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**Title:** Harmonisation of Buyers' Codes Of Conduct to Improve Health And Safety: A Case Study Of The Cambodian Garment Industry

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# **HARMONISATION OF BUYERS' CODES OF CONDUCT TO IMPROVE HEALTH AND SAFETY: A CASE STUDY OF THE CAMBODIAN GARMENT INDUSTRY**

## **I. INTRODUCTION**

In April 2013, over a thousand garment workers were killed in Bangladesh when 'Rana Plaza', a factory building collapsed.<sup>1</sup> The tragedy raised global concerns regarding the safety of workers in this sector in the Third World, especially those who do outsourced work for large western manufacturers under extremely precarious conditions.<sup>2</sup> Following this incident, international attention turned to the health and safety conditions of work in the garment industry in South and South East Asian.

The conditions of work in the Cambodian garment industry are no exception. Barely a few hours after some large global brands (buyers) – who outsource their manufacturing process to Third World destinations for cheap labour – agreed to sign an *Accord on Fire and Building Safety in Bangladesh* on 13 May 2013,<sup>3</sup> a shoe factory collapsed in *Kampong Speu*, one of the provinces in Cambodia— *Wing Star Shoes*. This incident caused the death of at least two workers and more than ten workers were injured.<sup>4</sup> A few days later, in *Phnom Penh*, the capital city of Cambodia, *Top World Garment*, collapsed and injured around 23 garment workers;<sup>5</sup> including a pregnant woman.<sup>6</sup>

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<sup>1</sup> ABC news, 'Bangladesh Building Death Toll Passes 1,000' *ABC News* (Online), 10 May 2013 <<http://www.abc.net.au/news/2013-05-10/bangladesh27s-collapsed-building-death-toll-passes-12c000/4681230>>.

<sup>2</sup> Chris Meyers, 'Wrongful Beneficence: Exploitation and Third World Sweatshops' (2004) 35(3) *Journal of Social Philosophy* 319, 319.

<sup>3</sup> International Labour Rights Forum, *Accord on Fire and Building Safety in Bangladesh* (13 May 2013) <[http://www.laborrights.org/sites/default/files/publications-and-resources/Accord\\_on\\_Fire\\_and\\_Building\\_Safety\\_in\\_Bangladesh\\_2013-05-13.pdf](http://www.laborrights.org/sites/default/files/publications-and-resources/Accord_on_Fire_and_Building_Safety_in_Bangladesh_2013-05-13.pdf)>.

<sup>4</sup> Joel Preston, *Female Garment Workers in Cambodia Fighting for the Right Not to Die at Work* (24 May 2013) <<http://www.tmponline.org/2013/05/24/garment-workers-cambodia/>>.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

Safety at workplaces is not the only issue that garments workers in Cambodia are fighting for. Issues related to occupational health are also central to their demands. For example, a large number of garment workers have suffered from mass fainting. According to records from the Ministry of Labour and Vocational Training (Ministry of Labour) in June 2011, over a thousand of workers fainted during working hours.<sup>7</sup> The International Labour Organization's (ILO) report found that heat strain and exhaustion were two of the reasons for the loss of consciousness.<sup>8</sup>

It is apparent from these incidents, that the health and safety of workers in the garment industry is a matter of serious concern. Workers need to be cautious of the fact that their lives are exposed to the risks of death, injury and other health complications. There are many important questions that could be asked of those who are responsible for these tragedies? What has been done by different agencies such as labour inspectors from the Ministry of Labour, the ILO inspectors, and buyers' internal compliance officers in monitoring workers' health and safety? What regulations have been put in place to ensure that workers are not exposed to risks to their health and safety such as buyers' codes of conduct, internal factory policies, national regulations, and the like. To what extent are these regulations and codes implemented? How can these situations be remedied?

The author's interest in searching for answers to these questions stem not only from the fact that she is concerned about the status of workers in her country as a matter of academic and policy interest, but also because she has been involved in this process. The author had the opportunity to see from very close proximity the ways in which garment factories operate under extremely unsafe conditions for workers in Cambodia. She has had first hand experience in visiting various garment factories in Cambodia as a factories advisor and also an officer with the Arbitration Council,

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<sup>7</sup> Bronh Sopheana and Choeung Theany, *OSH Status Report-Cambodia* (2011) 10 <[http://www.amrc.org.hk/system/files/Cambodia\\_0.pdf](http://www.amrc.org.hk/system/files/Cambodia_0.pdf)>.

<sup>8</sup> Preston, above n 4.

the institution established to resolve labour disputes.<sup>9</sup> The latter allowed her to work on a range of cases where workers demanded healthy and safe working conditions. It is this experiential insight that has prompted her to write this paper.

This paper intends to propose a novel approach –not adequately discussed in existing literature – to improve health and safety of workers who are working in the garment industry. The author argues for the harmonisation of buyers’ codes of conduct. The author uses the term ‘buyer’ in this paper to refer to Western brands, such as GAP, Wal-Mart, H&M, who outsource the manufacturing of clothes to the Cambodian garment industry. This term has been used widely in the garment industry. Workers use the term ‘buyer’ rather than its translation in Cambodian language because this term has attained almost universal parlance due to its use across the board by group leaders, production managers, and management in the factories as well as by the unions. Although the author of this paper has done adequate searches of databases and has not found any research, which explains why workers use the term ‘buyer’, as someone who has worked in this industry, the author has experiential knowledge.

This new approach in harmonising buyers’ codes of conduct is a response to the current situation in Cambodia where buyers have more influence than government inspectors, or ILO inspectors in enforcing health and safety provisions.<sup>10</sup> Unfortunately, these codes vary from buyer to buyer, and the absence of any uniform commitment to a code results in failures to ensure safe and healthy working conditions.

One might argue that the ILO Conventions on OSH is an alternative to buyers’ codes of conduct. However, Cambodia has not yet ratified the ILO Convention on Occupational Safety and Health (No. 187) 2006 and its accompanying Recommendation (No. 197). To have those standard provisions apply in Cambodia will require a long process and political commitment from the government. This

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<sup>9</sup> *Labour Law* (Cambodia) 13 March 1997, art 309 and art 312; *Sub- Decree* (Ministerial regulation) *on the Arbitration Council* No. 99, cl 32.

<sup>10</sup> Richard Locke, Matthew Amengual and Akshay Mangla, ‘Virtue out of Necessity? Compliance Commitment, and the Improvement of Labour Conditions in Global Supply Chains’ (2009) 37(3) *Politics and Society* 319, 320.

commitment does not exist at the moment. Therefore, harmonisation of buyers' codes of conduct and implementing them is considered to be much more workable in the current Cambodian garment industry context.

In order to build an argument regarding how buyers' codes of conduct can be harmonised, this paper is divided into the following parts. Part II provides an overview of the current legal framework and policies that are designed to oversee the occupational health and safety (OHS) of workers in the Cambodian garment sector, including their enforcement agencies. Part III discusses the challenges of implementing these codes. Part IV provides an overview of the benefits of harmonising buyers' codes of conduct, based on Robens' style OHS laws, which is well known for its influence on the harmonisation of workplace health and safety regulations in Australia.<sup>11</sup> Part V examines the strategy for achieving harmonisation. Part VI concludes the discussion of harmonisation of buyers' codes of conduct which the author believes, will help to improve workers' health and safety in the garment manufacturing industry in Cambodia.

## II. REGULATIONS, BUYERS' CODES OF CONDUCT AND THEIR ENFORCEMENT AGENCIES

This section will examine the work of three regulatory frameworks and the work of their enforcement agencies. These are: 1) OHS regulations, 2) buyers' codes of conduct, and 3) 'Better Factories Cambodia', which is an ILO project established to monitor working conditions in the Cambodian garment industry. Before the discussion of each of these frameworks, the author will provide an overview of the Cambodian context.

### A. *Country Context*

For nearly 30 years, Cambodia was under a civil war.<sup>12</sup> A number of essential public institutions were destroyed.<sup>13</sup> The most horrific period in the country's history lasted from 1975 to 1979 when it suffered the wrath of a genocidal regime (the

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<sup>11</sup> Ron McCallum, 'The Role of the Criminal Law in 21<sup>st</sup> Century Australian Occupational Health and Safety Regulation' [2005] *Australian Mining Petroleum Law Association Yearbook* 184, 190.

<sup>12</sup> Hugo van Noord, Hans S. Hwang and Kate Bugeja, 'Cambodia's Arbitration Council: Institution-Building in Developing Country' (Working Paper, International Labour Organisation, 2011) 2.

<sup>13</sup> Ibid.

