntary Settlements” on Violet Apparel Workers That Make Workers Give Up 75 Percent of Legal Terminal Compensation**

#### ***a. Labor Ministry Attempts to Interpose Corrupt Labor Organizations in Dispute between Ramatex and Violet Apparel Workers over Theft of Terminal Compensation***

On September 29, the Department of Labor Inspections convened another meeting concerning the dispute between the Violet Apparel workers and Ramatex over the latter’s refusal to pay workers their full legally due terminal compensation.<sup>70</sup> However, contrary to the labor ministry’s normal practice for mediation of labor disputes—which is to convene a conciliation meeting between the employer and the union representing the workers raising the dispute—the Department of Labor Inspections invited *other labor unions*, which were aligned with the factory management and the government and, unlike CATU, had not raised any complaints on behalf of the Violet Apparel workers.

CATU saw the Department of Labor Inspections’ introduction to the dispute of management and government-aligned labor organizations—many of which, in Cambodia, have a reputation for violence and for accepting payoffs from employers<sup>71</sup>—yet another attempt by the Department of Labor Inspections, in collusion with Ramatex, to intimidate the Violet Apparel workers. Accordingly, CATU rejected the irregular procedure that the Department of Labor Inspections was attempting to introduce and refused to attend the meeting.

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<sup>69</sup> Human Rights Watch, *Cambodia’s Dirty Dozen: A Long History of Rights Abuses by Hun Sen’s Generals*, June 2018, [https://www.hrw.org/sites/default/files/report\\_pdf/cambodia0618\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/cambodia0618_web_0.pdf), (implicating K.K.B. members Royal Cambodian Armed Forces (RCAF) Commander-in-Chief, Pol Saroeun, National Military Police Commander, Sao Sokha, and National Police chief, Neth Savoeun, in human rights abuses); Mech Dara, “Military Police Commander ‘Learned from Hitler’,” *Cambodia Daily*, January 16, 2015, <https://english.cambodiadaily.com/news/military-police-commander-learned-from-hitler-76248/> (discussing military police commander, Neth Savoeun); Worker Rights Consortium, *Crackdown in Cambodia*, March 24, 2014, <https://www.workersrights.org/wp-content/uploads/2016/06/WRC-Report-Crackdown-in-Cambodia-3.24.14.pdf>.

<sup>70</sup> Meeting minutes on file with the WRC.

<sup>71</sup> See, e.g., International Trade Union Confederation, “Survey of Violations of Trade Union Rights,” April 1, 2022, <https://survey.ituc-csi.org/Cambodia.html?lang=en#tabs-3>.



## **b. Labor Ministry Intentionally Delays Submitting to Arbitration Council the Violet Apparel Workers' Complaint of Theft of Terminal Compensation for Two Months**

Under the Cambodian labor law and its implementing regulations,<sup>72</sup> unless the dispute between Ramatex and the Violet Apparel workers had been resolved through conciliation, the labor ministry was required to forward the Violet Apparel workers' July 6 complaint to the country's Arbitration Council<sup>73</sup> by no later than July 25. However, even though no such resolution was reached, the labor ministry refused to comply with this statutory mandate until September 30, two months later.

Both the Cambodian labor law and its implementing regulations<sup>74</sup> impose strict time limits on the labor ministry's handling of formal complaints from workers. Ministry officials are required to report all complaints from workers to the labor minister within 48 hours of receiving them.<sup>75</sup> Under the labor law, the labor minister is then mandated to appoint conciliators to the case within 48 hours of receiving this report, and the actual conciliation meeting is required to be held no later than 15 days after this.<sup>76</sup>

Based on this legally mandated timeline, since the Violet Apparel workers submitted their complaint to the labor ministry on July 6, conciliators were required to be appointed to the dispute by the labor minister by July 10, and the conciliation meeting should have been held by July 25. Instead, the MLVT had its Department of Labor Inspections organize the meetings between the workers and representatives from the military-backed K.K.B. on July 23 and 24. These July meetings were *not* conciliation meetings,<sup>77</sup> since they did not result in a conciliation meeting report, as would have been required if they were intended as such.<sup>78</sup> They were instead, an effort to intimidate the Violet Apparel workers and end their protests. The official conciliation meeting concerning the complaint was not held by the labor ministry until September 29,<sup>79</sup> two months after the statutory deadline. This delay was a direct result of the labor ministry's failure to comply with the explicit and binding requirements of both the labor law and its own regulations, an action that must be viewed as an intentional effort to further undermine the Violet Apparel workers' attempt to resist Ramatex's theft of their legally due terminal compensation.

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<sup>72</sup> Ministry of Labor and Vocational Training, Prakas No. 317/01 SKBY, (Procedures for Resolution of Collective Labor Disputes), Nov. 29, 2001, <https://www.arbitrationcouncil.org/download/prakas-317-01-on-procedures-for-settlement-of-collective-labor-dispute/?wpdmdl=8578&refresh=63cfd82631ba1674567554>.

<sup>73</sup> Ministry of Labor and Vocational Training, Report on the Resolution of the Collective Labor Dispute at Violet Apparel (Cambodia), No. 1022 K.B/AK/VK, Sep. 30, 2020; Minutes of the Conciliation of the Collective Labor Dispute at Violet Apparel, Sep. 29, 2020; Letter Confirming Representatives of the Employee Party in the Resolution of the Collective Labor Dispute of Violet Apparel (Cambodia) No. 009/20 KB/AK/LBV, September 29, 2020.

<sup>74</sup> Labor Law, Article 308; Ministry of Labor and Vocational Training, Prakas No. 317/01 SKBY.

<sup>75</sup> Ministry of Labor and Vocational Training, Prakas No. 317/01 SKBY, Article 2.

<sup>76</sup> Labor Law, Article 308.

<sup>77</sup> Labor Law, Article 308.

<sup>78</sup> Ministry of Labor and Vocational Training, Prakas No. 317/01 SKBY, (Procedures for Resolution of Collective Labor Disputes) sets strict time limits for Ministry of Labor and Vocational Training officials to respond after receiving a formal complaint from workers. For example, under Article 2 of this Prakas, officials are required to report the complaint to the labor minister within 48 hours of receiving it so that the minister can appoint conciliators for the case. Similarly, Article 304 of the Labor Law requires the minister to appoint conciliators within 48 hours of having been informed of the dispute. Article 305 further requires this conciliation to occur within 15 days of the minister having appointed the conciliators.

<sup>79</sup> Ministry of Labor and Vocational Training, Minutes of the Conciliation of the Collective Labor Dispute.

The official conciliation meeting, unsurprisingly, failed to resolve the dispute, not the least because CATU, which had brought the Violet Apparel workers' complaint, was not in attendance.

The case was forwarded to the AC by the MLVT on the following day, September 30, two months after the statutory deadline had elapsed.<sup>80</sup> The AC convened a panel on October 2 and held a hearing on October 8.<sup>81</sup> The AC then published its award on the Violet Apparel case on November 12, more than four months after workers had filed their complaint.

## **D. “Politically Compromised” Arbitration Ruling Fails to Protect Violet Apparel Workers from Ramatex’s Theft of Terminal Compensation**

### **1. Arbitrator’s Refusal to Rule on Ramatex’s Underpayment of Compensation in Lieu of Prior Notice Reflects AC’s Loss of Independence and Impartiality**

On November 12, 2020, the AC issued its decision in the case brought by the Violet Apparel workers against Ramatex.<sup>82</sup> In its decision, the AC declined to rule on the issue of whether Ramatex violated the law by failing to pay the Violet Apparel workers compensation in lieu of prior notice based on their original dates of hire at the factory, stating that it lacked jurisdiction to make this decision.<sup>83</sup>

This action—or, more accurately, omission—by the AC stood in blatant conflict with the AC’s statutory mandate under the labor law to interpret and apply the labor law in disputes between employers and workers.<sup>84</sup> A recent report by Human Rights Watch described the AC’s failure to rule in the Violet Apparel case as revealing “a politically compromised Arbitration Council”<sup>85</sup> that, as result of political pressure from government and employers, no longer possesses the independence and impartiality needed to properly fulfill its statutory mandate. The reason the AC declined to rule on whether Violet Apparel had broken the law by denying workers their full compensation in lieu of prior notice was, Human Rights Watch concluded, because to decide the issue, “the Arbitration Council ... would have had to rule against the MLVT”.<sup>86</sup>

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<sup>80</sup> Ministry of Labor and Vocational Training, Report on the Resolution.

<sup>81</sup> Arbitration Council, Letters Inviting the Employee and Employer Parties to Participate in the Hearing No. 347 KB/AK/VK/LKA. Oct. 2, 2020.

<sup>82</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>83</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (“The Arbitration Council does not have the power to decide on the contents of Notification No. 023/19 or Letter No. 070 KB/AKThK that they are contrary to the Labor Law and cause a loss of benefits or affect the rights of any party. In conclusion, the Arbitration Council decides to refuse to consider the demand of the Employee Party for the employer to calculate the employment seniority of prior notice to employees by taking the duration of both contracts combined together, that is, starting from the first contract until the date of termination of the contract in order to pay compensation in lieu of prior notice to each employee”).

<sup>84</sup> Labor Law, Article 312, § 2 (“The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement”).

<sup>85</sup> Human Rights Watch, “Only ‘Instant Noodle’ Unions Survive.”

<sup>86</sup> Human Rights Watch, “Only ‘Instant Noodle’ Unions Survive.”

**a. Arbitration Council Deferred to Employer-Friendly Notice from Department of Labor Inspections, Even Though Notice Contradicted the Labor Law and Its Own Jurisprudence**

The reason why, in order to enforce the labor law and rule in favor of the Violet Apparel employees, the AC would have had to “rule against the MLVT”, was because officials within the labor ministry had, as we have discussed, issued an interpretation of the labor law that directly contradicted both the labor law, itself,<sup>87</sup> and the AC’s prior jurisprudence interpreting it.<sup>88</sup> By declining to rule, the AC, in effect, deferred to the labor ministry, abdicating both its own statutory responsibility and the independence that has been, since the AC’s inception, the primary source of its credibility.<sup>89</sup>

In February 2020, the Department of Labor Inspections (the same ministry office that would, in June 2020 issue the illegitimate “open letter” stating that pay in lieu of prior notice would not be required at all during the Covid-19 pandemic) had issued an earlier and similarly invalid letter.<sup>90</sup> This previous letter from the Department of Labor Inspections had opined on—again, in clear contradiction to the labor law and blatantly in favor of employers—how compensation in lieu of prior notice should be calculated.

