



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
re SINOLINK GARMENT MANUFACTURING (KENYA)**

FINDINGS, RECOMMENDATIONS, AND STATUS REPORT

MARCH 8, 2006

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Introduction

This is a report of an Assessment of labor practices at Sinolink Garment Manufacturing Ltd (referred to hereafter as Sinolink), an apparel factory located in Mombasa, Kenya. According to factory disclosure data supplied by WRC affiliates, the factory has recently produced knitwear products for Lee Sport, a division of the VF Corporation. The facility has also produced goods for Steve and Barry's University Sportswear, Reebok, Starter (a division of Nike), Faded Glory, George, No Boundaries, Jordache, The Children's Place, FUBU, One Step Up, Energie, and Arendine.

The WRC carried out an emergency assessment of labor practices at the facility in response to a worker complaint made in August 2004. The complaint alleged serious violations of workers' rights, primarily in the areas of freedom of association and occupational health and safety. A WRC Assessment Team conducted initial on-the-ground gathering of evidence during August 1 – 3, 2004. Additional fact gathering was conducted during five separate missions to Mombasa during late 2004 and throughout 2005, as well through intermediaries. This research included analysis of documentary evidence and substantial interviews with current and former employees, members of factory management, union representatives, government officials, and other stakeholders.

On the basis of this research, the Assessment Team identified a number of serious violations of worker rights at the Sinolink facility. Most notably, the facility had violated employees' associational rights, as protected by Kenyan and international law and applicable codes of conduct, by refusing to recognize a labor union lawfully elected to represent employees, by colluding with the state police force to violently squelch lawful associational activities, and by unlawfully dismissing workers engaged in efforts to associate with the union. The WRC's investigation also documented a number of code of conduct violations in other areas, as discussed in detail in this report.

Very much to its credit, Sinolink responded to the WRC's findings and recommendations for remedial action by undergoing a dramatic, positive transformation. The facility has made substantial progress on a number of labor rights issues, most significantly becoming the first apparel factory in the Mombasa export processing zone to demonstrate respect for employees' associational rights by formally recognizing a union elected by its employees. This action is of particular significance given that the region is marked by flagrant, often violent, violation of workers' associational rights. The facility has also made substantial progress in other areas of concern, including effectively correcting problems concerning sexual harassment of female employees, occupational health and safety, provision of paid sick leave, and the use of casual employment arrangements.

The important progress at Sinolink is attributable to good faith efforts on the part of management at the facility to work with the WRC and other actors to implement changes. The management personnel that implemented these changes took over operations subsequent to the initiation of the WRC's compliance assessment. The progress is also due in large measure to the involvement of Steve and Barry's University Sportswear, a major university licensee whose products were being manufactured at the facility on a

subcontract basis without the company's knowledge. In response to the WRC's findings, Steve and Barry's intervened aggressively and played a critical role in persuading the factory to recognize the employees' union.

Unfortunately, the positive progress made to date has been undermined by the inability of Sinolink to secure steady orders from buyers. Weeks after signing the agreement to recognize the union in March 2004, the facility lost the majority of its business and was forced to shut down operations for a period of several months, laying off virtually all of its workforce. The loss of orders was a result of several factors, including a general shift in production away from Kenya in the wake of the global phase-out of apparel quotas that was completed on December 31, 2004, as well as a loss of business relationships that resulted from the change in management. In view of the positive progress made at the facility, the WRC communicated with six major buyers for whom the facility had recently produced goods to notify these companies of the important progress and to encourage them to place orders at Sinolink in order to reward the positive actions by management and to enable full remediation. However, the volume of orders placed by Steve and Barry's in combination with other orders the facility has received has not been substantial enough to enable steady or full employment. At present the facility employs roughly 350 workers, roughly one third of the number of workers employed by the facility prior to the facility's temporary closure in 2005.