Khmer Rouge) that killed more than 1.7 million in this four year period.<sup>14</sup> Lots of educated people were killed including professors, teachers and officials.<sup>15</sup> After the genocidal regime collapsed, only ten law graduates survived.<sup>16</sup>

The war finally ended in Cambodia in 1991 with the signing of the Paris Peace Accords.<sup>17</sup> Consequently, the country started to engage in global trade from 1994 and since then the garment manufacturing sector has expanded remarkably.<sup>18</sup> It is not surprising to learn that this sector is developing faster than other heavy industries. As Khondoker states: in the 'product life cycle theory',<sup>19</sup> developed countries generally introduced new products (through modern research in science and technology) and moved the production base gradually to developing countries.<sup>20</sup> One obvious reason behind this movement is the fact that developed countries depend heavily on the cheap labour in developing countries.<sup>21</sup> For example, the garment industry is a typical example of 'product life cycle theory' because this industry has been continuously relocating its manufacturing processes from developed to developing countries.<sup>22</sup> Furthermore, in the context of Cambodia, the garment industry does not require highly skilled workers and is not capital intensive.

The number of garment factories has also grown significantly during this time. In 1996 around 32 factories operated in Cambodia; 14 years later in 2010, this figure had increased to over 500 factories.<sup>23</sup> This growth has contributed to approximately US\$2.99 billion of total exports in 2010, which is a 26% increase on the US\$2.38

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<sup>14</sup> Sophal Ear, *Aid How Foreign Assistance Dependence Undermines Democracy in Cambodia*, (Columbia University Press, 2013) xi.

<sup>15</sup> Ibid.

<sup>16</sup> John A. Hall, 'Human Rights and the Garment Industry in Contemporary Cambodia' (2000) 36 (1) *Stanford Journal of International Law* 119, 174.

<sup>17</sup> Noord, above n 12.

<sup>18</sup> Martin Hess, 'Global Production Networks and Variegated Capitalism: (Self-) Regulating Labour in Cambodian Garment Factories' (Discussion Paper, Better Work, 2013) 14.

<sup>19</sup> Mottaleb Khondoker, 'Determinants of Labor-Intensive Exports by the Developing Countries: A Cross Country Analysis' (Working Paper, The Australian National University, 2012) 5.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid 6.

<sup>22</sup> Khondoker, above n 19.

<sup>23</sup> Chikako Oka, *Labour Standard Compliance and the Role of Buyers: The Case of the Cambodian Garment Sector* (PhD Thesis, The London School of Economic and Political Science, 2010) 31.

billion in 2009.<sup>24</sup> This mainstay sector is estimated to support around 20% of the country's population,<sup>25</sup> of which around 85% are women.<sup>26</sup> As the ILO has noted 'No other country in the world depends so much on the garment industry as Cambodia'.<sup>27</sup>

Although Cambodia has been a member of the ILO since 1969,<sup>28</sup> it has not ratified the ILO Convention on Occupational Safety and Health (No. 187) 2006 and its accompanying Recommendation (No. 197).<sup>29</sup>

Despite the end of the civil war in Cambodia two decades ago, law enforcement in the country remains weak largely due to corruption and lack of political will. This state of poor law enforcement leaves Cambodian people vulnerable to rights violations.<sup>30</sup> The government has introduced court reforms to ensure that the judiciary functions properly, but this project has largely failed due to lack of commitment from the government.<sup>31</sup> The country ranks low on a global rule of law index. According to *The World Justice Project/ Rule of Law Index: 2012-2013*:

Cambodia is ranked lower than most other countries in the region on all dimensions. The overall legal and institutional environment remains quite weak, which is highlighted by the low scores in key areas, including effective limits on government powers; regulatory enforcement; ... and absence of corruption.<sup>32</sup>

In Cambodia, senior officials from the government also receive direct benefits from garment factories through their involvement in the factory's administrative work.

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<sup>24</sup> International Labour Organization, 'Independent Evaluation of the ILO's Strategy on Occupational Safety and Health: Workers and Enterprises Benefit from Improved Safety and Health Conditions at Work' (Report, 2013) 51.

<sup>25</sup> Dennis Arnold and Toh Han Shih, 'A Fair Model of Globalisation? Labour and Global Production in Cambodia' (2010) 40(3) *Journal of Contemporary Asia* 401, 401.

<sup>26</sup> Ibid.

<sup>27</sup> International Labour Organization, *Better Factories Cambodia-International Trade Agreement and the Cambodian Garment Industry*, (2005) 2

<[www.betterfactories.org/content/documents/Inernational%20trade.pdf](http://www.betterfactories.org/content/documents/Inernational%20trade.pdf)>.

<sup>28</sup> International Labour Organization, *Country Profile*, <<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11003:0::NO:::C>>.

<sup>29</sup> Department of Occupational Health and Safety, Ministry of Labour and Vocational Training, Cambodia, 'The Overview of Occupational Safety and Health in Cambodia' (Report, 2011) 11.

<sup>30</sup> Noord, above n 12.

<sup>31</sup> Ear, above n 14, 43.

<sup>32</sup> Mark David Agrast et al, 'The World Justice Project/ Rule of law Index: 2012-2013' (Report, The World Justice Project, 2013) 30. [Note: Mark David Agrast, Juan Carlos Botero, Joel Martinez, Alejandro Ponce and Christine S. Pratt]



For example, whenever a factory wants to obtain a permit or any paperwork from the state, factory owners normally bribe those officials to get their documents approved.<sup>33</sup> This current practice makes it even harder to improve labour standards and implement the law and its relevant regulations.

### B. *Cambodian Labour Law and Its Inspectors*

To understand the challenges in the implementation of various OHS codes and regulations, it is worthwhile to consider briefly the current legal framework and policies that oversee workers' health and safety in the garment manufacturing sector. This part also includes various enforcement agencies.

Despite the fact that Cambodia has not yet ratified the ILO Conventions related to OHS, safe and healthy working conditions are covered under the Cambodian *Labour Law (Labour Law)*. For example, the health and safety of workers are protected under chapter VIII of *Labour Law*, from article 228 to article 247.<sup>34</sup> This piece of legislation is one of the most progressive in the region,<sup>35</sup> as it encompasses all basic international norms such as freedom of association and the right to collective bargaining.<sup>36</sup> In addition, the *Labour Law* gives the Ministry of Labour powers to enforce the OHS provisions.<sup>37</sup> In line with this power, the Ministry created the Department of Occupational Health and Safety, which has a role in maintaining standards of hygiene, and occupational safety.<sup>38</sup>

Under the *Labour Law*, labour inspectors and labour controllers within the Bureau of Labour Inspection<sup>39</sup> (part of the Ministry of Labour) are authorized to inspect establishments regarding health, working conditions and safety.<sup>40</sup>

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<sup>33</sup> Kevin Kolben, 'Note From the Field: Trade, Monitoring, and the ILO: Working To Improve Conditions in Cambodia's Garment Factories' [2004] 7 *Yale Human Rights and Development Law Journal* 79, 86.

<sup>34</sup> Department of Occupational Health and Safety, above n 29, 2.

<sup>35</sup> Chikako Oka, 'Accounting for the Gaps in Labour Standard Compliance: The Role of Reputation-Conscious Buyers in the Cambodian Garment Industry' [2010] 22 *European Journal of Development Research* 59, 62.

<sup>36</sup> *Ibid.*

<sup>37</sup> Department of Occupational Health and Safety, above n 29.

<sup>38</sup> *Ibid.* 5.

<sup>39</sup> John A. Hall, 'The ILO's Better Factories Cambodia Program: A Viable Blueprint for Promoting International Labour Rights?' [2010] 21 *Stanford Law & Policy Review* 427, 435.

<sup>40</sup> *Labour Law*, art 233.

In 2011, there were around 91 OHS inspectors throughout the country.<sup>41</sup> Inspectors have various roles in relation to OHS matters. Some of these are: conducting technical inspection on industrial hygiene, building an OHS network in a factory, promoting medical check-ups for workers, providing OHS protection to workers and preventing workplace accidents and occupational diseases.<sup>42</sup>

Unfortunately, the inspectors are not an effective enforcement agency because they lack resources and political will to carry out their mandate,<sup>43</sup> in enforcing the *Labour Law* and other related regulations. The U.N. report on human rights in Cambodia in 1998 found that the Ministry paid 100 inspectors to carry out their inspecting work, but only 12 actually performed their tasks.<sup>44</sup> Such a record is grossly insufficient for the state inspection system to monitor over 500 factories and address working conditions of labourers in a comprehensive manner.

Lack of resources is, however, not the only problem. Bribery is also rampant.<sup>45</sup> For example, inspectors often demand bribes from factories they inspect.<sup>46</sup> As quoted in Oka's PhD thesis, in a particular instance one factory manager complained, 'inspectors come so often that it's like their house. They will find something to complain about, and rather than reporting, they ask for bribe, about USD 20 to 40 each time'.<sup>47</sup> The Ministry is unable to provide inspectors with the money to buy petrol for their mopeds, in order to visit the factories.<sup>48</sup> This fuels a temptation to resort to corrupt practices by the inspectors.<sup>49</sup> The inspectors accept the money or gifts. The cycle of bribery also reaches senior government officials who are bribed by the factory owners for their own protection.<sup>50</sup> The inspectors merely carry on that practice.<sup>51</sup> In most cases, inspectors are simply in no position to actually inspect the factory, since the owners have already bought protection by bribing the senior

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<sup>41</sup> Department of Occupational Health and Safety, above n 29.