The Department of Labor Inspections’ February 2020 letter stated that:

In the case of [an employer] terminating an [employee working under a] unspecified duration employment contract [“UDC”] which was converted from a fixed-duration employment contract [“FDC”], the employer shall calculate employment seniority for prior notice by calculating from the time that this [FDC] was converted to an [UDC] if the employer has paid severance for termination of the [FDC] already...<sup>91</sup>

What this letter asserted (incorrectly) was that if an employer fired a worker who was employed under a long-term contract (known in Cambodia as a “UDC”) but had previously been working for the same employer under successive short-term contracts (known in Cambodia as “FDCs”), the amount of compensation in lieu of prior notice that the employer must pay should be calculated based not on the worker’s original date of hire by the employer under a FDC (i.e., when the employee actually started work at the factory) but on the typically much later date when the

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<sup>87</sup> Labor Law, Articles 73, 75, and 77.

<sup>88</sup> Arbitration Council, Arbitration Award, Case No. 043/17; Arbitration Award No. 030/06; Arbitration Council, Arbitration Award, Case No. 009/19; Arbitration Council, Arbitration Award, Case No. 015/19.

<sup>89</sup> See, for example, Hugo van Noord, Hans S. Hwang, and Kate Bugeja, *Working Paper No. 24: Cambodia’s Arbitration Council: Institution-building in a developing country*, International Labor Organization, August 2011, (“One of the primary challenges facing the establishment of the Arbitration Council was ensuring its independence, especially against capture (perceived or real) from any one party or interest. In the Cambodian context, a Council under the control of the Ministry could have been perceived by both unions and employers as non-independent; and it would likely have been unacceptable in particular to those unions which viewed –rightly or wrongly– the Ministry as aligned with employers’ interests.”), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_166728.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_166728.pdf).

<sup>90</sup> Department of Labor Inspections, Letter No. 070 K.B/A.K/AThK, Letter to Cambodian Federation of Employers and Business Associations,” February 21, 2020, (discussing “the method of calculating employment seniority to identify the period of prior notice which employers must implement when terminating employment contracts in cases where fixed-duration employment contracts (FDC) have changed to an unspecified employment contract (UDC)”).

<sup>91</sup> Department of Labor Inspections, Letter No. 070.

employer finally issued the worker a UDC—so long as, at that later date, the employer had paid the worker statutory severance when converting the contract.

Whether or not the AC would concur with—or reject—the Department of Labor Inspections’ formula for calculating compensation in lieu of prior notice, despite it clearly contradicting the law, was significant to the Violet Apparel workers’ case. This was because, like nearly all garment factories in Cambodia, Ramatex had originally hired Violet Apparel workers under FDCs, which it later converted to UDCs—in this case, for all of the workers, on January 1, 2019, and, at that point, had paid the workers required severance.

As a result, if the AC followed the formula for calculating the compensation in lieu of prior notice as it was set out in the Department of Labor Inspections’ February 2020 letter, the amount workers were due would be calculated as if they had only begun working at the factory in January 2019. However, a majority of the workers had been employed by Violet Apparel for at least several years prior to this, with some workers having worked at Violet Apparel for more than 15 years.<sup>92</sup>

The formula for compensation set out in the Department of Labor Inspections’ February 2020 letter clearly contradicted the labor law—both as it set out in the statutory text and as interpreted, prior to this point, by the AC. Under the Cambodian labor law, the amount of pay in lieu of prior notice that is due upon termination to an employee who began working for their employer under a FDC must be calculated based on the starting date of their first FDC, *even when their employer has paid them severance upon the renewal of each FDC*.<sup>93</sup>

As discussed below, this is a principle that the AC has upheld in its prior jurisprudence addressing the labor law’s requirements regarding labor contracts.<sup>94</sup> Therefore, if the AC *had* carried out its statutory mandate by exercising its jurisdiction to decide this issue, the AC would have ruled that Ramatex violated the labor law by refusing to provide workers compensation in lieu of prior notice based on their original dates of hire at the factory.

#### **b. AC Recognized that Ramatex Violated Labor Law by Refusing to Pay Violet Apparel Workers their Full Compensation in Lieu of Prior Notice**

Under the Cambodian labor law, an employer who terminates a worker must provide the worker with either a period of prior notice or equivalent number of days’ wages in lieu of such notice (i.e., compensation in lieu of prior notice), in an amount based on the worker’s total length of service with the employer, ranging from 15 days’ wages (if the employee has worked for the employer from six months to two years) to three months’ wages (if the employee has worked for the employer for more than 10 years).<sup>95</sup>

Ramatex violated this legal requirement by calculating the amount of compensation in lieu of prior notice that it paid the Violet Apparel workers based on the date that the factory converted their

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<sup>92</sup> Data on Violet Apparel employees’ length of service on file with the WRC.

<sup>93</sup> Labor Law, Articles 73–75, 77.

<sup>94</sup> Arbitration Council, Arbitration Award, Case No. 043/17; Arbitration Council, Arbitration Award, Case No. 009/19; Arbitration Council, Arbitration Award, Case No. 015/19.

<sup>95</sup> Labor Law, Article 75.

employment agreements from FDCs to UDCs, rather than the original date on which the factory hired them. Ramatex claimed that this practice was legal, because it had paid workers severance each time it renewed the workers FDCs—and that this effectively “reset” the workers’ length of service to zero on each such occasion.

The AC recognized that Ramatex’s position on this issue was blatantly unlawful. As the AC observed, Article 73(7) of the labor law explicitly states: “If an [UDC] replaces a [FDC], when terminating the [employee’s] contract, the employment seniority of [the] employee shall be calculated by taking the periods of both contracts combined together.”<sup>96</sup> Resetting an employee’s seniority to zero when a UDC replaces a FDC is the opposite of what the statute mandates, since it takes the periods of *neither* contract into account.

The AC also rejected Ramatex’s claim that because the company had paid workers severance when it had renewed their FDCs, it could calculate workers’ length of service from the date it subsequently converted their FDCs to UDCs, rather than the date it originally hired them. The AC stated in this case, “[W]hen a fixed-duration employment contract is converted to an unspecified duration employment contract, the employment seniority of employees shall be calculated ... starting from the first contract ... [e]ven though the employer has paid 5% severance already....”<sup>97</sup>

Most Violet Apparel workers had been employed by the factory on FDCs for a lengthy period before the company converted these contracts to UDCs in January 2019, with some workers having worked at Violet Apparel since 2003. By ignoring the law’s requirements and calculating the compensation in lieu of prior notice that it paid these workers based on the January 2019 date when it issued them UDCs rather than their actual original date of hire under FDCs, the factory unlawfully limited the compensation in lieu of prior notice payable to them to 15 days’ wages, rather than the up to three months’ wages that they were owed.

### ***c. Despite Recognizing That Ramatex’s Underpayment of Compensation in Lieu of Prior Notice Was Unlawful, AC Declined to Rule on This Issue, Deferring to Department of Labor Inspections’ Notices That Lacked Legal Authority or Logic***

Despite acknowledging that Ramatex’s position on calculating compensation in lieu of prior notice was contrary to the labor law, the AC declined to rule on this issue, claiming a lack of jurisdiction.<sup>98</sup> In attempting to justify its failure to rule on this issue, the AC pointed to two notices that were issued by officials in the labor ministry, and cited to the AC by Ramatex, asserting that, contrary to the statutory text<sup>99</sup> and the AC’s own prior jurisprudence,<sup>100</sup> employers could pay such

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<sup>96</sup> Labor Law, Article 73.

<sup>97</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>98</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (“The Arbitration Council does not have the power to decide on the contents of Notification No. 023/19 or Letter No. 070 KB/AKThK that they are contrary to the Labor Law and cause a loss of benefits or affect the rights of any party. In conclusion, the Arbitration Council decides to refuse to consider the demand of the Employee Party for the employer to calculate the employment seniority of prior notice to employees by taking the duration of both contracts combined together, that is, starting from the first contract until the date of termination of the contract in order to pay compensation in lieu of prior notice to each employee”).

<sup>99</sup> Labor Law, Articles 73, 75, and 77.

<sup>100</sup> Arbitration Council, Arbitration Award, Case No. 043/17; Arbitration Council, Arbitration Award, Case No. 030/06; Arbitration Council, Arbitration Award, Case No. 009/19; Arbitration Council, Arbitration Award, Case No. 015/19.

compensation based on the date of workers’ receiving a UDC, rather than their original (earlier) date of hire. For the AC to abdicate its statutory mandate to interpret and apply the labor law—and to, instead, defer to these labor ministry notices—was highly questionable for several reasons that are discussed below.

The first of the two labor ministry notices that Ramatex cited to the AC was a ministry notification letter,<sup>101</sup> which merely directed that companies, like Ramatex, that were employing workers on FDCs “longer than the maximum period specified by the law” must have those workers’ employment agreements “converted to [UDCs] by no later than the end of 2019”.

As the AC recognized, this labor ministry notification did not actually address the issue of how to *calculate* compensation in lieu of prior notice. The AC, itself, observed: “[T]his Notification does not state clearly about the calculation of employees’ employment seniority for prior notice when terminating employees’ employment contracts.”<sup>102</sup> This being the case, however, it is also unclear how this July 2019 labor notification provided any justification for the AC declining to rule on this issue.