While Sinolink has made significant advances on labor issues, additional action is necessary in some areas. Most notably, the facility has not yet negotiated a collective bargaining agreement with the union that represents its employees. Such an accord is crucial for improvements concerning terms and conditions of employment to be furthered and formalized. The extended delay in concluding the agreement has resulted in strong part from practical challenges faced by the factory in making long term financial commitments given its unstable economic state. We expect the facility to move forward with and conclude these negotiations in the near term.

The WRC will remain engaged with Sinolink to ensure that the progress made thus far is sustained and that remaining issues are fully addressed. Given the significant progress to date, the WRC recommends strongly that licensees and other apparel brands source product from Sinolink. Indeed, our experience indicates that the key to future progress at the facility lies less in new actions on the part of the facility's management than in the willingness of university licensees and other brands to provide the facility with steady and substantial orders at prices that enable full code compliance.

Sources of Evidence

The preliminary findings presented here are based upon the following sources of evidence:

- Interviews with roughly 30 current Sinolink workers, conducted off-site;

- Meetings and communications with members of Sinolink management, including the facility's general manager, managing director, and human resources manager;
- An interview with a representative of the Kenya Export Processing Zone Authority based at the Kipevu zone in Mombasa, Kenya;
- A meeting with the Industrial Relations Executive of the Kenya Export Processing Authority based at the national headquarters in Nairobi, Kenya;
- A meeting with the Executive Director of the Federation of Kenyan Employers;
- A meeting with the Deputy Director of the Kenya Human Rights Commission;
- Collection and analysis of relevant documents and communications pertaining to industrial relations at the factory, as well as factory payslips, newspaper articles, and other documents; and
- Review and analysis of Kenyan law in the area of industrial relations and employee compensation.

Allegations Assessed in the Report

Based upon the worker complaints and research by WRC staff, the following concerns and allegations were identified for review.

- **FREEDOM OF ASSOCIATION:** That the factory has unlawfully refused to recognize a trade union elected by the workforce; that workers have been subjected to the use of violence and threats of violence by riot police acting at the behest of company management in retaliation for workers' exercise of protected associational rights; that factory management and supervisors have pressured employees to resign from the union.
- **HEALTH AND SAFETY:** That workers have been locked inside the factory during shifts of late night and overnight overtime, causing at least one grave medical emergency; that the factory does not provide transportation to employees who work late; that medical personnel and equipment in the factory are not sufficient; and that the facility's toilets are poorly maintained and place workers at the risk of contracting diseases.
- **HARASSMENT AND ABUSE:** That workers have been frequently addressed in abusive and degrading language; that workplace discipline frequently involves corporal punishment, such as hitting and slapping; and that female workers have been subjected to sexual harassment.
- **IMPROPER USE OF CASUAL EMPLOYMENT STATUS:** That the company opted to keep workers on casual terms of employment for unnecessarily long periods of time, contrary to Kenya's labour laws; that in implementing a Return-to-Work formula entered into between Sinolink factory management and workers' representatives following an employee strike, the facility knowingly reduced the years of service and accompanying benefits of some workers by moving forward the workers' start dates of employment;
- **FORCED AND IMPROPERLY COMPENSTAED OVERTIME:** That employees are sometimes required to work overtime against their will and are not appropriately compensated for the overtime worked.

- **ACCESS TO MATERNITY LEAVE AND SICK LEAVE:** That employees are deprived of their right to paid sick leave and to paid maternity leave;

We outline below the WRC's findings with respect to each of these areas of potential non-compliance and, where appropriate, list recommendations for remedial action, developed in consultation with workers, buyers and experts in the field. A narrative of the facility's actions in response to these recommendations has also been provided.

Findings, Recommendations and Status Report

Freedom of Association

Allegations

The Assessment Team investigated the following allegations in this area: that the factory has unlawfully refused to recognize a trade union elected by the workforce; that workers have been subjected to the use of violence and threats of violence by riot police acting at the behest of company management in retaliation for workers' efforts to exercise protected associational rights; and that factory management and supervisors have pressured employees to resign from the union.