<sup>42</sup> Ibid.

<sup>43</sup> Hall, The ILO's Better Factories Cambodia Program, above n 39.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Oka, Labour Standard Compliance, above n 23, 34.

<sup>47</sup> Ibid.

<sup>48</sup> Hall, The ILO's Better Factories Cambodia Program, above n 39, 436.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

officials.<sup>52</sup> Besides the poor payment, inspectors are also not equipped with sufficient materials to help them in diagnosing working conditions, which leads to increases in many occupational risks and diseases.<sup>53</sup>

Although the state inspectors have a duty to remedy non-compliance with provisions on health and safety of workers, to translate this power into practice continues to be a challenge. The fine that is imposed by inspectors to sanction a factory for non-compliance matters is too meager to have any deterrent effect on the factory. As noted by a unionist, in research conducted by Merk: even if the Ministry's labour inspectors enforce the law by imposing a fine, 'the punishment is often a small fine that they [manufacturers] can pay without fixing the violation'.<sup>54</sup>

In summary, although the *Labour Law* and its related regulations provide extensive protection of workers health and safety, the enforcement agencies, such as the Ministry's inspectors, suffer from incapacity and corruption, which prevents them from effectively enforcing the laws.

### C. *The Better Factories Cambodia and Its Inspectors*

In addition to inspectors from the Ministry of Labour, there is another institution that also conducts inspections —Better Factories Cambodia (BFC). BFC is one of the ILO's innovative programmes, which was an attempt by the international community to promote labour rights in developing countries like Cambodia.<sup>55</sup> BFC was created to monitor and report factory compliance with the *Labour Law* and international labour standards.<sup>56</sup> BFC is funded by the Cambodian government, employers' associations, unions, the Australian government, the United States Department of Labour, International Finance Corporation and Korea's Ministry of Strategy and Finance.<sup>57</sup>

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<sup>52</sup> Ibid.

<sup>53</sup> Sopheana, above n 7, 7.

<sup>54</sup> Jeroen Merk, '10 Years of the Better Factories Cambodia Project: A Critical Evaluation' (Report, Community Legal Education Center and Clean Clothes Campaign, 2012) 18.

<sup>55</sup> Hall, The ILO's Better Factories Cambodia Program, above n 39, 427.

<sup>56</sup> Better Factories Cambodia, *Monitoring*, <[http://betterfactories.org/?page\\_id=90](http://betterfactories.org/?page_id=90)>.

<sup>57</sup> Better Factories Cambodia, *Our Funders*, <[http://betterfactories.org/?page\\_id=67](http://betterfactories.org/?page_id=67)>.

Historically, BFC was established through an agreement signed between the United States and the Cambodian governments in 1999.<sup>58</sup> Under that agreement, the United States granted Cambodian garment manufacturers more access to its market, under the condition that the labour rights environment in Cambodian garment factories improved.<sup>59</sup> To assess the granting of quotas to Cambodian garment manufacturers, the government of the United State sought the ILO's assistance.<sup>60</sup> This happened because it was considered that the inspectors' reports were not reliable. As indicated earlier, the inspectors from the government use corrupt means to produce their monitoring reports and the Cambodian government lacked both resources and capacity to perform this task more efficiently.<sup>61</sup>

Initially, the ILO was hesitant to monitor the factories, as it did not have experience in conducting factory-level monitoring,<sup>62</sup> however, it later agreed to carry out this task through the establishment of the BFC. For six years, from 1999 to 2004, the US Government relied on BFC's monitoring and reporting to decide whether to increase the import quota for Cambodian garments into the US market.<sup>63</sup> At the same time, international brands also used BFC's reporting as a basic tool for monitoring their Cambodian vendors' compliance with their codes of conduct.<sup>64</sup>

According to BFC's website, the Cambodian government requires all garment factories that wish to export their products to agree to be monitored by BFC.<sup>65</sup> In this regard, factories must ensure that they do not breach the core labour standards if they want an export license.<sup>66</sup> However, factories that subcontract to exporting firms are not required to register to be monitored by the BFC.<sup>67</sup> This also applies to

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<sup>58</sup> International Human Rights and Conflict Resolution Clinic Stanford Law School & Worker Rights consortium, 'Monitoring in the Dark: An evaluation of the International Labour Organization's Better Factories Cambodia monitoring and reporting program' (Report, 2013) iii.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Daniel Adler and Michael Woolcock, 'Justice without the rule of law? The Challenge of Rights-Based Industrial Relations in Contemporary Cambodia' (Working paper, The World Bank, 2009) 172.

<sup>62</sup> Oka, Labour Standard Compliance, above n 23, 18.

<sup>63</sup> International Human Rights and Conflict Resolution Clinic Stanford Law School & Worker Rights consortium, above n 58.

<sup>64</sup> Ibid.

<sup>65</sup> Better Factories Cambodia, Monitoring, above n 56.

<sup>66</sup> Adler, above n 61, 176.

<sup>67</sup> Anna Shea, Mariko Nakayama and Jody Heymann, 'Improving Labour Standards in Clothing Factories' (2010) 10(1) *Global Social Policy* 85, 90.

those garment factories that only produce for the local market, and do not export.<sup>68</sup> These two types of factories are out of the scope of the BFC monitoring programme.<sup>69</sup> Due to this limitation, factories often use the sub-contracting arrangement to escape monitoring and the working conditions in those factories are relatively worse than the factories that are under the BFC monitoring scheme.<sup>70</sup> The number of subcontracting factories is estimated to be between 300-3000,<sup>71</sup> and some factories even have up to 12 subcontracted facilities.<sup>72</sup> This figure demonstrates that a large number of factories are outside the reach of inspection.

BFC conducts unannounced visits in pairs to monitor the working conditions in garment factories.<sup>73</sup> Although the monitoring process is supposed to be conducted without warning, the research conducted by Shea, Nakayama and Heymann claim that ‘factory managers know when to expect these visits.’<sup>74</sup> For example, the visits are conducted every six months; this time frame allows the factory owners to prepare for the inspection.<sup>75</sup> The research also found that ‘in some factories staff bathrooms are fully stocked for the inspections and then cleared out afterwards.’<sup>76</sup> Some factories even use bathrooms as a hidden space for underage workers during visits by inspectors.<sup>77</sup> On some occasions, factory owners also made an announcement over a speaker informing workers that they should not say anything bad about the factory if they are questioned by inspectors.<sup>78</sup> The announcement is generally made right after the factory manager is made aware of the inspection. This happens when the inspectors introduce themselves to the security guard at the factory gate. The security guard reports their presence to the factory manager before the inspectors get in. The awareness of the management

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<sup>68</sup> Merk, above n 54, 19.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Arianna Rossi and Raymond Robertson, ‘Better Factories Cambodia: An Instrument for Improving Industrial Relations in a Transnational Context’ (Working Paper No. 256, Center for Global Development, June 2011) 9 < <http://www.cgdev.org/publication/better-factories-cambodia-instrument-improving-industrial-relations-transnational> >.

<sup>74</sup> Shea, above n 67, 98.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Merk, above n 54, 19.

<sup>78</sup> Shea, above n 67.

about the BFC's visits creates difficulties in producing accurate reports about what exactly the factory conditions are.

During each visit, BFC monitors the compliance of a factory against 156 labour standards, which are drawn from local law and international standards.<sup>79</sup> After each visit, BFC produces two types of reports— individual factory reports and periodic synthesis reports.<sup>80</sup> The individual factory reports are only shared with factory owners and buyers, who need to pay a fee to get access to the report.<sup>81</sup> In this way, buyers have full power to decide whether they want or do not want to buy BFC's reports. The reports provide the result of the visit, which also includes the findings and recommendations to remedy the non-compliance matters.<sup>82</sup> Under the current practice, BFC is not involved in remediation of the violations of working conditions that have been identified.<sup>83</sup> This is the responsibility of the factory management and their buyers.<sup>84</sup> The periodic synthesis reports are posted to the ILO's website to provide the public with general information about the progress of the whole garment industry.<sup>85</sup> The synthesis reports provide limited information drawn from the detailed analysis of the industry.

Although BFC has played an important role in monitoring the working conditions including health and safety of workers in the garment industry, there is still a gap in its scope. When BFC first started to operate, it monitored approximately 180 factories; currently it monitors around 300 factories.<sup>86</sup> The expansion in scope places a burden on the programme's resources, which has resulted in a reduction in the frequency of monitoring visits.<sup>87</sup> For example, the program initially aimed to monitor factories every six months,<sup>88</sup> but currently its visits occur approximately

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<sup>79</sup> International Human Rights and Conflict Resolution Clinic Stanford Law School & Worker Rights consortium, above n 58, 30, 31.