The AC’s decision cited a second notification, the “open letter” issued by the Department of Labor Inspections in February 2020. As discussed, this “open letter” asserted that an employer who terminated an employee working under a UDC that had been converted from a FDC could calculate owed compensation in lieu of prior notice based on the date that the UDC was issued, rather than the worker’s original date of hire, so long as the employer had paid severance when the contract was converted to a UDC.<sup>103</sup> However, as previously noted, the AC, itself, stated that this assertion directly contradicted the requirements of the labor law.<sup>104</sup> Moreover, as discussed, because the Department of Labor Inspections’ notification was issued by a sub-ministerial official, rather than by the labor minister, himself, it lacked any legal authority or effect. Therefore, the AC’s decision to defer to this notice, especially since it directly contradicted both the text of the law<sup>105</sup> and the AC’s own interpretation of it<sup>106</sup> must be understood as politically motivated.

The AC alluded to these flaws in the Department of Labor Inspection’s February 2020 notification:

“According to Article 47 of the Law on the Organisation and Functioning of the Council of Ministers ... the Minister has the right to issue ... circulars and instructions about affairs which fall within the competency of that Ministry, but [these] ... *cannot be contrary to the various legal documents [i.e., the law]*” (emphasis added).<sup>107</sup>

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<sup>101</sup> Ministry of Labor and Vocational Training, Notification No. 023/19 K.B/SChNKhL, (July 8, 2019) (Repayment of Employment Seniority Indemnities Prior to 2019 and Payment of New Employment Seniority Indemnities from 2019 Onwards for Textile, Garment and Footwear Enterprises and Establishments).

<sup>102</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>103</sup> Department of Labor Inspections, Letter No. 070.

<sup>104</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (“[W]hen a fixed-duration employment contract is converted to an unspecified duration employment contract, the employment seniority of employees shall be calculated ... starting from the first contract ... [e]ven though the employer has paid 5% severance already....”)

<sup>105</sup> Labor Law, Articles 73, 75, and 77.

<sup>106</sup> Arbitration Council, Arbitration Award, Case No. 043/17; Arbitration Award No. 030/06; Arbitration Council, Arbitration Award, Case No. 009/19; Arbitration Council, Arbitration Award, Case No. 015/19.

<sup>107</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

Moreover, as the AC also recognized—and as previously discussed—under the labor law, any unilateral notice that causes a loss of benefits or rights for workers under the law, even if it had been issued by the labor minister, himself, must be considered null and void.<sup>108</sup> Since calculating pay in lieu of prior notice based on the date when a worker’s employment contract is converted to a UDC, rather than the worker’s original (earlier) date of hire, will unavoidably cause a worker to lose benefits, the AC should have treated the Department of Labor Inspections February 2020 notice as completely null and void and ruled on how Ramatex’s underpayment of compensation in lieu of prior notice should be calculated.

**d. AC’s Failure to Rule on Ramatex’s Underpayment of Compensation in Lieu of Prior Notice Was an Abdication from AC’s Statutory Authority and Mandate**

Instead of issuing a ruling on calculating pay in lieu of prior notice, however, the AC advised that if the Violet Apparel workers were dissatisfied by Ramatex and the labor ministry having unlawfully stripped away rights granted to employees under the labor law, these workers should go elsewhere for relief—not to the AC. The AC stated in its decision:

[I]f any party ... understand[s] that this Notification is contrary to the Labor Law and causes a loss of benefits, affects their rights or that Letter No. 070 KB/AKThK issued by the Department of Labor Inspections does not have applicable legal force, [that] party ... should request interpretation from a competent institution of the Royal Government which has the power to interpret legal disputes or the competent court or the Constitutional Council.<sup>109</sup>

The AC went on to conclude,

Regarding the mentioning of the Employee Party and the Employer Party about the contents of Notification No. 023/19 and Letter No. 070 KB/AK/AKThK which are contrary to the contents of Paragraphs 5, 6 and 7 of Article 73 of the Labor Law, the AC finds that this case is not within the jurisdiction of the AC.<sup>110</sup>

These extraordinary pronouncements, which formed the sole basis of the AC’s failure to rule on the issue of Ramatex’s underpayment of compensation in lieu of prior notice for the Violet Apparel workers, represented a clear—and unprecedented—abdication of the AC’s statutory authority and mandate.

Article 312 of the Cambodian labor law states that the authority and responsibility to interpret the labor law and apply it to disputes between employers and employee rests with the AC, itself: “The Council of Arbitration [AC] legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement”.<sup>111</sup>

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<sup>108</sup> Labor Law, Article 13, (“The provisions of this law are of the nature of public order, except for derogations expressly provided for. Consequently, all rules resulting from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void.”).

<sup>109</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>110</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>111</sup> Labor Law, Article 312.

This statutory mandate and delegation of authority is clear, direct, and without qualification. It does not say, ‘Except in cases where a non-ministerial official has, without authority, issued a notice that contradicts the law’. Yet, here, the AC, without explanation, abdicated from exercising this authority and fulfilling this mandate and, therefore, allowed Ramatex to use an erroneous and legally invalid notice from the Department of Labor Inspections to deny the Violet Apparel workers their legally due compensation.

**e. AC Showed Bias by Deferring to Erroneous Department of Labor Inspection Department Notice That Supported Ramatex’s Underpayment of Workers and Ignored Labor Minister’s Superseding Clarification Correctly Applying Law**

As discussed, in August 2020, the labor minister issued a formal notice of correction reaffirming that employers are required to calculate compensation in lieu of prior notice based on employees’ original date of hire, as required under Article 75 of the labor law.<sup>112</sup> The AC—in its decision disclaiming jurisdiction to rule on the issue—cited as its rationale the Department of Labor Inspections’ invalid February 2020 letter.<sup>113</sup> However, the AC failed to take any notice, in this decision, of the subsequent, and clearly superseding, affirmation from the labor minister, himself, that pay in lieu of prior notice should be calculated in accordance with Article 75.

The AC selectively chose to defer to a legally invalid notice issued by the Department of Labor Inspections *over* a superseding notice by the labor minister—who *did* have legal authority to issue it—that was consistent with the plain language of the law and the AC’s prior rulings.

To rule on the issue of calculation of compensation in lieu of prior notice and find that Ramatex unlawfully underpaid the Violet Apparel workers, the AC would *not* have been required to contradict the labor ministry’s own interpretation of the law (although, under the labor law, the AC clearly possesses the statutory authority to do this),<sup>114</sup> nor would it have had to rule on the propriety or correctness of the Department of Labor Inspections’ February 2020 letter.

Instead, to rule that Ramatex underpaid the Violet Apparel workers for compensation in lieu of prior notice the AC merely had to *follow* the labor ministry’s own superseding clarification of the law’s requirements—which was in complete accord with the AC’s own prior jurisprudence.

Therefore, the only possible explanation for the AC’s decision on this point is outcome-driven *bias* on the AC’s part, in favor of Ramatex and against the Violet Apparel workers. And the only possible motive for the AC to have this bias is the need to avoid the risk of ruling against this prominent and powerful employer.

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<sup>112</sup> Ministry of Labor and Vocational Training, “Clarification on the Payment;” Department of Labor Inspections, Letter No. 070.

<sup>113</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (noting “the mentioning of the Employee Party and the Employer Party about the contents of Notification No. 023/19 and Letter No. 070 KB/AK/AKThK which are contrary to the contents of Paragraphs 5, 6 and 7 of Article 73 of the Labor Law ...”).

<sup>114</sup> Labor Law, Article 312, (“The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement.”).



## **f. AC's Failure to Exercise Jurisdiction Reflects "Politically Compromised" Status**

International human rights experts have expressed concern that despite the AC's clear mandate and broad authority under Cambodia's labor law to interpret and apply the law, the AC has begun to use the claim of lack of jurisdiction to refrain from ruling on weighty issues in cases involving politically powerful employers.<sup>115</sup> This apparent self-censorship must be seen within the context of the Cambodian government's increasing crackdown on civil liberties, and labor and human rights, which has led, in turn, to the increasingly compromised position of those institutions, like the AC, that are tasked with independently upholding the rule of law. The consequences of this same dynamic can also be seen in the worsening repression of independent trade unionists and other human rights defenders in the country<sup>116</sup> and, in turn, in the decision of the European Union to withdraw trade preferences out of concern over this crackdown on civil society and democratic participation.<sup>117</sup>

A recently published report by Human Rights Watch highlights the AC's failure to exercise its jurisdiction in the case of the Violet Apparel workers as reflecting "a politically compromised Arbitration Council"<sup>118</sup> that, as result of the political pressure from government and employers, can no longer be relied upon to fulfil its statutory mandate to independently and impartially interpret and apply the law. Human Rights Watch concluded that, "In the Violet Apparel case, the Arbitration Council avoided ruling on the issue as it would have had to rule against the [wishes of the] MLVT."<sup>119</sup>

As has been discussed in this section, the accuracy of this assessment cannot seriously be disputed. Not only did the AC defer to an interpretation of the legal requirements in question<sup>120</sup> that flew in the face of both the statutory text<sup>121</sup> and the AC's own jurisprudence<sup>122</sup> but in doing so, also disregarded the Minister of Labor and Vocational Training's own subsequent clarification of this requirement.<sup>123</sup> The only conceivable reason for the AC to do this was because the labor ministry had, in fact, already indicated how it wished this case to be concluded—when, as described above, in collaboration with the military-led KKB anti-strike committee, it intervened in the dispute on the side of the employer.

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<sup>115</sup> Human Rights Watch, "Only 'Instant Noodle' Unions Survive."

<sup>116</sup> Human Rights Watch, "Only 'Instant Noodle' Unions Survive."

<sup>117</sup> European Commission, "Cambodia loses duty-free access to the EU market over human rights concerns" August 12, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1469](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1469); European Commission, "Trade/Human Rights: Commission decides to partially withdraw Cambodia's preferential access to the EU market," February 12, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_229](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_229).

<sup>118</sup> Human Rights Watch, "Only 'Instant Noodle' Unions Survive."

<sup>119</sup> Human Rights Watch, "Only 'Instant Noodle' Unions Survive."