Findings

Refusal to recognize a legally constituted trade union

The WRC found substantial credible evidence supporting the conclusion that, by refusing to recognize the Tailors and Textile Workers Union (TTWU)¹, the Sinolink facility violated provisions of applicable codes of conduct and core conventions of the International Labour Organization that protect the associational rights of workers. The action also violated the Kenyan Constitution, Industrial Relations Charter (1984) and one of the country's core labour laws, the Trade Disputes Act (Chapter 234).

In Kenya, the right to workplace representation and collective bargaining is enshrined in Section 80 of the country's Constitution. This right is enforced through the Regulation of Wages and Conditions of Employment Act (Chapter 229), the Trade Unions Act (Chapter 233) and the Trade Disputes Act (Chapter 234). According to Section 5(2) of the Trade Disputes Act (Chapter 234), if a simple majority (51%) of unionisable workers in a given workplace signify their willingness to belong to a union, the employer in question is mandated to accord formal recognition to the union. The recognition agreement gives the union the legal mandate to represent the workers in question in all matters relating to their terms and conditions of employment.

¹ The Tailors and Textile Workers Union (TTWU) is a legitimate trade union body recognized by Kenyan law. TTWU is mandated to organize and represent workers textiles and apparel enterprises, including those in the Export Processing Zones (EPZs). The union has an estimated 45,000 paid up members, the majority of whom are employed in EPZ factories.

With respect to the issue of union recognition at Sinolink, the Assessment Team identified the following facts:

- On November 17, 2003, the TTWU delivered a letter to the management of Sinolink stating that the union had recruited a majority of the factory's workforce and requesting that the factory grant the union recognition and commence negotiations toward a collective bargaining agreement;
- On November 20, 2003, lacking a response from the management to the November 17th letter and following a refusal by management to meet with union representatives regarding the recognition issue, the union delivered to Sinolink management a notice of intent to strike. The notice of strike by the union was given in accordance with Section 26(a) of the country's Trade Disputes Act (Chapter 234), which requires any aggrieved party intending to take an industrial action to notify the Minister in charge of labour matters of the intention and give a notice of not less than 21 days.
- On January 3, 2004, two days before the intended strike date, the Ministry of Labour intervened in the case and called for a meeting with representatives of the Export Processing Zone Authority (EPZA), Kenya National Chamber of Commerce and Industry (KNCCI), Sinolink management, and the union. In response, the union called off the strike.
- During January 23–26, the Ministry of Labour, in consultation with the EPZA, Sinolink factory management, and the union, carried-out a membership verification exercise to determine the level of support enjoyed by the union among the factory's workforce. This exercise determined that the union had recruited 425 out of the 807 eligible employees, representing a total of 52.66%. The results of the exercise are reflected in the signed minutes of the exercise and have been confirmed through separate interviews with representatives of the union and the EPZA, both of whom were present throughout the exercise.
- After the verification exercise took place, the union provided factory management with a draft Memorandum of Recognition Agreement for its countersignature. However, factory management refused to sign the recognition agreement. Factory management also subsequently declined repeated requests to meet with union representatives regarding the issue of union recognition.

Based upon the available evidence, the Assessment Team found that the facility had violated employees' right to union representation. As noted, under Kenyan law an employer is obliged to accord recognition to a union as long as the union has demonstrated a simple majority (51%) membership among employees. The only other pre-condition set by law is that there be no rival union claiming to represent the workers in question. In the case of the Sinolink, the TTWU had recruited roughly 53% of the unionisable workforce, surpassing the simple majority threshold. The Assessment Team found there was no rival union seeking to represent the employees of Sinolink. In view

of these facts, the Assessment Team found that the Sinolink case represented a fit case for union recognition. The refusal of the factory to recognize the union represented a violation of Section 5(2) of the Trade Disputes Act (Chapter 234), Section 80 of Kenya's Constitution and ILO Convention No. 89 as well as provisions of applicable codes of conduct.

Collusion with Police to Suppress the Exercise of Associational Rights

The Assessment Team gathered substantial credible evidence supporting the conclusion that Sinolink management colluded with the Kenyan police force to suppress the exercise of protected associational activities by workers and to deny the right of workers to associate with a trade union.