<sup>80</sup> Ibid.

<sup>81</sup> Oka, Labour Standard Compliance, above n 23, 11.

<sup>82</sup> International Human Rights and Conflict Resolution Clinic Stanford Law School & Worker Rights consortium, above n 58, 31.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid 38.

<sup>87</sup> Ibid.

<sup>88</sup> Rossi, above n 73, 5.

once a year and in some instances even less frequently.<sup>89</sup> This decline in frequency creates a challenge for inspectors to have a comprehensive understanding of the working conditions. In addition, although BFC has expanded its scope, there are still some factories that are excluded. For example, the Ministry of Labour has registered 525 garment factories while the ILO monitoring program monitors approximately 300 garment factories.<sup>90</sup> The difference indicates the number of garment factories still outside the scope of monitoring by BFC.<sup>91</sup>

Furthermore, BFC has also failed to remedy the non-compliance matters. As a study conducted by Stanford Law School found, 'BFC today lacks the mandate, resources, and the systematic verification procedures to see that labour violations are remedied'.<sup>92</sup> Thus, the work of BFC to improve health and safety of workers remains limited and it appears like a toothless tiger because it does not have enforcement powers. As one labour rights organisation expressed their disappointment: 'we no longer inform the BFC [about the violation of labour rights] because it cannot do anything'.<sup>93</sup> With regard to this concern, BFC recently announced to the press that, from January 2014, it will change its current practice and will attempt to disclose its assessment information of individual factories' compliance with the *Labour Law* and international labour standards to the public.<sup>94</sup> This strategy has not been welcomed by the government and Garment Manufacturers Association in Cambodia.<sup>95</sup>

#### D. *Buyers' Codes of Conduct and Their Auditors*

Since the Cambodian government is either unable or unwilling to enforce their own *Labour Law*,<sup>96</sup> and the BFC's inspectors have no power to enforce non-compliance

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<sup>89</sup> International Human Rights and Conflict Resolution Clinic Stanford Law School & Worker Rights consortium, above n 58, 38, 39.

<sup>90</sup> Oka, Labour Standard Compliance, above n 23.

<sup>91</sup> Ibid.

<sup>92</sup> International Human Rights and Conflict Resolution Clinic Stanford Law School & Worker Rights consortium, above n 58, 41.

<sup>93</sup> Merk, above n 54, 15.

<sup>94</sup> Better Factories Cambodia, 'ILO-Better Factories Cambodia Returns to Public Disclosure of Assessment Findings' (Press Release, 23 September 2013) <<http://betterfactories.org/wp-content/uploads/2013/09/Public-Disclosure-Press-Release-EN.pdf>>.

<sup>95</sup> Joshua Lipes, *ILO Initiative Could Unravel Cambodia's Garment Industry: Manufacturers*, <<http://www.rfa.org/english/news/cambodia/initiative-10042013150820.html>>.

<sup>96</sup> Lucio Baccaro, 'Civil Society, NGOs, and Decent Work Policies: Sorting Out the Issues,' (Discussion Paper No. 127, International Institute of Labour Studies, 2001).

matters, codes of conduct from buyers have emerged as the principal way to remedy poor working conditions in Cambodian garment factories.<sup>97</sup> The emerging codes of conduct help to explain a failure of the state in enforcing its own regulation, which links to the growing demand of corporate accountability.<sup>98</sup>

Historically, buyers' codes of conduct have emerged in response to pressures from unions, consumer groups and civil society.<sup>99</sup> Critics of codes of conduct argue that these codes are not designed to protect labour rights or improve working conditions, but are used instead to limit the legal liability of global brands and prevent damage to their reputation.<sup>100</sup> Codes and monitoring systems have been used as a tool to reduce reputational risks of the buyer in the market.<sup>101</sup> Locke, Amengual and Mangla point out that, although auditors found that suppliers are not in compliance with the codes of conduct, it is still 'an open secret that very few brands ever exit factories'.<sup>102</sup> Others argue that these codes are not an attempt to undermine state regulation but rather to respond to the reality of global production networks and the low capacity of developing countries like Cambodia to enforce *Labour Law* and regulations in full.<sup>103</sup> The latter view is supported by many authors, who argue that buyers' codes of conduct help to improve labour standards, particularly when the state lack the capacity or the resources to carry out systematic factory inspections.<sup>104</sup>

Before placing orders, buyers have certain procedures that they normally follow. These are not actually a clear set of rules that every buyer must follow, but normally they follow their own internal rules before placing orders. Generally it is a mix of rules and practices. This is how the procedure goes. The candidate factory is assessed by internal compliance teams or external auditors to examine its level of

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<sup>97</sup> Locke, *Virtue out of Necessity*, above n 10.

<sup>98</sup> Dara O' Rourke, 'Outsourcing Regulation: Analyzing Nongovernmental Systems of Labour Standards and Monitoring' (2003) 31 (1) *The Policy Studies Journal* 1, 5.

<sup>99</sup> Richard Locke, Thomas Kochan, Monica Romis and Fei Qin, 'Beyond Corporate Codes of Conduct: Work Organization and Labour Standards at Nike's Suppliers' (2007) 148 (1&2) *International Labour Review*, 21, 22.

<sup>100</sup> *Ibid.*

<sup>101</sup> Rourke, *Outsourcing Regulation*, above n 98, 4.

<sup>102</sup> Locke, *Virtue out of Necessity*, above n 10, 326.

<sup>103</sup> Locke, *Beyond Corporate Codes of Conduct*, above n 99.

<sup>104</sup> Rourke, *Outsourcing Regulation*, above n 98, 1.



compliance.<sup>105</sup> If it is not satisfied with the compliance level, the auditor will require the candidate factory to produce a corrective action plan.<sup>106</sup> In contrast, if the compliance level is satisfactory, then the sourcing teams will place orders.<sup>107</sup> In this way, as Oka notes, 'buyers' compliance departments play the role of a gatekeeper'.<sup>108</sup> After orders are placed, factories are regularly monitored. If factories do not rectify the problem within a given time frame, buyers may cancel orders.<sup>109</sup> The interesting question to examine is how often buyers cancel orders. The answer is not very often or even rare that buyers exit factories, even when they find that the factory is not complying with the codes of conduct.<sup>110</sup> This proportion reflects what Oka has argued, that most buyers are normally more interested in low price, high quality and on time delivery than good working conditions.<sup>111</sup>

The inspection from buyers is done by an internal or external agency. For internal monitoring, it is generally conducted by the staff of buyers who are responsible for monitoring the implementation of the company's code of conduct throughout its suppliers.<sup>112</sup> For example, GAP has a vendor compliance department with over 100 staff responsible for monitoring the compliance of the codes.<sup>113</sup>

Alternatively, some buyers transfer this monitoring task to an independent third party or external inspector to conduct the monitoring. The auditing conducted by the third party sometimes results in a conflict of interest with the buyers who paid for the inspection because the external agency tends not to reveal all the information that can damage the relationship between the auditor and the factory management. They want to maintain a good relationship between themselves and

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<sup>105</sup> Oka, Labour Standard Compliance, above n 23, 51.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Hazel Genn, 'Business Responses to the Regulation of Health and Safety in England' (1993) 15(3) *Law and Policy* 199, 224.

<sup>111</sup> Chikako Oka, 'Does Better Labour Standard Compliance Pay? Linking Labour Standard Compliance and Supplier Competitiveness' (Better Work Discussion Paper No. 5, International Labour Office, 2012) 1 <<http://betterwork.com/global/wp-content/uploads/Discussion-Paper-Series-No-5-Does-Better-Labour-Standard-Compliance-Pay.pdf>>.

<sup>112</sup> Rourke, Outsourcing Regulation, above n 98, 7.

<sup>113</sup> Ibid.

their clients for future auditing work.<sup>114</sup> In such an event, both brands and their suppliers (factories) may have an interest in hiding labour violations rather than reporting them. This leads to raising questions about the external and internal audits,<sup>115</sup> which then get perceived as lacking transparency and undermined the legitimacy of many buyers' self-monitoring efforts.<sup>116</sup>

The commitment by buyers to enforce their own codes of conduct is varied. Reputation-sensitive buyers are more likely to carefully select and monitor their suppliers to minimise potential problems and safeguard their reputation.<sup>117</sup> For example, an international buyer such as the Walt Disney Company left Cambodia in 1996 due to labour rights abuse in the factories that produced clothes for the company.<sup>118</sup> A survey of the top 15 international brands or buyers in Cambodia, who make up 45% of the country's exports, found that over 60% of buyers emphasised that labour standards were as important or more important than the low price, quality, and delivery times.<sup>119</sup> A survey indicates that good labour standards ranked 1 out of 12 reasons to outsource garment from a specific country.<sup>120</sup> However, some buyers do not have a strong interest in pushing the factories to comply with their code.<sup>121</sup> At the end of the day, workers are the ones who suffer from the risks to their health and safety no matter what buyers they are producing the clothes for.