<sup>120</sup> Department of Labor Inspections, Letter No. 070 K.B/A.K/AThK.

<sup>121</sup> Labor Law, Articles 73, 75, and 77.

<sup>122</sup> Arbitration Council, Arbitration Award, Case No. 043/17; Arbitration Council, Arbitration Award, Case No. 030/06; Arbitration Award No. 009/19; Arbitration Council, Arbitration Award, Case No. 015/19.

<sup>123</sup> Ministry of Labor and Vocational Training, "Clarification on the Payment."

**g. Conclusion: Ramatex Unlawfully Underpaid Compensation in Lieu of Prior Notice to Violet Apparel Workers**

As discussed above, a plain reading of the relevant articles of the labor law<sup>124</sup> and its prior interpretation by the AC<sup>125</sup>—when that institution retained sufficient independence to render an impartial determination—dictate that Ramatex must provide the Violet Apparel workers pay in lieu of prior notice based on their original dates of hire and not on the date they were subsequently issued UDCs. The WRC finds, accordingly, that Ramatex violated Cambodian law when it refused to provide the Violet Apparel workers payment in lieu of prior notice based on their entire length of service at the factory.

**2. AC’s Denial of Violet Apparel Workers’ Right to Damages Also Reveals Its Loss of Impartiality—but Cannot Hide Ramatex’s Lawbreaking**

Article 91 of the Cambodian labor law specifies that, when workers are dismissed without a “valid reason”, the employer must pay damages to these workers, in addition to their ordinary terminal benefits: “Labor contract termination made on a party’s will [e.g., involuntary termination by an employer] without proper justifications provides entitlement to the other party [i.e., the employee] to claim damages.”<sup>126</sup> In its prior jurisprudence in cases involving factory closures, the AC has found that employers were required to pay damages to workers when companies failed to support with convincing evidence their claims that a valid reason *necessitated* the closure of their factories and the termination of their employees.<sup>127</sup>

In the case of Violet Apparel, Ramatex failed to provide such convincing evidence that it needed to dismiss the factory’s workers. Nevertheless, in contradiction to its prior precedents—and in what was also a politically motivated ruling—the AC found in this case that Ramatex was not required to pay damages to the workers whom the company terminated when it closed the Violet Apparel factory, even though the company had not provided evidence that such dismissals were necessary.<sup>128</sup>

As with its (non)decision in this case on the issue of compensation in lieu of prior notice, the AC’s stated reasoning for the outcome it reached on the issue of damages is contradictory and raises questions as to its underlying motive. In the sections below, we assess the AC’s decision on the issue of Ramatex’s failure to pay damages to the Violet Apparel workers for terminating them and whether valid cause to legally terminate them without such payment actually existed.

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<sup>124</sup> Labor Law, Articles 73, 75, and 77.

<sup>125</sup> Arbitration Council, Arbitration Award, Case No. 043/17; Arbitration Council, Arbitration Award, Case No. 030/06; Arbitration Council, Arbitration Award, Case No. 009/19; Arbitration Council, Arbitration Award, Case No. 015/19.

<sup>126</sup> Labor Law (revised 2018), Article 91 (“Labor contract termination made on a party’s will without proper justifications provides entitlement to the other party to claim damages.”). Article 91 does not specify what constitutes proper justifications.

<sup>127</sup> Arbitration Council, Arbitration Award, Case No. 018/19 (Evergreen Apparel); Arbitration Council, Arbitration Award, Case No. 054/19 (Now Corp.); Arbitration Council, Arbitration Award, Case No. 068/19 (Meta Biomed); Arbitration Council, Arbitration Award, Case No. 103/19 (Zhong Hua).

<sup>128</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

**a. Contrary to Its Prior Jurisprudence, AC Failed to Require Ramatex to Show Convincing Evidence of Valid Reason to Dismiss Violet Apparel Workers—and Evidence Reviewed by the WRC Shows Company’s Proffered Justification for Terminating Workers Was False**

**i. Under AC’s Prior Jurisprudence, Employers Must Pay Damages to Dismissed Workers—Unless They Provide Convincing Evidence of a Valid Need to Dismiss**

Under the AC’s prior jurisprudence, for an economic circumstance to constitute a valid basis for termination that exempts the employer from being required to pay damages to workers, the employer must produce *evidence* of an actual impact of that circumstance on the employer’s business that created a *need* to dismiss its employees.<sup>129</sup> As the AC noted, under Article 87 of the labor law, the mere fact that an employer has decided to close a factory does *not* establish that the employer has a valid need to dismiss its employees—one sufficient to avoid paying them damages—unless it can be shown that the closure was due to a situation of *force majeure*. As stated in Article 87 of the labor law “...the cessation of activities in the enterprise does not open an opportunity for the employer to avoid duties as stated in this Section 3, except in the case of force majeure.”<sup>130</sup> Moreover, as the labor law states, even declaring bankruptcy or having a business liquidated by a court does not, by itself, establish that such a valid need to dismiss workers due to *force majeure* exists.<sup>131</sup>

**ii. AC Did Not Require Ramatex to Show Convincing Evidence of Need to Dismiss Violet Apparel Workers—and Did Not Require Ramatex to Pay Damages**

In the Violet Apparel case, the AC did not state that Ramatex had shown the existence of a *force majeure* that would justify the company dismissing its workers without paying them damages under Article 87 of the labor law. Instead, the AC ruled that Ramatex was not required to pay damages, because it had a proper reason to dismiss the workers, which exempted it from this requirement under the labor law’s Article 91.<sup>132</sup>

Yet contrary to the AC’s prior jurisprudence, it allowed Ramatex to dismiss the workers without paying damages, without providing *any evidence* to show that its business had been negatively affected to such a degree as to require the employees’ termination. Instead, the AC improperly credited Ramatex’s claim that it needed to dismiss the Violet Apparel workers based on *general* conditions in the garment industry, without any examination of the extent to which Ramatex’s business, *specifically*, had been affected by these conditions.<sup>133</sup>

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<sup>129</sup> Arbitration Council, Arbitration Award, Case No. 018/19; Arbitration Council, Arbitration Award, Case No. 054/19; Arbitration Council Award 068/19; Arbitration Council, Arbitration Award, Case No. 103/19.

<sup>130</sup> Labor Law, Article 87.

<sup>131</sup> Labor Law, Article 87 (rev. 2019), (“...[T]he cessation of activities in the enterprise does not open an opportunity for the employer to avoid [his/her] duties as stated in this Section 3, except in the case of force majeure. Bankruptcy and judicial liquidation are not considered as force majeure...”).

<sup>132</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (“[T]he Arbitration Council finds that according to the new Article 91, the employer has a proper reason for terminating employees’ employment contracts and does not have a duty to pay damages to employees.”).

<sup>133</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (“Based on the facts, the employer decided to close the company for the reason of the spread of COVID-19 which caused buyers in Europe to cancel orders from the company, leaving the company without work and the ability to continue employees’ employment contracts.”).

The labor law explicitly grants the AC “... power to investigate the economic situation of enterprises...” and “the power to require the parties to present any document or economic, accounting, statistical, financial, or administrative information.”<sup>134</sup> Yet it is exactly these powers that, in the case of the Violet Apparel workers, the AC chose not to exercise.

### iii. *Evidence Shows Violet Apparel Did Not Have a Proper Reason to Dismiss Its Workers*

In its decision, the AC found that Ramatex had a proper reason to terminate the Violet Apparel workers and, therefore, was not required to pay them damages, because “the spread of COVID-19 ... caused buyers in Europe to cancel orders from the company leaving the company without work and the ability to continue employees’ employment contracts”.<sup>135</sup> While this may have been an accurate characterization of the business conditions of many other factory owners during the first several months of the pandemic, there is no evidence that it was an accurate characterization of *Ramatex’s business*—and there is substantial evidence to the contrary.

First, unlike many other factory owners in Cambodia, Ramatex does not rely primarily on European buyers for its orders. Ramatex’s significant buyers are two American brands, Nike and Under Armour, and the Japanese company, Fast Retailing (Uniqlo),<sup>136</sup> all of which are domiciled and conduct the bulk of their business outside of Europe. Therefore, the statement that European brands (which were not Ramatex’s primary source of business) had canceled orders due to the Covid-19 pandemic was largely irrelevant to the matter before the AC: whether Ramatex could prove with evidence that its own economic situation necessitated this mass dismissal.

Ramatex never presented the AC with any such evidence. Indeed, contrary to the claim that the company was “without work and [without] the ability to continue employees’ employment contracts”,<sup>137</sup> during the period in question, Ramatex not only continued operations at all three of its other factories in Cambodia—Apple Apparel, Olive Apparel, and Berry Apparel—these factories required their workers to perform around five hours of overtime on a weekly basis as well.<sup>138, 139</sup>

In fact, in the same timeframe that Ramatex chose to shutter Violet Apparel, Olive Apparel and Berry Apparel *expanded* the size of their workforce, together hiring an additional 1,373 workers, more than the entire workforce of Violet Apparel’s 1,284 workers that lost their jobs. In other words, Ramatex hired more workers at Olive Apparel and Berry Apparel than it fired at Violet Apparel,

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<sup>134</sup> Labor Law, Article 312.

<sup>135</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>136</sup> According to each brands’ public disclosure, Nike sources from 14 Ramatex facilities, Fast Retailing from nine facilities, and Under Armour from six; Malaysian Investment Development Authority, “Ramatex: Leading by Example in Advocating ESG Textile Manufacturing Conglomerate Introduces Projects in EORTS to Embrace Movement In Line With 12MP,” accessed January 23, 2023, <https://www.mida.gov.my/ramatex-leading-by-example-in-advocating-esg/>.

<sup>137</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>138</sup> Workers at Apple Apparel and Berry Apparel provided consistent testimony to the WRC that they were working overtime regularly throughout 2020 and 2021. Most of the workers interviewed by the WRC reported around two hours per day of overtime on one to four days per week, while some employees stated that overtime work was less frequent than this. Based on these testimonies, the WRC estimates that the average overtime performed by workers at Ramatex’s other facilities during this period was roughly five hours per week.