Under Kenyan law, a strike action is considered a protected associational activity, so long as the strike is organized in protest of a specific alleged unfair labor practice and the strike fully adheres to the provisions of Sections 26-30 of the Trade Disputes Act (Chapter 234), Laws of Kenya. Any act by an employer to thwart a protected associational activity by workers is illegal. The WRC views the use of police force by an employer to suppress protected associational activities as an especially severe violation of basic labor rights. This principle is explained in the WRC's Model Code of Conduct, which states, "Licensees shall not cooperate with governmental agencies and other organizations that use the power of the State to prevent workers from organizing a union of their choice."² The monitoring guidelines of the Fair Labor Association proclaim a similar principle: "The employer will not use force, or the presence of police or military, to intimidate workers, or to prevent peaceful organizing or assembly."³

The allegations of worker rights abuse in this area primarily concerned actions by company management and State riot police in response to a planned strike by the company's workers. Based on substantial testimony from workers and observers, the Assessment Team identified the following facts concerning this incident:

- On April 20, 2004, the General Secretary of TTWU delivered a letter to Ministry of Labour officials and Sinolink, giving a notice of workers' intention to strike. According to the notice, the intended industrial action was to be undertaken on May 19, 2004. The letter indicated that the strike was called in protest of a refusal by Sinolink management to recognize the union chosen by a majority of the Sinolink employees.
- At approximately 6:00 am on the morning of May 19, 2004, the date on which the intended strike was to take place, riot police were already present in the area in front of the factory when a group of Sinolink workers assembled in preparation for the intended strike. Shortly after the workers gathered, the riot police converged on the workers, declared the gathering an "unlawful assembly", and ordered workers to

² Worker Rights Consortium, "Model Code of Conduct", (Section III. C. 9).

³ Fair Labor Association, "Monitoring Guidance Document" Version 1.1 Section III: Compliance Benchmarks.

return to work. When several workers declined to leave the area, they were physically assaulted by the riot police. Several workers were injured in the process. The police arrested at least one Sinolink worker, a female employee who was held on bond for 5000 Kenya shillings (equivalent to roughly \$US 70.00⁴). Fourteen workers from neighboring EPZ facilities who had joined the Sinolink workers for the protest were also arrested. As a result of the police intervention, the strike at Sinolink Kenya did not take place and the majority of the plant's workers returned to work.

- On May 19, 20, and 21, police officers armed with guns and other weapons were present inside the Sinolink factory. According to credible first hand testimony, the police stood over workers in the production line throughout each of these days. In interviews with WRC investigators, workers described the experience of "working at gunpoint" as "humiliating".

The Assessment Team concluded that the actions of the police force, in combination with the action of factory management, represented a clear violation of the rights of the facility's employees. The actions of the police force on May 19, 20, and 21 of 2004 had the clear effect of squelching the effort by workers to carry out a strike. It should be emphasized that the planned strike of May 19 was fully lawful under Kenyan law and, therefore, a protected associational activity. The union gave notice of its intent to strike on April 20, 2004, well more than the 21 days notice required by law and had pursued appropriate dispute resolution channels provided under Kenyan law.⁵ It should also be noted that the strike was motivated by the refusal of factory management to recognize a labor union lawfully elected to represent workers, a practice by management which, as discussed above, represented a clear violation of employees' legal rights. Thus, the police interference had the effect of suppressing and putting an end to a legal associational activity by the facility's employees.

It bears emphasis that the riot police were already present outside the factory prior to any unrest or disturbance of any kind on the morning of the planned strike and, particularly, that the police were then present *inside* the factory for the rest of this day and throughout the two subsequent days. The Assessment Team did not identify any evidence indicating that factory management voiced any form of disapproval toward the police actions at any time. Credible testimony from a large number of workers indicated a widespread belief among the workforce that in carrying out these actions the police were acting at the behest or with the blessing of factory management. These findings support the conclusion that factory management and the armed police force colluded to squelch the exercise of lawful associational activities by the facility's employees.