In brief, this section has demonstrated that under the current regime, the state inspection of workplace health and safety is ineffective. In the absence of state enforcement mechanisms, the BFC has performed a more reliable role in this regard,

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<sup>114</sup> Ivanka Mamic, 'Business and Code of Conduct Implementation: How Firm Use Management Systems for Social Performance' (Research Paper, International Labour Organisation, 2003) 39.

<sup>115</sup> Locke, *Beyond Corporate Codes of Conduct*, above n 99, 23.

<sup>116</sup> Sandra Polaski, 'Harnessing Global Forces to Create Decent Work in Cambodia' (Report, International Labour Organization, 2009) 10.

<sup>117</sup> Oka, *Does Better Labour Standard Compliance Pay?*, above n 111.

<sup>118</sup> Don Wells, 'Best Practice' in the Regulation of International Labour Standards: Lessons of the U.S.-Cambodia Textile Agreement' [2006] 27 *Comparative Labour Law & Policy Journal* 357, 368.

<sup>119</sup> Foreign Investment Advisory Service a Joint Service of the International Finance Corporation and the World Bank, 'Cambodia: Corporate Social Responsibility and the Apparel Sector Buyer Survey Result' (Report, 2004) <[http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2005/12/15/000160016\\_20051215183914/Rendered/PDF/346570KH0ENGLISH0Buyer1Survey.pdf](http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2005/12/15/000160016_20051215183914/Rendered/PDF/346570KH0ENGLISH0Buyer1Survey.pdf)>.

<sup>120</sup> *Ibid.*

<sup>121</sup> Genn, above n 110.

but it has no enforcement power to remedy non-compliance issues. Local media has described BFC as ‘handicapped’ in its monitoring program.<sup>122</sup> In the light of this, the main mechanism that is currently operating in the Cambodian garment industry are buyers’ codes of conduct, which have become a de facto enforcement authority. However, the buyers’ monitoring protocols are still limited due to the different purposes for which inspections are conducted. The next part explores the various consequences that result from the enforcement regimes under the buyers’ codes of conduct.

### III. POTENTIAL CONSEQUENCES OF VARIOUS OHS POLICES AND DIFFERENT ENFORCEMENT AGENCIES

#### A. *Inconsistency of Buyers’ Codes of Conduct—Mixed Messages*

Although buyers’ codes of conduct in relation to health and safety are designed to protect workers from unhealthy and unsafe working conditions, there are still a growing and diverse numbers of codes of conduct and auditing protocols in monitoring health and safety matters in the garment industry in Cambodia. By way of illustration, this paper discusses the provisions regarding fire security in three different buyers’ codes of conduct, GAP Inc., H&M and Wal-Mart. This illustration attempts to offer a glimpse into the different standards that apply to the same workers, under the same workplace environment.

The *Code of Vendor Conduct* from GAP Inc. provides that to evacuate workers in case of fire the factories have to keep aisles, exits and stairways clear and accessible at all times.<sup>123</sup> The evacuation drills are to be conducted at least once a year, fire alarms are to be installed on each floor and emergency lights are to be placed above exits and on stairways.<sup>124</sup> For H&M, fire safety provisions are similar to GAP’s, but it also adds that everyone working on the premises, including managers and guards, must

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<sup>122</sup> Dene-Hern-Chen, ‘Better Factories Cambodia Slammed by Stanford Researchers’, *The Cambodia Daily* (online), 20 February 2013 < <http://www.cambodiadaily.com/archive/better-factories-cambodia-slammed-by-stanford-researchers-11011/>>.

<sup>123</sup> Gap Inc., *Code of Vendor Conduct*, 12 <[http://www.gapinc.com/content/dam/csr/documents/COVC\\_070909.pdf](http://www.gapinc.com/content/dam/csr/documents/COVC_070909.pdf)>.

<sup>124</sup> *Ibid.*

be regularly trained in how to act in case of fire or other emergency.<sup>125</sup> Wal-Mart's fire safety provisions also require that factory exits are properly marked with illuminated signs in English and the local language, evacuation routes are marked on the floors and posted in each work area.<sup>126</sup>

If a factory is a supplier for all the three international brands (GAP, H&M and Wal-Mart) it has to arrange for all the different requirements of the buyers. These varied requirements can, in effect, send mixed messages to the factory, which might result in confusion and negatively impact the health and safety standards. This situation is like a factory that has three different managers and each manager asks the factory to do three different things, resulting in confusion. Besides these varied requirements, the auditors from the buyers visit the factory on separate occasions and they issue different warnings according to their own codes of conduct. For example, research conducted by Oka in 51 factories found that 60% of the factories received up to 5 compliance visits per year while 22% received 15 or more.<sup>127</sup> During each visit, the auditors are required to examine matters in order for the factories to comply with their codes of conduct.<sup>128</sup> Meeting the range of requirements from varied sources results in confusion and requires resources that these factories do not have.

Although the author agrees that buyers' codes of conduct regarding fire security are designed to keep workers safe if a fire occurs, the variation in standard is difficult to implement in practice given the context of poor design of garment factory buildings, and employers normally try their best not to expand the infrastructure, but to maximise the capacity of the building. For example, in Factory X which has 200 workers, buyer A requires five emergency exit doors for this number of workers but buyer B requires just three emergency exit doors. If the factory receives orders from

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<sup>125</sup> H & M, *Code of Conduct*, 2

<[http://about.hm.com/content/dam/hm/about/documents/en/CSR/codeofconduct/Code%20of%20Conduct\\_en.pdf](http://about.hm.com/content/dam/hm/about/documents/en/CSR/codeofconduct/Code%20of%20Conduct_en.pdf)>.

<sup>126</sup> Wal-Mart Stores, Inc., *Standards for Suppliers Manual*, 11

<[http://cdn.corporate.walmart.com/0e/ca/52eda3d84f828f82da0e9a02f021/standards-for-suppliers-manual\\_129833075555266802.pdf](http://cdn.corporate.walmart.com/0e/ca/52eda3d84f828f82da0e9a02f021/standards-for-suppliers-manual_129833075555266802.pdf)>.

<sup>127</sup> Chikako Oka, 'Channels of Buyer Influence And Labour Standard Compliance: The Case of Cambodia's Garment Sector' [2010] 17 *Advances in Industrial and Labour Relations* 153, 164.

<sup>128</sup> *Ibid* 168.

both buyers then they have to comply with the requirements. In practice, the two doors that are not required by buyer A are normally blocked so that factories owners can keep more stuff in front of the doors. This practice confuses the management, and the workers who need to remember which doors they need to use during the emergency. This is just one of the many examples that result in confusion due to the mixed and inconsistent requirements in different buyers' codes of conduct.

#### *B. Increased Compliance Costs for Suppliers and Buyers*

There are various monitoring visits from different agencies in one factory. It can range from the internal staff of the factory who are responsible for monitoring the health and safety compliance measures, to the multi-brands monitoring and the third party monitoring agents.<sup>129</sup> For example, GAP Inc. has over 100 staff responsible for monitoring the implementation of its codes of conduct throughout its global supply chain.<sup>130</sup> This corporation has spent literally millions of dollars on its internal monitoring system.<sup>131</sup> It also spends on external auditing which adds more costs to the buyers. The buyer might also need to spend a great deal of money in training and capacity building and provide incentives to monitors so that they stay away from corrupt practices.<sup>132</sup> For international buyers like H&M, they employ compliance staff who are based in the country and normally visit their suppliers three to four times a year.<sup>133</sup>

It is not only buyers who need to spend a great deal of resources to create and implement the codes of conduct; factories that supply buyers also face considerable difficulties with resources. By way of illustration, factory A signed a contract to produce a number of shirts for GAP Inc. and Wal-Mart. GAP Inc. made up a total of 20% of the total export from factory A and Wal-Mart ordered 80%. GAP and Wal-Mart have their own codes of conduct, both of which factory A has to follow.

However, GAP's brand targeting student clients may implement rigorous standards

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<sup>129</sup> Dara O'Rourke, 'Multi-stakeholder Regulation: Privatizing or Socializing Global Labour Standards?' (2006) 34(5) *World Development* 899, 906.

<sup>130</sup> *Ibid* 901.

<sup>131</sup> *Ibid*.

<sup>132</sup> *Ibid* 907.