<sup>139</sup> In November 2020, Nike disclosed that Berry Apparel had 3,145 workers and Olive Apparel had 2,886 workers. Apple Apparel was not disclosed at the time but reportedly employed around 1,400 workers. The total number of these three facilities was thus 7,431, or 5.8 times as many as Violet Apparel.

even as it claimed that it closed Violet Apparel because it needed to reduce its overall workforce. Notably, Ramatex compounded the harm to the Violet Apparel workers by failing to offer them any of these new jobs.<sup>140</sup>

Therefore, if Ramatex had a sufficient volume of orders to have workers at two other factories perform overtime during this period and had expanded the workforce at their two other factories by the same number of workers that had been terminated at Violet Apparel, this indicates it received enough orders such that Ramatex had no valid reason to dismiss the Violet Apparel workers.

Moreover, rather than leaving Ramatex “without work” (which the company claimed, to the AC, that its European buyers had done),<sup>141</sup> Nike, one of Ramatex’s top buyers, clearly maintained, if not expanded, its business with Ramatex in Cambodia during this period. Around roughly the same time that Ramatex closed Violet Apparel, which was supplying Nike, Nike *added* another Ramatex factory in Cambodia, Apple Apparel, to its public list of suppliers.<sup>142</sup> This development suggests that Ramatex did not *lose* orders from Nike but, instead, *shifted* orders between Violet Apparel, Olive Apparel, and Apple Apparel.

In addition, a public statement by another buyer from Violet Apparel indicates that rather than facing a deficit of orders in the latter half of 2020, Ramatex, within months of closing Violet Apparel, was *turning away* business. British brand, Matalan, stated to international human rights group, Business & Human Rights Resource Centre on March 17, 2022, that “Ramatex *chose* not to continue the sourcing relationship with Matalan in December 2020.”<sup>143</sup>

The evidence shows that Ramatex was not “without work” during this period and did not lack the “ability to continue [the Violet Apparel] employees’ employment contracts”.<sup>144</sup> The company *had* the ability to continue employing these workers, but it *chose* not to.

The WRC has reviewed the list of documents cited in the AC’s decision as having been provided by Ramatex to the AC as evidence in support of the company’s claim that it had a valid need to terminate the Violet Apparel workers, and therefore should not be required to pay them damages.<sup>145</sup> Yet there are *no documents* on that list that would conceivably constitute such evidence.

The documents that Ramatex submitted to the AC as evidence in this case consist solely and completely of: (1) letters of attorney and other documents establishing representation of the company in the proceedings by its lawyers and managers; (2) documents pertaining to company

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<sup>140</sup> Ramatex failed to offer any of the Violet Apparel workers jobs at the two Ramatex-owned facilities in Cambodia where the company expanded its workforce during 2020. This omission violated Article 95 of the Labor Law, which stipulates that, in the case of “layoffs resulting from a reduction in an establishment’s activity or an internal reorganization that is foreseen by the employer is subject to the following procedures”: employers must retain their most senior workers and provide, for those workers who are dismissed, for the following two years, priority to be re-hired for the same position in the enterprise and also, if there are vacancies, inform the dismissed workers.

<sup>141</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>142</sup> Nike, “Supplier List,” 2020.

<sup>143</sup> Business & Human Rights Resource Centre, “Matalan’s Response.”

<sup>144</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

<sup>145</sup> Arbitration Council, Arbitration Award, Case No. 056/20, (“Documents and exhibits considered by the Arbitration Council:] A – Documents received from the Employer Party”).

registration, governance, and internal rules; (3) minutes of prior conciliation meetings between the company and the workers' union; (4) the notices and letters issued by the Ministry of Labor and Vocational Training and its Department of Inspections that already have been referenced in this report; and (5) workers' employment contracts and wage statements.<sup>146</sup> Based on this listing, *none* of these documents appears to concern the financial ability of the company to continue to employ the Violet Apparel workers, or the company's orders from buyers, which were the reasons that the AC cited for not awarding damages to the workers for termination without valid cause.

The AC violated its mandate by taking Ramatex's claim that it had a valid need to terminate the Violet Apparel workers at face value, without subjecting it to scrutiny or requiring the company to provide any credible evidence in support of it. In fact, none of the evidence submitted by Ramatex pertained to their financial or business situation.<sup>147</sup> The AC did not fulfill its legal mandate to properly examine the company's reason for terminating the workers,<sup>148</sup> had it done so,<sup>149</sup> it would have rejected these claims and ordered Ramatex to pay full terminal compensation to workers, consistent with their rights under the law.<sup>150</sup>

***b. AC's Failure to Scrutinize Ramatex's Claims concerning Justification for Dismissing Workers Reflects AC's Loss of Independence, Impartiality***

The failure of the AC to scrutinize the credibility of Ramatex's claim to have had a valid reason to dismiss the Violet Apparel workers is concerning for two reasons. First, it has explicit statutory authority to require employers to produce evidence of such claims. Second, in prior cases, the AC has ruled that employers that failed to produce evidence of such claims, like Ramatex, were required to pay damages to dismissed employees.

With regard to the authority of the AC to require employers to produce evidence of having a valid reason to dismiss workers, Article 312 of the Cambodian labor law states:

The Council of Arbitration has the considerable power to investigate the economic situation of the enterprises and the social situation of the workers involved in the dispute... [and] the power to make all inquiries into the enterprises or the professional organizations, as well as the power to require the parties to present any document or economic, accounting, statistical, financial, or administrative information that would be useful in accomplishing its mission.<sup>151</sup>

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<sup>146</sup> Arbitration Council, Arbitration Award, Case No. 056/20, ("Documents and exhibits considered by the Arbitration Council[:] A – Documents received from the Employer Party").

<sup>147</sup> Arbitration Council, Arbitration Award, Case No. 056/20, ("Documents and exhibits considered by the Arbitration Council[:] A – Documents received from the Employer Party").

<sup>148</sup> Labor Law, Article 312.

<sup>149</sup> Arbitration Council, Arbitration Award, Case No. 018/19; Arbitration Council, Arbitration Award, Case No. 054/19; Arbitration Council, Arbitration Award, Case No. 068/19; Arbitration Council, Arbitration Award, Case No. 103/19.

<sup>150</sup> Labor Law, Article 91.

<sup>151</sup> Labor Law, Article 312.

The AC has a long history of exercising these powers of investigation, inquiry, and requisition to scrutinize employers' claims that dismissals of workers were supported by a valid justification and has frequently awarded damages in cases where such claims did not hold up to examination.<sup>152</sup>

For example, in its decision in the case of the closure of another factory, Pou Yuen, the Arbitration Council ordered the employer to pay damages to workers stating that:

[Although] Pou Yuen declared the cessation of all company production and told all employees to stop work from 23 December 2017.... The Arbitration Council finds that the employer does not have a valid reason in terminating the employment contracts of employees which can release the employer from providing damages to the employees.<sup>153</sup>

Similarly, in the *Meta Biomed* case, the AC ruled that, even though “the employer dissolved the employment contracts of the employees on 30 June 2019 for the reason that the enterprise was closing”, nonetheless, because the company “did not show evidence supporting the reason for closing the enterprise in order to confirm the reasonable reasons for terminating the employment contracts”, the factory’s employees “have the right to receive damages”.<sup>154</sup>

By way of comparison, in the case of the Violet Apparel workers, the AC not only failed to scrutinize Ramatex’s claim to have a valid reason for dismissing the Violet Apparel workers, but, also, it did not even require the company to produce any evidence in support of this claim. As a result, the contrast between the approach of the AC in the case of the Violet Apparel workers and its prior jurisprudence in equivalent cases is extremely glaring.

For this reason, the AC’s failure to award damages to the Violet Apparel workers can only be seen as a further reflection of the institution’s loss of impartiality and independence, in the midst of a more general deterioration in Cambodia, in recent years, of rule of law and access to justice. Accordingly, the WRC finds that the AC’s decision not to require Ramatex to pay damages to the Violet Apparel workers—like its failure to rule on the issue of the company’s underpayment of compensation in lieu of prior notice—represents the product of a “politically compromised Arbitration Council”,<sup>155</sup> rather than an impartial and independent application of Cambodian labor law.

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<sup>152</sup> Arbitration Council, Arbitration Award, Case No. 018/19; Arbitration Council, Arbitration Award, Case No. 054/19; Arbitration Council, Arbitration Award, Case 068/19; Arbitration Council, Arbitration Award, Case No. 103/19.

<sup>153</sup> Arbitration Council, Arbitration Award, Case No. 05/18.

<sup>154</sup> Arbitration Council, Arbitration Award, Case No. 068/19.

<sup>155</sup> Human Rights Watch, “Only ‘Instant Noodle’ Unions Survive.”