Coercion of Employees to Resign from Trade Union

The Assessment Team concluded, on the basis of detailed and mutually corroborated testimony, that Sinolink factory management personnel have pressured employees to resign from membership in the Tailors and Textile Workers Union. Sinolink thereby

⁴ Interbank Exchange Rate, May 19, 2004

⁵ Trade Disputes Act of Kenya. CAP 234. Section 26.

violated workers' rights of association, including provisions of Kenyan law (Trade Disputes Act, Cap. 234 Laws of Kenya), provisions of applicable codes of conduct, and Convention 98 of the International Labor Organization, ratified by Kenya.⁶

The Assessment Team heard credible testimony from numerous workers who stated they have witnessed factory supervisors making threatening remarks and demands to workers as part of efforts to pressure the workers to resign from the union. The testimony was highly detailed as to the language used by particular supervisors. For example, several workers stated that they witnessed supervisors and management personnel pass out sample resignation statements and tell workers that "if you don't sign this, you will be sacked" and that "there are lots of other people we can find to replace you if you don't do this."

Workers testified that in some cases, supervisors passed out sample resignation forms to entire sections of the factory at one time, waited while workers copied the text onto a separate piece of paper, and then collected the statements. In other cases, according to worker testimony, supervisors asked workers if they were members of the union or if they wished to continue as members of the union. The verbal answers were apparently considered as formal resignations from the union; workers have been removed from the roster of union-dues paying members on this basis. In an interview with the Assessment Team, a union representative testified that several hundred union members have been made to resign from the union as of May 2004.

While the specific number of workers who have been pressured to resign from the union cannot be credibly verified at this time, it appears based upon the evidence available that the practice did occur, and occurred on a frequent basis, beginning in early 2003 up until mid 2004. The practice is a clear violation of law and applicable codes of conduct.

Recommendations by the WRC regarding Freedom of Association

On November 12, 2004, the WRC communicated a set of preliminary recommendations to Sinolink management. The principle recommendation in the area of freedom of association was for the company to respect the right of employees to join a trade union of their choosing by according immediate recognition to the TTWU. The WRC also advised factory management to enter into collective bargaining agreement negotiations with the union in order to formalize terms and conditions of work and channels for addressing employee grievances. The WRC further recommended that the facility cease all acts of harassment and intimidation of employees seeking to exercise their lawful right to join a trade union, including any acts of collusion with police force to thwart the exercise of protected associational rights by the employees.

⁶ The convention specifically prohibits anti-union discrimination, including any particular acts calculated to "make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership" and provisions of applicable Codes of Conduct that prohibit anti-union discrimination.

Response from Sinolink and Buyers

Sinolink ultimately responded very positively to the WRC's recommendations in this area, but did not do so initially. In response to the WRC's initial recommendations, Sinolink factory management argued that it did not have an obligation to recognize the union because the union did not enjoy majority support among the facility's *current* workforce. Management insisted that it was willing to recognize the union only if the union conducted a new membership recruitment exercise and demonstrated majority support of the union by the existing workers. Management argued that the list of workers presented by the union in 2004 was contestable and that a majority of the workers in question have since left the company.

The WRC, however, held that the union membership verification exercise conducted in 2004, which included participation of all relevant parties, including the government, was the appropriate basis for determining whether the union had attained the necessary recognition threshold. The WRC emphasized that in a situation in which a legitimate verification exercise has been conducted, but an employer has failed to adhere to the findings of this exercise, the standard – and only legally sufficient – remedy available is recognition of the union based upon the legal right that existed *at the time that the membership verification took place*. Requiring the union to undertake fresh membership recruitment exercise would have, in the view of the WRC, punished the factory's employees for the management's failure to adhere to the law. The WRC also emphasized that prompt action to recognize the union was necessary as a sign of good faith, both to workers and outside observers, in light of past incidents that have created a hostile environment for the exercise of associational rights by workers within the facility.