<sup>133</sup> Oka, Accounting for the Gaps, above n 35, 72.

while retailers targeting price-conscious consumers such as Wal-Mart may care less about workers' health and safety. In a situation like this, the factory might not take into serious consideration the health and safety standards under GAP's code of conduct, as its share is only 20% of its total products. Furthermore, the factory manager has to be prepared for various auditors who might visit them and different documents must be prepared for different purposes of auditing. This creates more stress and a resources burden on the suppliers and their workers to address the buyers' needs, which are inconsistent.

### C. *Workers Face Different Layers of Protection*

Workers suffer from different degrees of protection in relation to their health and safety. If a factory is producing clothes for a reputation-sensitive buyer then presumably that buyer is more active in protecting workers' health and safety than those buyers who care less about their reputation. Consequently, the cost of non-compliance facing suppliers of reputation-conscious buyers is higher than that of other suppliers, making the former more likely to comply with labour standards than the latter.<sup>134</sup>

Oka draws two different conclusions from her research on *Labour Standard Compliance and the Role of Buyers* focusing on the garment industry in Cambodia: (1) Factories producing for at least one particularly reputation-conscious buyer will have a higher level of labour standard compliance than factories producing for other types of buyers.<sup>135</sup> (2) Factories producing for a large number of less reputation-conscious buyers will have a higher level of labour standard compliance than factories producing for fewer of these buyers. Finally, it results in inconsistencies in standards, which may undermine attempts to improve work health and safety of workers in the garment sector.<sup>136</sup>

These challenges link to the Robens' style of legislation. Robens argues that various pieces of legislation should be harmonised to increase the level of protection for workers' health and safety. Although buyers' codes of conduct do not have any

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<sup>134</sup> Oka, *Labour Standard Compliance*, above n 23, 52.

<sup>135</sup> *Ibid.*

<sup>136</sup> Richard Johnstone, *Work Health And Safety Law and Policy* (Lawbook, 3<sup>rd</sup> ed, 2012) 92.

legally binding force on a factory as state regulation does, in the current Cambodian context, the codes have played an important role in increasing health and safety standards for workers in the garment sector. For example, increasing numbers of buyers are using monitoring strategies and eliminating the orders that they place with their suppliers if those suppliers fail to meet the standards laid down in the codes.<sup>137</sup> The code has become one of the dominant modes of regulating labour conditions.<sup>138</sup> Unfortunately, as already discussed, the codes differ from buyer to buyer.

In the next section the author briefly examines the Robens' Report on harmonising workplace health and safety regulations. This discussion is aimed at exploring the possibilities of harmonising buyers' codes of conduct based on the experience that can be learnt from Robens.

#### IV. PROPOSED BENEFITS OF HARMONISATION OF BUYERS' CODES OF CONDUCT

##### A. *The Robens' Report*

In Britain in the 1970s, the Robens' Committee was appointed.<sup>139</sup> The committee was chaired by Lord Robens and was appointed to review various provisions of legal framework that were designed to protect workers' health and safety.<sup>140</sup> This review was conducted because of a widespread belief that industrial work was far less safe and healthy for workers.<sup>141</sup> The report is well known for influencing the development of ideas regarding harmonisation of workplace health and safety in Britain.<sup>142</sup>

The report identified numerous deficiencies in various UK statutes that were meant to protect the health and safety of workers. It identified that there are too many laws, which were uncoordinated, complicated, inflexible and ineffective in

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<sup>137</sup> Sarosh C. Kuruvilla and Anil Verma, 'International Labour Standards, Soft Regulation, and National Government Roles' (Report, Cornell University, School of Industrial and Labour Relations, 2006) 22.

<sup>138</sup> Oka, Channels of Buyer Influence, above n 127, 154.

<sup>139</sup> Breen Creighton and Peter Rozen, *Occupational Health and Safety Law in Victoria* (The Federation Press, 2007) 3.

<sup>140</sup> *Ibid.*

<sup>141</sup> Anthony D. Woolf, 'Robens Report—The Wrong Approach?' (1973) 2 (2) *The Industrial Law Journal* 88-95.

<sup>142</sup> Barry Sherriff and Michael Tooma, *Understanding the Model Work Health and Safety Act* (CCH, 2010) 1.

penalising for the breaches of their provisions.<sup>143</sup> For example, the report found that health and safety at work was governed by nine separate groups of statutes, with 500 subordinate statutory instruments administered by five central government departments, through seven inspectorates.<sup>144</sup> The report noted that ‘the sheer mass of law was counter-productive.’<sup>145</sup> The report argued that the way to get rid of this problem was to establish ‘self-regulation’,<sup>146</sup> but it did not explain what this term meant.<sup>147</sup> Creighton and Rozen suggest that, this term would not necessarily mean that the state would become entirely inactive in relation to those workers who were involved in processes of self-regulation.<sup>148</sup> Gramham and Woods opinion is that in the context of global corporations, the term ‘self-regulation’ can be used to describe a variety of attempts by corporations to establish rule-based constraints on behaviour without the direct coercive intervention of states or other external factors.<sup>149</sup>

The report further suggested that in order to create a more unified and integrated system, the existing statutory provisions needed to be rationalised and unified within the framework of a single, comprehensive enactment,<sup>150</sup> and that its administration should be brought under a single management.<sup>151</sup>

The author of this paper believes that buyers’ codes of conduct should be harmonised as now there are too many codes, which are not unified, inconsistent, and complicated. They create counter-productive consequences and fail to respond to the purpose of the codes, which is to ensure that labourers are working under safe and healthy conditions. In contrast, the unification of the code will create various benefits for all key players such as buyers, factories owners, workers, as well as the government. The next section explores what the benefits of harmonisation might be.

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<sup>143</sup> Ibid 2.

<sup>144</sup> Robert Baldwin, ‘Why Rules Don’t Work’ (1990) 53 (3) *The Modern Law Review* 321, 322.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid. .

<sup>147</sup> Creighton, above n 139, 5.

<sup>148</sup> Ibid.

<sup>149</sup> David Graham and Ngaire Woods, ‘Making Corporate Self-Regulation Effective in Developing Countries’ (2006) 34 (5) *World Development* 868, 869.

<sup>150</sup> Lord Robens (Chairman), *Safety and Health at Work* (1972) [125].

<sup>151</sup> Robens 1972, [110].



### B. *Reduction in Compliance Costs*

Harmonisation of various buyers' codes of conduct will help to reduce the compliance costs for factories, buyers, workers as well as the government. For factories, there is a resource burden in facilitating each visit of the monitor, auditor and inspector who come to inspect the company with various compliance requirements on many different occasions. This increases resource stress and burden on the factories as different buyers require separate examinations. Although buyers require different standards for ensuring health and safety of workers, there are still around 15 per cent of garment factories that lock the emergency exit doors during working hours, 45 per cent fail to conduct emergency fire drills every six months, and 53 per cent have obstructed access paths.<sup>152</sup> This creates a serious concern over the health and safety issue of the workers, despite being examined by various monitoring processes.

The consistency in buyers' codes will help the factories to be more efficient and effective in implementing the code and reduce complexity and duplication in the codes. If the health and safety of workers are protected then the factories also develop goodwill, which in turn attracts reputation sensitive buyers to place orders. Such a condition will increase the work performance of labourers as they will spend less time during their working hours bothering about the risk to their health and safety. Moreover, the factory's good reputation will also help it recruit more workers due to its better working environment.<sup>153</sup> Harmonisation of buyers' codes of conduct in health and safety matters will help to reduce the cost of compliance and enhance protection standards for workers health and safety which, in consequence, help to increase the productivity of the factory.

For buyers such as large international brands, their sales will also increase because of the harmonisation the code. A paper by Hiscox and Smyth noted that in a major retail store in New York City, the sales rose from 10-20% for items labelled as being

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<sup>152</sup> Joshua Lipes, 'Conditions in Cambodia's garment Industry Worsen: ILO' (18 July 2013) <<http://www.rfa.org/english/news/cambodia/garment-07182013175956.html>>.

<sup>153</sup> Manuela Weber, 'The Business Case for Corporate Social Responsibility: A Company-Level Measurement Approach for CSR' [2008] 26 *European Management*, 247, 249.

made under ethical labour standards.<sup>154</sup> This is a result of increased awareness among conscientious consumers who demand more information on the manufacturing history of products they buy to avoid products that are manufactured under exploitative and unsafe conditions.<sup>155</sup>

The government also benefits from the system as fewer accidents will occur in the factories, and this will attract more reputation sensitive buyers to come to invest in Cambodia, resulting in overall economic growth. This also allows the government to save more resources in treating injured workers. The government will receive less pressure from labour unions as well as civil society if conditions for health and safety of workers are effectively protected. In the economic realm, the gains to be achieved include increased exports, which would stimulate overall economic growth, subsequently increasing employment and fiscal revenues.<sup>156</sup> The growth in the garment sector can also create a beneficial economic effect on households, mainly in the countryside, which receive money from the young, largely female workforce in the factories who come from rural households.