**c. Conclusion: Independent Review of Evidence Shows Ramatex’s Dismissal of Violet Apparel Workers Lacked a Valid Reason, Refusal to Pay Damages Violated the Law**

In the absence of an impartial and expert determination by the AC, the WRC must consider the substantial evidence, discussed above, concerning the question of whether Ramatex had a legally valid reason to dismiss the Violet Apparel workers. This evidence, as noted, includes the facts that, during the period when Ramatex dismissed these workers, the company, also:

- Increased the size of its workforce by 1,373 workers in two other owned facilities in Phnom Penh, roughly equivalent to the total number of workers terminated at Violet Apparel;
- Had the workforces of two other, substantially larger, facilities in Cambodia perform consistent weekly overtime;
- Expanded its production base in Cambodia for Nike, which was a key buyer of products made at Violet Apparel and Ramatex’s other Cambodia-based factories;<sup>156</sup>
- Turned away orders from at least one other significant buyer, Matalan;<sup>157</sup> and
- Contrary to its claim to have been compelled to dismiss the Violet Apparel workers by a loss in orders from Europe, maintained a customer base substantially comprised of United States and Japanese brands.<sup>158</sup>

This evidence of the company’s business situation, during the period in which Ramatex dismissed the Violet Apparel workers, can be added to the assessment of the company’s subsequent practices concerning dismissal of employees. Since Ramatex’s dismissal of the Violet Apparel workers without payment of damages in 2020 and the ensuing controversy over its questionable legality, the company has—more recently—conducted layoffs of workers at three of its other factories in Cambodia: Apple Apparel, Berry Apparel, and Olive Apparel. At all three factories, Ramatex cited reduced orders as the reason for the layoffs, yet the WRC has been able to confirm, through a review of workers’ pay statements from November and December 2022, that, at these factories, the company *did* pay statutory damages to the affected dismissed workers, although it calculated these based on the date the workers’ contracts were converted to UDCs, rather than their initial date of hire, as the law requires.<sup>159</sup>

This is a further indication that Ramatex, itself, does not maintain the position that, under Cambodian law, a reduction in orders constitutes a valid basis for dismissing workers without paying any damages, as the company did at Violet Apparel. Instead, in the particular circumstances of the closure of Violet Apparel, which occurred during the first months of the Covid-19 pandemic when the viability of Cambodia’s export garment manufacturing industry *in general* was perceived to be at risk, Ramatex was emboldened to dismiss the Violet Apparel workers without paying them damages by the extreme pro-employer partisanship being displayed by the MLVT (and which was then echoed by the AC), even though the company had no legal justification for doing so.

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<sup>156</sup> Nike, “Supplier List,” 2020.

<sup>157</sup> Business & Human Rights Resource Centre, “Matalan’s Response.”

<sup>158</sup> Nike, Under Armour, and Fast Retailing are all domiciled outside of Europe.

<sup>159</sup> Labor Law, Article 73.



Based on the totality of the evidence, the WRC finds that Ramatex did not have a legally valid basis for dismissing the Violet Apparel workers. Therefore, applying the past precedents of the AC—as established during the period when the AC *was* permitted to function as an impartial and independent adjudicator<sup>160</sup>—the WRC concludes that Ramatex lacked a valid basis under Cambodian law for dismissing the Violet Apparel workers and, therefore, violated Cambodian law and buyer codes of conduct when it refused to pay damages to these workers upon their dismissal.<sup>161</sup>

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<sup>160</sup> Arbitration Council, Arbitration Award, Case No. 018/19; Arbitration Council, Arbitration Award, Case No. 054/19; Arbitration Council, Arbitration Award, Case No. 068/19; Arbitration Council, Arbitration Award, Case No. 103/19.

<sup>161</sup> Labor Law, Article 91; Nike, “Nike Code of Conduct,” (“Workers are timely paid at least the minimum wage required by local law ... and provided legally mandated benefits, including ... statutory severance when employment ends.”).

## IV. Nike's Response to Ramatex's Theft of Terminal Benefits from Violet Apparel Workers

On December 21, 2020, the WRC wrote to Nike, reporting that its key business partner had substantially underpaid terminal benefits that were legally due to 1,284 workers whom Ramatex had dismissed from its Violet Apparel factory. Nike responded on January 25, 2021, and asserted that:

- Nike has not sourced products from the Violet Apparel factory since 2006, and the factory has not been authorized to manufacture Nike products since that time;
- Nike conducted an investigation which found no evidence that Nike products had been manufactured at Violet Apparel “in recent years”;
- Nike’s supplier code of conduct restricts suppliers from subcontracting production of Nike goods to other facilities owned by the same supplier; and
- The Ramatex Group had adequately addressed the dispute citing the decision of the AC.

Nike reiterated these points in communications with other stakeholders concerning the dismissal of the Violet Apparel workers.<sup>162</sup> Below is an assessment of Nike’s assertions concerning its sourcing relationship to the Violet Apparel factory, noting the significant aspects of these claims that were factually inaccurate or misleading.

### A. While Nike Claims That It Had Not Sourced from Violet Apparel since 2006 and That Its Own Investigation Found No Recent Nike Production at the Factory, Overwhelming Evidence Shows Violet Apparel Made Nike Goods up until 2020

Nike claimed that it ceased doing business with Violet Apparel in 2006 and that Nike conducted its own investigation that found no evidence of production for Nike goods at the factory “in recent years”.<sup>163</sup> As to Nike’s assertion that it stopped sourcing from Violet Apparel in 2006, this claim is contradicted by Nike’s own published lists of its suppliers. Violet Apparel appeared on Nike’s public list of its suppliers through 2008<sup>164</sup>—Nike has not provided any explanation for this discrepancy in dates.

Nike’s claim that its own investigation found no evidence of recent production of Nike’s goods at Violet Apparel is equally dubious and far more troubling, since it raises serious doubts about either the competency of Nike’s investigation or the good faith of its statements. In this regard, it is notable that Nike has, from 2017 to the present, included on its public list of suppliers, Ramatex’s Olive Apparel factory, which, like Violet Apparel, is located in Phnom Penh, Cambodia.<sup>165</sup>

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<sup>162</sup> E.g. see, Business & Human Rights Resource Centre, “Nike Statement regarding: Violet Apparel Factory,” October 19, 2020, [https://media.business-humanrights.org/media/documents/BHRRC\\_Violet\\_Apparel\\_10.19.pdf](https://media.business-humanrights.org/media/documents/BHRRC_Violet_Apparel_10.19.pdf).

<sup>163</sup> Nike, Letter to Worker-driven Social Responsibility Network, (“In regard to your inquiry about Violet Apparel, Nike has not sourced from this facility since 2006 and since then the factory has not been authorized to manufacture Nike product... Specific to the situation at Violet Apparel, we have conducted an independent investigation of the allegations that the facility was recently producing Nike products and found no evidence that Nike products were manufactured at Violet Apparel in recent years.”).

<sup>164</sup> Nike, “Supplier List,” 2008.

<sup>165</sup> Nike, “Supplier List,” February 2023.

The WRC has gathered overwhelming evidence that—starting no later than 2018 and continuing up until at least December 2019, a few months before the factory’s closure in 2020—Violet Apparel manufactured Nike goods, whose production apparently was subcontracted to the factory by Ramatex from the latter’s Olive Apparel facility. Workers at Violet Apparel consistently and credibly testify that they regularly manufactured Nike products for many years, at least until the end of 2019. The WRC has also obtained internal factory documents from mid-2018, confirming the continued production of Nike goods at the factory, as well as photographs taken inside Violet Apparel in late 2019 showing Nike goods on the factory’s production lines.<sup>166</sup>

Finally, a review of Nike’s public supplier lists reveals that in 2020, the year that Ramatex closed Violet Apparel, Ramatex began producing Nike goods in Phnom Penh at its Berry Apparel factory, which, according to the same lists, increased its workforce by 478 workers in the period between February and November 2020.<sup>167</sup> Then in 2021, Ramatex began supplying Nike from a third Phnom Penh factory, Apple Apparel,<sup>168</sup> which had increased its workforce by 895 workers in 2020.

With the documentary and testimonial evidence discussed above, these public disclosures by Nike support the conclusion that, up until 2020, Violet Apparel produced Nike-branded goods—whose manufacturing Ramatex subsequently shifted, during and after the factory’s closure in 2020, to its other Phnom Penh facilities.

Accordingly, based on the totality of this evidence, the WRC finds that, despite Nike’s assertions to the contrary, Violet Apparel manufactured Nike products as a subcontractor for its sister Ramatex facility—and publicly disclosed Nike supplier—Olive Apparel, from no later than 2018 up until a few months before Violet Apparel’s closure in 2020.<sup>169</sup> Therefore, Ramatex’s refusal to pay the Violet Apparel workers their full terminal compensation represents a violation of Nike’s supplier code of conduct that Nike has failed to require Ramatex to remediate and correct, as well as its stated commitments under the United Nations Guiding Principles for Business and Human Rights (“UNGP”), and the Organisation for Economic Co-operation and Development (“OECD”) Guidelines for Multinational Enterprises.<sup>170</sup>

Nike, for its part, appears not to have interviewed any former workers from Violet Apparel in the process of investigating whether Nike goods were made at the factory “in recent years”. This is not entirely surprising. Brand auditors, as a general practice, rarely interview workers outside a factory setting and the factory in question was, in this case, already closed at the point in which Nike claimed to have investigated. However, the fact that Nike, which continues to have extensive business dealings with Ramatex and presumably could gain access to factory records, also claims to have found no documentary evidence of Nike production at the factory<sup>171</sup>—when, as the WRC’s investigation readily confirmed, such documentation plainly exists.

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<sup>166</sup> Documents on file with the WRC.

<sup>167</sup> Nike, “Supplier List,” February 2020 and November 2020.

<sup>168</sup> Nike, “Supplier List,” 2021.

<sup>169</sup> Nike, “Supplier List,” 2020.

<sup>170</sup> Nike, “Written evidence submitted by Nike (FL0030)”; Nike, Inc, “Human and Labor Compliance Standards,” April 4, 2018, <https://about.nike.com/en/newsroom/resources/human-rights-and-labor-compliance-standards>, (“We also consider the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises as best practice for understanding and managing human rights risks and impacts.”)

<sup>171</sup> Nike, Letter to Worker-driven Social Responsibility Network.

## B. Nike Has Responsibility to Correct Theft of Terminal Benefits from Violet Apparel Workers Who Made Nike Products—Even If Nike Was Not Aware of This Production

The WRC acknowledges that Nike may not have been aware of the subcontracted production of its goods at Violet Apparel at the time this production occurred. Nonetheless, Nike has a responsibility to protect and uphold the legal rights of its supply chain workers and to ensure corrective action when these workers' rights have been violated by Nike's suppliers—even when those suppliers also concealed that production from Nike at the time.

While Nike's supplier code of conduct *formally* restricts suppliers from subcontracting Nike's production to their other owned facilities without Nike's permission,<sup>172</sup> as this case illustrates, the existence of such a provision in a supplier code of conduct does not, by itself, guarantee compliance by the supplier. Most international apparel brands have codes of conduct for their suppliers that prohibit unauthorized subcontracting, yet substantial research has shown that this practice remains widespread in the global apparel industry, with brand price pressure, short lead times for delivery, and undercapitalization being key factors behind it.<sup>173</sup>

Unauthorized subcontracting is a well-established risk in the garment industry, and, according to Human Rights Watch in 2019, Cambodia is a “prime example of growing unauthorized subcontracting”.<sup>174</sup> As per the *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*,<sup>175</sup> this, therefore, requires additional due diligence measures to prevent this in accordance with brand codes of conduct. Where unauthorized subcontracting does occur, international rights norms—such as the UNGP and the OECD Guidelines for Multinational Enterprises—require brands to take responsibility to remediate harms.

Under the UNGP, “leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm”, and it further states that “if the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it”.<sup>176</sup> There can be no question that Nike has sufficient leverage to compel Ramatex to take such corrective action and remedy its theft of terminal benefits from the Violet Apparel workers. Nor is there any doubt that Ramatex could easily afford to do this. Ramatex owns 14 factories, globally, that Nike has listed among its suppliers—including multiple facilities that have produced apparel for

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<sup>172</sup> Nike Inc., “Nike Code Leadership Standards,” November 2020, [https://purpose-cms-preprod01.s3.amazonaws.com/wp-content/uploads/2021/02/23072145/Nike\\_2021\\_Code\\_Leadership\\_Standards.FINAL\\_.pdf](https://purpose-cms-preprod01.s3.amazonaws.com/wp-content/uploads/2021/02/23072145/Nike_2021_Code_Leadership_Standards.FINAL_.pdf), (“1.2.6 Unauthorized Subcontracting Is Prohibited: The supplier may not subcontract the production or distribution of Nike product to third-parties or supplier-owned facilities not previously approved, in writing, by Nike.”).

<sup>173</sup> Felipe Caro, Leonard Lane, Anna Sáez de Tejada Cuenca, “Can Brands Claim Ignorance? Unauthorized Subcontracting in Apparel Supply Chains” *Management Science*, 67(4):2010-2028, (September 22, 2020), <https://doi.org/10.1287/mnsc.2020.3679>.

<sup>174</sup> Human Rights Watch, *Paying for a Bus Ticket and Expecting to Fly: How Apparel Brand Purchasing Practices Drive Labor Abuses*, April 23, 2019, <https://www.hrw.org/report/2019/04/24/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive>.

<sup>175</sup> Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*, March 7, 2018, <https://doi.org/10.1787/9789264290587-en>.

<sup>176</sup> Office of the High Commissioner United Nations for Human Rights, *Guiding Principles on Business and Human Rights*, (2011), [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

Nike as a licensee of universities affiliated with the WRC—and the two companies have done business with each other since at least 2005.<sup>177</sup>

Nike publicly states that its “...approach aligns with the UN Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development (OECD) Human Rights Guidelines on Multinational Enterprises, which are founded on business’ responsibility to respect human rights.”<sup>178</sup> Yet, as set out in the UNGP, businesses have a responsibility to minimize human rights violations in their supply chains, irrespective of whether they directly contributed to the violation, and to adequately address any abuses that do take place. It is therefore difficult to reconcile this gulf between Nike’s stated commitments and its failure to address the severance theft of the Violet Apparel workers.

When, as has not been infrequent, factories engaged in such unauthorized subcontracting have been found to have violated the rights of workers under national labor laws and the codes of conduct of the international brands whose goods they have produced, the appropriate response from brands whose goods have been implicated has been to ensure that these violations of workers’ rights are corrected and remedied. Indeed, there are multiple examples of cases in which labor violations were detected in factories with ‘unauthorized production’ of goods for international brands, where the brands then acted to ensure that the workers who made their products had access to remedy and/or received their legally owed compensation in full, such as: adidas in Myanmar<sup>179</sup> Tesco, Starbucks, Disney, and NBCUniversal in Thailand;<sup>180</sup> Walmart, H&M, Under Armour, VF Corp, and Hanesbrands (North Face, Timberland) in Cambodia;<sup>181</sup> and Inditex (Zara), New Look, and Zephyr in Bangladesh.<sup>182</sup> There are also multiple recent examples of brands such as PVH (Calvin Klein, Tommy Hilfinger)<sup>183</sup> and Victoria’s Secret<sup>184</sup> taking direct responsibility to remediate wage theft in full even where they sourced small volumes or had no ongoing relationship with the supplier factory or

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<sup>177</sup> Nike began publishing its supplier lists in 2005. Public disclosure lists (on file with the WRC) show, 14 Ramatex Group facilities in February 2023 and 16 Ramatex Group facilities in October 2022.

<sup>178</sup> Nike, “Written evidence submitted by Nike (FL0030).”

<sup>179</sup> Worker Rights Consortium, “Challenging the Status Quo: Helping Workers Protect their Associational Rights in Myanmar,” January 15 2020, <https://www.workersrights.org/commentary/challenging-the-status-quo-helping-workers-protect-their-associational-rights-in-myanmar/>.

<sup>180</sup> Worker Rights Consortium, “Buyers Pulled Orders When Migrant Burmese Garment Workers Spoke Out in Defense of Their Rights, Now They Are Making Workers Whole,” May 10, 2021, <https://www.workersrights.org/commentary/buyers-pulled-orders-when-migrant-burmese-garment-workers-spoke-out-in-defense-of-their-rights-now-they-are-making-workers-whole/>.

<sup>181</sup> Worker Rights Consortium, “Worker Rights Consortium Factory Assessment: Reliable Source Industrial Co. Ltd., Cambo Yon Xing Garment Co. Ltd. (Cambodia),” January 19, 2017, <https://www.workersrights.org/wp-content/uploads/2017/05/WRC-Assessment-re-Cambo-Yon-Xing-Cambodia-1.19.17.pdf>; Clean Clothes Campaign, “Historic win for Cambodian workers,” April 24, 2013, <https://cleanclothes.org/news/2013/03/04/historic-win-for-cambodian-workers>.

<sup>182</sup> Worker Rights Consortium, “Han Embroidery,” August 19 2016, <https://www.workersrights.org/factory-investigation/han-embroidery-ltd/>; Leonie Barrie, “Bangladesh: Inditex and New Look pay fire victim families,” Just-Style, February 25, 2013, <https://www.just-style.com/news/bangladesh-inditex-and-new-look-pay-fire-victim-families/>.

<sup>183</sup> Sarah Butler, “Haiti garment workers share \$1m payout after factory closure a year ago,” *The Guardian*, February 5, 2023, <https://www.theguardian.com/world/2023/feb/05/haiti-garment-workers-share-1m-payout-a-year-after-factory-closure>.

<sup>184</sup> Agence France-Presse in Bangkok, “Victoria’s Secret pays sacked Thai workers \$8.3m in ‘wage theft’ settlement,” *The Guardian*, May 28, 2022, <https://www.theguardian.com/global-development/2022/may/28/victorias-secret-thai-garment-workers-wage-settlement>.

its parent company—all brand actions in contrast with Nike’s response to Ramatex’s Violet Apparel closure.

In spite of Ramatex Group’s well-documented track record of attempting to deny workers at its factories legally owed severance and other terminal benefits,<sup>185</sup> Nike has continued to source from Ramatex as a major supplier for nearly 20 years. In the case of Violet Apparel, Nike’s refusal to compel Ramatex to correct these violations of workers’ rights and Nike’s apparent failure to even know, much less acknowledge, that the Violet Apparel workers produced Nike’s goods raise serious concerns about the adequacy of Nike’s labor and human rights due diligence and the genuineness of its commitments to human rights standards.

### **C. Nike’s Denial That Ramatex Underpaid Workers’ Terminal Benefits Relies on a Blatantly Biased Decision from a “Politically Compromised Arbitration Council”**

Nike has responded to concerns raised by the WRC and other stakeholders concerning Ramatex’s underpayment of the terminal compensation to the Violet Apparel workers by asserting that “Ramatex ... has addressed the situation and acted on the decision of the Arbitration Council”.<sup>186</sup> This claim by Nike, however, is disingenuous. It fails to acknowledge the obvious bias and flaws in the AC’s decision—which are clearly indicative, as Human Rights Watch has observed, of the “politically compromised” status of the AC in Cambodia’s severely constrained human rights environment.<sup>187</sup>

Indeed, on the issue of underpayment of compensation in lieu of prior notice, claiming, as Nike has, that Ramatex “acted on the decision of the Arbitration Council”,<sup>188</sup> is plainly inaccurate on its face. As laid out above, the AC failed to reach a “decision” on that issue at all, instead, disclaiming jurisdiction over the issue and, thereby, effectively deferred to the position taken on this issue by the Department of Labor Inspections—which, while in blatant contradiction to the labor law and lacking any legal authority, openly favored the interests of Nike’s supplier, Ramatex.<sup>189</sup>

Moreover, the AC’s ruling that Ramatex was not required to pay damages to the Violet Apparel workers was also clearly a product of the political bias and lack of impartiality to which the AC, like so many other formerly independent civil society institutions in Cambodia, have fallen victim in recent years. What the AC actually decided in this case was—in contradiction to its prior precedents and for blatantly political reasons—to let pass without scrutiny Ramatex’s claim that it had a valid need to terminate the Violet Apparel workers and, therefore, should not be required to pay the workers damages.

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<sup>185</sup> Bent Gehrt and Ben Hensler, “Violations of Cambodian Labor Law and Buyer Codes of Conduct at June Textile Company Ltd. (Gimmill Industrial Pte. Ltd. / Ramatex Group),” Worker Rights Consortium, July 7, 2011, <https://www.workersrights.org/wp-content/uploads/2016/02/June-Textile-WRC-letter-to-buyers-070711.pdf>.

<sup>186</sup> Nike, Letter to Worker-driven Social Responsibility Network.

<sup>187</sup> Human Rights Watch, “Only ‘Instant Noodle’ Unions Survive.”

<sup>188</sup> Human Rights Watch, “Only ‘Instant Noodle’ Unions Survive.”

<sup>189</sup> Arbitration Council, Arbitration Award, Case No. 056/20.