### *C. Increasing Coverage in Conducting Inspections*

When buyers' codes are harmonised, fewer resources will be expended on the different monitoring processes; thus, it will increase more inspections of other factories. For example, under the current system, a factory can be inspected by different agencies – like, the Ministry's inspector, BFC monitor, and buyers' auditor – who share a similar agenda to ensure that working conditions are safe and healthy. If codes are harmonised then perhaps this factory can be monitored only by an independent agency. This will save resources that can enable the inspection of more factories, including subcontracting factories and factories that produce for the domestic market.

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<sup>154</sup> Michael J. Hiscox and Nicholas F.B. Smyth, 'Is There Consumer Demand for Improved Labour Standards? Evidence from Field Experiments in Social Product Labeling,' 2 (Report, Harvard University, 2005).

<sup>155</sup> Rourke, Outsourcing Regulation, above n 98.

<sup>156</sup> Polaski, above n 116, 19.

#### D. *Increase in Health and Safety Standards for Workers*

Workers will also benefit from harmonisation of the buyers' codes of conduct. It will maximize the productivity of the individual who would otherwise suffer from unsafe working conditions. This arrangement will protect all workers no matter which buyer they are producing clothes for.

Under the current situation, workers' health is affected adversely and their efficiency is decreasing.<sup>157</sup> The reason for this is that workers are working in an unclean working environment, which involves contact with a lot of harmful and toxic chemicals.<sup>158</sup> Workers have also demanded an end to such unhealthy work environments. Research conducted in Vietnam involving around 4,000 workers in 83 factories<sup>159</sup> indicated that factory managers in fact drew a wrong conclusion that workers value their wages over their workplace health and safety.<sup>160</sup> In Cambodia recently, there were a large number of strikes by workers in the garment industry demanding higher wages and better working conditions.<sup>161</sup>

### V. ROAD TO HARMONISATION

There are many different strategies that can be used to achieve harmonisation. The author is proposing two main steps. The first step is to adopt a single code of conduct through the cooperation of various codes of buyers. The second step is to create an independent monitoring agency, which will have the primary role to enforce compliance with the code and can educate relevant stakeholders to remedy non-compliance matters.

#### A. *Establishing the Independent Committee*

An independent committee should be created to review buyers' codes of conduct, identifying the overlapping provisions and draft a set of standard provisions to minimise the risk to workers' health and safety. The committee should be composed

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<sup>157</sup> International Labour Organization, Independent Evaluation of the ILO's Strategy, above n 24, 55.

<sup>158</sup> Ibid.

<sup>159</sup> George Domat, Paris Adler, Rajeev Dehejia, Drusilla Brown, Raymond Robertson, 'Do Factory Managers Know what Workers Want?: Manager-Worker Information Asymmetries and Pareto Optimal Working Conditions' (Discussion Paper No. 10, Better Work, 2013) 9.

<sup>160</sup> Ibid 36.

<sup>161</sup> Sean Teehan, 'Brands Call for Trade Union Law' *The Phnom Penh Post* (online), 20 January 2014 <<http://www.phnompenhpost.com/national/brands-call-trade-union-law>>.

of representatives from buyers, suppliers, workers, consumers, and government. Others relevant stakeholders such as civil society, and the public could also be able to send in their submissions or recommendations to the committee, within a particular timeframe, about the relevant standards that need to be included to protect the health and safety of workers. After this, the committee should review all the submissions and draft a single code of conduct. The committee should also take into account the concerns and suggestions of all relevant parties and interested stakeholders. It is important for the committee to bear in mind that as long as it recommends low-cost solutions in implementation of the code, the chances of factories complying will increase manifold.<sup>162</sup>

### *B. Approval of The Draft of A Code of Conduct*

After the draft of the code is completed, it should be approved by the majority of the buyers who are currently doing businesses in Cambodia's garment industry. This is workable since Cambodia organises a buyers' forum every year. The annual buyers' forum is part of Better Work, which is a unique partnership between the ILO and the International Finance Corporation dedicated to reducing poverty and providing a fair framework for globalization in developing countries.<sup>163</sup> The purpose of the annual buyers' forum is to provide opportunities to engage in constructive dialogue with relevant stakeholders, including national governments, workers' unions and manufacturer associations, to support innovative solutions to better labour standards in their global supply chain.<sup>164</sup> Since harmonisation of the buyers' codes is important to avoid unnecessary costs and confusion on the part of the export industry in Cambodia, this agenda is suitable for the buyers' forum and the possibility that buyers are going to go for approval is very high.

The buyers also need to accept the fact that sometimes the problem of workers who choose to work longer hours, which harms their health, is not only due to the factories failing to comply with the code, but also due to the low prices that buyers and retailers pay for their merchandise.<sup>165</sup> For example, during the period between

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<sup>162</sup> Locke, *Virtue out of Necessity?*, above n 10, 342.

<sup>163</sup> Better Work, *Buyers' Forum*, < [http://betterwork.org/global/?page\\_id=367](http://betterwork.org/global/?page_id=367)>.

<sup>164</sup> *Ibid.*

<sup>165</sup> International Labour Organization, *Independent Evaluation of the ILO's Strategy*, above n 24, 51.

2004 and 2008, buyers paid on average of US\$52 per dozen, which fell to US\$39 for the apparel exports to the United States market. At the same time it fell from €13.4 to €12.5 per kilogram for the garment to be exported to the European Union countries.<sup>166</sup> Falling prices pose other difficulties for remedying non-compliance matters. Therefore, it is important that buyers must understand and participate strongly in improving the working conditions by ensuring that their purchasing practices does not aid factors that cause poor working conditions to persist.

After the code is adopted, all buyers, irrespective of whether they are reputation sensitive or not, have to comply with the code in order to place orders in the Cambodian garment industry. This process will be designed to ensure that workers in this sector receive the same level of protection for their health and safety no matter which buyers they are producing the clothes for.

This arrangement is attentive to the reality that buyers do not normally give orders to factories that have the best working conditions.<sup>167</sup> As Oka argues that:

[B]etter labour standard compliance is a necessary condition for producing for reputation-conscious buyers but not sufficient condition for attracting them as other criteria such as price, quality and delivery time are driving buyers' sourcing decisions.<sup>168</sup>

Based on this observation, it is important that workers health and safety are protected over the other criteria by requiring them to comply with the model code of conduct. This will succeed as long as consumers are willing to pay a premium to ensure that the goods they buy are not made in sweatshops or if they are unwilling to buy brands that do not follow basic labour standards.<sup>169</sup>

### *C. Independent Monitoring Agency and Education Agency*

The next step is to create an independent monitoring agency with enforcement powers. Under the current system, the government enforcement agency remains weak, whereas the BFC monitors are reliable but they do not have a mandate to

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<sup>166</sup> Yevgeniya Savchenko and Gladys Lopez Acevedo, 'Female Wages in the Apparel Industry Post-MFA: The Cases of Cambodian and Sri Lanka' (Working Paper No. 6061, World Bank, 2012).

<sup>167</sup> Locke, *Virtue out of Necessity?*, above n 10, 335.

<sup>168</sup> Oka, *Does Better Labour Standard Compliance Pay?*, above n 111.

<sup>169</sup> Kuruvilla, above n 137, 13.

remedy the non-compliance matters. This paper suggests that all the state inspectors and BFC monitors should be joined together under one administration to avoid confusion and expand the scope to better the health and safety safeguards for garment workers.

This approach suggests what Kuruvilla and Verna's view that 'the failure of the national government to adequately enforce its own legislation should not be seen only as the source of the problem but should be also included as part of the solution.'<sup>170</sup> They have argued that the participation of the national government offers substantial advantages in improving labour standards because it can bring the issues into the internal debates of the country.<sup>171</sup> This helps the government claim more ownership on the implementation of its regulations.<sup>172</sup> The government is also able to reach more factories, than other players, to ensure compliance.<sup>173</sup> Lastly, the standards to safeguard the working conditions need to be appropriate for the country's own stage of development.<sup>174</sup> Together with BFC, which has a good reputation in examining the working conditions as their inspectors are well trained in national labour law, international labour standards, interviewing techniques and report writing,<sup>175</sup> these expertise with a better scope, will provide a promising solution to the health and safety problem of the workers.

The inspectors should be provided with competitive salaries, to match their substantial experience and expertise in examining the non-compliance matters. The high salaries will make these inspectors less vulnerable to the temptation of taking bribes and engaging in other corrupt practices. They should also be trained to ensure that monitoring meets both national and international standards.

Monitoring alone is not enough to help improve health and safety of workers in the garment sector. The agency's role should also extend to educating factories, buyers, workers and management. As Locke, Amengual and Mangla point out, factories

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<sup>170</sup> Ibid 3.

<sup>171</sup> Ibid.

<sup>172</sup> Ibid 25.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid 26.