In the Violet Apparel case, the AC failed to exercise its statutory authority to scrutinize Ramatex’s purported justification for dismissing these workers. Had the AC applied such basic scrutiny, it would have been plain that no such need to dismiss these workers existed.<sup>190</sup>

#### **D. Nike Has Recognized the AC’s “Diminished Role and Reduced Independence”, Yet Relies on the AC’s Politically Biased Decision against the Violet Apparel Workers to Avoid Enforcing Its Code of Conduct against Ramatex**

Nike’s unquestioning acceptance of the AC’s politically biased decision against the Violet Apparel workers is particularly striking, because, as the public record shows, Nike was already aware, well before this case, that the AC has become compromised and lost much of its former independence. In October 2018, Nike representatives joined a delegation led by the Fair Labor Association (“FLA”) and the American Apparel and Footwear Association (“AAFA”) that met with the Cambodian Minister of Labor and Vocational Training concerning the “weakening ... protection of human rights in Cambodia”—including the weakening of the protections previously afforded to garment workers by the AC.<sup>191</sup>

Following this meeting, the FLA and the AAFA sent a letter to the Cambodian Minister of Labor and Vocational Training, dated November 2018, reiterating the concerns of the brands, including Nike, that participated in the delegation, highlighting, among these concerns, “the reduced independence of the AC” and deploring the “diminished role” of the AC, “which previously had been a very effective dispute resolution mechanism”.<sup>192</sup>

Nike is well aware that, since it and the other members of this delegation met with the Cambodian labor minister in 2018, the environment for independent labor rights adjudication advocacy in Cambodia has only further deteriorated. In May 2019, Nike joined with other leading apparel brands, to send a letter to Cambodia’s Prime Minister, Hun Sen, expressing their “concern that the labor and human rights situation in Cambodia is posing a risk to [Cambodia’s] trade preferences”.<sup>193</sup>

For this May 2019 communication, the brands appended the letter previously sent by the AAFA and the FLA to the Minister of Labor and Vocational Training, which again decried, among other developments, “the reduced independence” and “diminished role” of the AC.<sup>194</sup> Given the fact that Nike was clearly aware of the decline of the AC’s independence and impartiality as far back as 2018, it is disingenuous for Nike to cite now, without qualification, the AC’s politically biased decision against the Violet Apparel workers—as a justification for failing to require Ramatex to correct the underpayment of these workers’ terminal compensation.

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<sup>190</sup> Labor Law, Article 312.

<sup>191</sup> Fair Labor Association, “Delegation to Cambodia;” Fair Labor Association, “Brand Letter.”

<sup>192</sup> Fair Labor Association, “Delegation to Cambodia;” Fair Labor Association, “Brand Letter.”

<sup>193</sup> Fair Labor Association, “Delegation to Cambodia;” Fair Labor Association, “Brand Letter.”

<sup>194</sup> Fair Labor Association, “Delegation to Cambodia;” Fair Labor Association, “Brand Letter.”

## E. Nike’s Refusal to Use Its Leverage with Ramatex to Ensure That the Violet Apparel Workers Receive Their Legally Owed Terminal Benefits Contradict Nike’s Human Rights Commitments

On Nike’s website, under the heading of “Our Commitment to Human Rights”, Nike states that it “consider[s] the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises as best practice[s] for understanding and managing human rights risks and impacts”<sup>195</sup> in its global supply chain.

Nike’s ongoing refusal to require Ramatex to remedy its theft of severance benefits from the Violet Apparel workers, however, runs directly counter to the practices that these international standards prescribe. The UNGP states that where a company “has the ability to effect change in the wrongful practices” of another firm, and by effecting such change will “mitigate [an] adverse impact”, the company should use its “leverage” with the other firm to achieve this outcome.<sup>196</sup>

Yet employing its leverage to mitigate adverse social impact is precisely what Nike has refused to do here, in its relationship with Ramatex, despite Nike’s considerable and ongoing influence as a key buyer and leading global brand. As noted, Nike sources globally from 14 different Ramatex factories, and has had an ongoing business relationship with the Ramatex Group since at least 2005.<sup>197</sup>

There is no doubt that Nike possesses sufficient leverage with Ramatex to “effect change” in Ramatex’s “wrongful practices”<sup>198</sup>—namely, Ramatex’s well-documented practice of denying legally earned terminal compensation to workers when it closes a factory, from its facility in Namibia in 2008, to the June Textile factory in Cambodia in 2013, to Violet Apparel today.<sup>199</sup> Nike, in blatant contradiction with the “best practices” it claims to follow, refuses to use its leverage with Ramatex to help correct this theft of terminal benefits from workers who made Nike’s products at Violet Apparel.<sup>200</sup>

## F. Violet Apparel is one of Several Recent Cases in which Nike Has Failed to Use Its Leverage with Suppliers to Address Mass Wage Theft

Ramatex’s theft of terminal benefits from the Violet Apparel workers is one of several recent instances in which Nike has failed to use its substantial leverage to ensure remediation of mass wage theft in its supply chain. For example, in 2019, when Nike’s Indonesian supplier PT Kahoindah Citragarment closed its doors, the factory deprived 2,000 workers of half of their legally mandated severance, an underpayment of US\$4.5 million. Despite numerous entreaties, Nike refused to acknowledge the violations and took no action to correct them.<sup>201</sup> Fortunately, other PT Kahoindah

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<sup>195</sup> Nike, Human Rights and Labor Compliance Standards.

<sup>196</sup> Office of the High Commissioner United Nations for Human Rights, *Guiding Principles*, (“Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm”).

<sup>197</sup> Nike, “Supplier List,” 2005.

<sup>198</sup> Office of the High Commissioner United Nations for Human Rights, *Guiding Principles*.

<sup>199</sup> Gehrt and Hensler, “Violations of Cambodian Labor Law.”

<sup>200</sup> Nike, Letter to Worker-driven Social Responsibility Network.

<sup>201</sup> Worker Rights Consortium, *Worker Rights Consortium Assessment, PT Kahoindah Citragarment Tambun-Bekasi (Indonesia): Findings, Recommendations and Status*, April 9, 2019, <https://www.workersrights.org/wp-content/uploads/2019/04/WRC-Assessment-of-PT-Kahoindah-Bekasi-Final-Clean-Last.pdf>.



buyers, including Gap and Fanatics, did take action and ultimately convinced the factory’s parent company to pay the workers in full.<sup>202</sup> In a still-unresolved case in Thailand, at Hong Seng Knitting, Nike has yet to acknowledge wage theft dating from 2020 affecting more than 3,000 workers, many of them migrants from Myanmar. Nike maintains that the workers at Hong Seng *voluntarily* surrendered their wages – choosing, during a pandemic-driven work slowdown, to take leave without pay, when paid leave was available. Despite the illogic of this claim, and despite extensive evidence that workers were coerced to give up their wages, Nike refuses to act. The workers at Hong Seng are collectively owed more than US\$800,000.<sup>203</sup>

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<sup>202</sup> Scott Nova and Jessica Champagne, “Update: Successful Remediation at PT Kahoindah,” Worker Rights Consortium, August 28, 2019, <https://www.workersrights.org/wp-content/uploads/2019/08/PT-Kahoindah-Memo-August-2019-.pdf>.

<sup>203</sup> Workers were originally owed more slightly less than \$600,000, a figure which has since increased to due to interest mandated by Thai law.

## V. Conclusion and Recommendations for Corrective Action: Nike and Other International Brands Must Require Ramatex to Pay Full Terminal Benefits to Former Violet Apparel Workers

Based on the evidence discussed in their report, the WRC has concluded that Ramatex has unlawfully denied the Violet Apparel workers terminal benefits due under Cambodian law by having underpaid compensation in lieu of prior notice and failing to provide damages for having dismissed these workers without legally valid justification.<sup>204</sup>

Despite a publicly stated commitment to the contrary, Nike—a major business partner of Ramatex, whose goods, as discussed, were found by the WRC to have been produced at Violet Apparel for several years leading up to the factory’s closure—has refused to use its leverage with its supplier to require that this theft of workers’ terminal compensation be remedied.<sup>205</sup> Nike has attempted to justify its failure to require corrective action by Ramatex by relying on a clearly biased and compromised ruling from Cambodia’s Arbitration Council, in which that formerly independent body effectively abdicated its clear statutory authority and mandate—to interpret and apply the labor law, itself, rather than defer to politically motivated government officials, and to scrutinize the factual claims of parties to disputes, rather than accept them at face value.<sup>206</sup>

Nike has hidden behind this flawed and biased decision from the AC as an excuse for allowing Ramatex to rob its former workers of hard-earned and desperately needed compensation. Nike has done this, even though, as discussed, Nike, itself, is well aware of the AC’s loss of independence and impartiality as it, like so many other institutions of Cambodian society, have increasingly fallen under the control of a repressive authoritarian regime.<sup>207</sup>

The WRC recommends that Nike, along with other brands that are business partners of Ramatex, instead of continuing to hide behind this biased and flawed decision, recognize the overwhelming evidence that, in the case of Violet Apparel, Ramatex has, once again, closed a factory and dismissed its workers without paying the full terminal compensation that was legally due. Accordingly, Nike and these other buyers should require Ramatex to pay the Violet Apparel workers full compensation in lieu of prior notice—based on their original date of hire at the factory—and full damages for being terminated without valid cause,<sup>208</sup> as well as interest to account for the nearly three years’ delay in corrective action.

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<sup>204</sup> Labor Law, Articles 73, 75, 77, and 91.

<sup>205</sup> Nike, Letter to Worker-driven Social Responsibility Network.

<sup>206</sup> Nike, Letter to Worker-driven Social Responsibility Network; Labor Law, Article 312.

<sup>207</sup> Fair Labor Association, “Delegation to Cambodia;” Fair Labor Association, “Brand Letter;” Human Rights Watch, “Only ‘Instant Noodle’ Unions Survive.”

<sup>208</sup> Labor Law, Articles 73, 75, 77, and 91.