<sup>175</sup> Hall, The ILO's Better Factories Cambodia Program, above n 39, 444.

comply with the laws, regulations and standards not simply because these ‘amoral calculators’ have been ‘deterred’ by the threat of sanctions, but instead because many of them have been assisted and/or educated to comply with regulations and standards by high- performing compliance officers and auditors.<sup>176</sup> For example, a research conducted in one of the world’s leading global garment companies and a pioneer in corporate codes of conduct and labour compliance programs, which authors called ABC (for confidentiality reasons),<sup>177</sup> illustrates that factories, which are the suppliers of ABC comply more to the rules and standards if they know how to do it.<sup>178</sup> In this regard, auditors view themselves not only as people who spot the problems, but also as ‘teachers, psychologists, or salesmen, trying to convince factory managers that compliance is in their own interest and showing them how to comply.’<sup>179</sup> To reach this stage, it is important that auditors are all trained in a variety of different disciplines such as human resources management, operations management, human right, health and safety.<sup>180</sup>

A study conducted by Pires in examining the practice of inspectors in promoting sustainable compliance demonstrates that sanctions through fine alone is not enough to change business practices.<sup>181</sup> He emphasises that on many occasions, factories are just ill prepared and lack capacity to change and upgrade their production practices, although the inspectors impose serious fines.<sup>182</sup> This demonstrates that some factories are usually unaware of measures that they could easily take to remedy the non-compliance matters.<sup>183</sup> On most occasions, inspectors also do not know about the industry well enough to intervene and solve specific compliance problems.<sup>184</sup> This lack of capacity on the part of inspectors cause factory owners to not listen to inspectors’ advice, and making them unwilling to change their the way of production at the inspectors’ request.<sup>185</sup> This study confirms that it

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<sup>176</sup> Locke, *Virtue out of Necessity?*, above n 10, 343.

<sup>177</sup> *Ibid* 321.

<sup>178</sup> *Ibid* 343.

<sup>179</sup> *Ibid*.

<sup>180</sup> *Ibid* 334.

<sup>181</sup> Roberto Pires, ‘Promoting Sustainable Compliance: Styles of Labour Inspection and Compliance Outcomes in Brazil’ [2008] *International Labour Review*, 199, 222.

<sup>182</sup> *Ibid*.

<sup>183</sup> *Ibid*.

<sup>184</sup> *Ibid*.

<sup>185</sup> *Ibid*.

is important for inspectors to have enough knowledge about the industry and be able to advise the factory owners about how they should adopt the law to their practices. This approach will lead to sustainable improvements in working conditions in the garment sector.

It is important to reach a consensus that all buyers who outsource manufacturing to the garment industry have to comply with the code no matter whether they are reputation sensitive buyers or not. This agreement will result in all factories who are the suppliers to be bound by the code. This approach will help overcome the complaint that some buying agents compromise or overlook the need for compliance or only consider certain standards during their contracts with the suppliers.<sup>186</sup> The Cambodian government also can make this code as a requirement for commercial agreement in Cambodia, between suppliers and the buyers.

#### *D. Strong and On Going Commitment from Buyers*

It is important that buyers have a strong commitment to implement the code. Rangarajan argues that in the Vietnam garment industry, while the laws on occupational health and safety are strong, the problem is that factories do not take those laws seriously. They also lack ongoing attention or commitment.<sup>187</sup> Locke, Amengual and Mangla draw the same conclusion that more factories will comply with the codes if buyers have a greater commitment to help the factories to comply.<sup>188</sup> This can be done by tracking of workplace conditions over time to engage factory managers and owners in an ongoing conversation over how best to tackle workplace problems in a cost-effective but sustainable manner.<sup>189</sup> In sum, making sustainable change will require a concerted effort by all buyers to put safety first in their supply chain.

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<sup>186</sup> Khan Ferdousour Rahman, *Compliance: Need of the hour in the apparel industry*, <<http://archive.thedailystar.net/law/2006/08/01/opinion.htm>>.

<sup>187</sup> Tara Rangarajan, *Management-Worker Dialogue Helps Put Safety First*, <<http://betterwork.org/global/?p=3203>>.

<sup>188</sup> Locke, *Virtue out of Necessity?*, above n 10, 336.

<sup>189</sup> *Ibid.*



### E. *Increase Incentives and Impose Serious Fines*

After the independent agency is established, the incentives and fines should be seriously implemented to increase compliance with the code. This stage is important when buyers commit to the code. This means more orders should be increased or reduced based on whether the supplier complies with the code. This is not a simple approach because in practice it is not always that the factories that comply with the codes of conduct that are rewarded and those who do not receive sanctions.<sup>190</sup> In the real industrial world, buyers normally commit to comply with the code if a clear incentive is provided.<sup>191</sup> As Berik and Rodgers emphasise that, 'a trade-incentive mechanism is the magic bullet for raising labour standards in low income, export-oriented economics.'<sup>192</sup> To do this, the Cambodian government can provide a tax incentive such as a percentage reduction of business or corporate taxes for those firms who adopt and comply with the code. This is likely to increase compliance, as the cost of adapting core codes may not be as high as the reduction in taxes.<sup>193</sup> The harmonisation also needs the support from regional and international players to pressure the buyers and support this approach.

Along with incentives, fines also need to be implemented. As Brown, Dehejia and Robertson found public disclosure encourages compliance, which is similar to sanctions on the factory for non-compliance.<sup>194</sup> As Ang et al have demonstrated in their research, the disclosure of non-compliance will help Cambodian factories to enhance code compliance efforts by both reputation sensitive and non-reputation sensitive buyers.<sup>195</sup> This finding concurs with the research conducted by Polaski in 2006, which found that public disclosure is a key element in increasing non-compliance matters.<sup>196</sup> An article published by Better Work also demonstrated that between 2001 and 2006, the period when BFC publicly disclosed the non-

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<sup>190</sup> Ibid 335.

<sup>191</sup> Graham, above n 149, 870.

<sup>192</sup> Gunseli Berik and Yana Van Der Meulen Rodgers, 'Options for Enforcing Labour Standards: Lessons From Bangladesh and Cambodia' (2010) 22 *Journal of International Development* 56, 81.

<sup>193</sup> Kuruvilla, above n 137, 29.

<sup>194</sup> Drusilla Brown, Rajeev Dehejia, and Raymond Robertson, 'Regulations, Monitoring, and Working Conditions: Evidence from Better Factories Cambodia and Better Work Vietnam' (Report, 2013) 8.

<sup>195</sup> Debra Ang, Drusilla Brown, Rajeev Dehejia and Raymond Robertson, 'Public Disclosure, Reputation Sensitivity, and labour law Compliance: Evidence from Better Factories Cambodia' (2012) 16 (4) *Review of Development Economics* 594, 606.

<sup>196</sup> Sandra Polaski, 'Cambodia Blazes a New Path to Economic Growth and Job Creation' (Report, 2004).

compliance of individual factories, cases of non-compliance went down, but following the elimination of this practice in 2006, the rate of non-compliance went up.<sup>197</sup> The conclusion can be drawn from this research that disclosure of individual factory non-compliance will help to promote compliance.

## VI. CONCLUSION

Troubled by the variation of buyers' codes of conduct, in this paper, the author has argued for a new approach to increasing the compliance on health and safety of workers in the garment industry by harmonising buyers' codes of conduct. While various legal mechanisms have been put in places to protect workers and ensure that they can work in safe and healthy working conditions, the enforcement of these provisions remains a challenge for Cambodia as the Ministry's inspectors are corrupt and accept bribes for under reporting non-compliance matters. In addition, the BFC which is the ILO program to monitor working conditions in the Cambodian garment industry has no enforcement powers to remedy non-compliance matters. In such an event, the only mechanism that might have some impact, even if temporary, is the power of the buyers.

Harmonisation of buyers' codes of conduct will help all the players such as factories owners, buyers, workers and government. It will reduce compliance costs, increase the scope of inspections and ultimately better protect the health and safety of workers in the garment industry. Based on the author's arguments, the question that might come up is why the author does not use the ILO Conventions on OSH to set standards rather than the buyers' codes of conduct. This is because the implementation of the ILO standards will require a long process and will also require different types of political engagements where the state has to be pressurised to first ratify the Convention and then implement it as municipal law. Working on harmonisation of buyers' codes of conduct and implementing them is so much more realistic in the current Cambodian garment industry context.

It is hoped that this paper will stimulate debate on the ways in which buyers' codes

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<sup>197</sup> Better Work, 'What drives compliance?: Findings from Better Factories Cambodia' (Work research, International Labour Organization and International Finance Corporation, 2012) 2  
<<http://betterwork.org/global/?p=203>>.

of conduct can be harmonised to provide a solution from the confusion that arises out of multiple codes of conduct and most importantly secure safe and healthy working conditions for garment industry workers in Cambodia.

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