The management personnel in decision-making roles at this time (in late 2004) did not agree to the WRC's recommendations. The WRC would have sought the support of the facility's licensees or other sympathetic buyers. However, it became clear that the licensee disclosed to the WRC as a buyer of the facility's products – Lee Sport, owned by VF Corporation – was not sourcing products from the facility any longer and did not appear to have substantial enough leverage with the facility to effectively push for remedial action. The other buyers present at the facility at this time did not have a track record of responding constructively to appeals for assistance in such cases and the WRC feared that the buyers' response would be to abandon the factory, causing dismissals. For these reasons, the WRC did not seek the involvement of the facility's buyers immediately, even upon the failure of management to remedy the violations. Thus, despite repeated efforts by the WRC to persuade the factory to address the issues of concern, little progress was made in the five months following the initiation of the WRC's compliance assessment in August 2004.

In late March 2005, the WRC learned that Sinolink was producing goods for Steve and Barry's University Sportswear. The goods were produced through a subcontract arrangement with another facility in Kenya with whom Steve and Barry's had placed the orders directly. Upon receiving this information, the WRC communicated with Steve and Barry's, notifying the company of the WRC's findings and requesting its support in

working to achieve corrective action at the facility. In response, Steve and Barry's became aggressively involved, communicating with the factory to support the WRC's recommendations for corrective action. At the WRC's recommendation, Steve and Barry's offered both a stick and carrot to the facility: It threatened to order a stop to the production of its products if the facility did not make the recommended changes, but committed to developing a substantial business relationship with the factory if it did undertake the recommended actions.

At roughly the same juncture, Sinolink underwent a change in management. During this restructuring, the management positions formerly held by individuals who held negative opinions about unionization were taken over by individuals with more progressive or open-minded views. The new crop of management also manifested a greater desire to resolve the worker rights issues raised by the WRC and other stakeholders.

The combination of the pressure from Steve and Barry's and the change in factory management enabled rapid, positive progress on freedom of association at Sinolink in late March and early April 2005. On April 7, 2005, Sinolink fulfilled a commitment made the previous week by signing a recognition agreement with the Tailors and Textile Workers Union (TTWU). The company's actions demonstrated, in the eyes of the WRC, a positive step forward in formalizing a system of positive labor relations in the facility. Testimony from Sinolink workers indicated that this action, coupled with a new workplace attitude exhibited by supervisors, brought a substantially raised level of respect for associational rights. The adoption of the recognition agreement also represented an important precedent in Mombasa, a region in which no other export apparel company had demonstrated respect for associational rights by recognizing a trade union freely elected by workers.

Labor relations between the factory and worker representative have been rocky since the recognition accord was signed. While the parties appeared to make progress toward formalizing terms of work in a collective bargaining agreement during a series of negotiation sessions following the signing of the recognition accord, the negotiations ultimately broke down over economic issues, with the company arguing that it could not agree to permanent increases in labor costs given its precarious financial state. Shortly thereafter, the company issued new letters of employment to workers altering their employment status from permanent to contract status without negotiating the terms of these contracts with the union, contrary to the parties' recognition agreement. The WRC is hopeful, however, that labor relations in the facility can be improved and that a collective bargaining accord can be finalized in the near future.

Occupational Health and Safety

Allegations

The WRC investigated allegations that workers have been locked inside the factory during shifts of late night and overnight overtime, creating a potential for grave medical

emergencies and fire hazards; that the factory does not provide transportation to employees who work late; that medical personnel and equipment in the factory are not sufficient; and that toilets are poorly maintained and place workers at the risk of contracting diseases.

Findings

The Assessment Team concluded that the factory management had failed to take basic occupational health and safety measures in accordance with Kenyan law and industry standards, in the following ways:

Employees have been locked inside the factory premises during overnight shifts

Locking workers inside the factory is, of course, an extraordinarily serious violation of health and safety standards, placing workers at serious risk of physical harm. Indeed, the unblocked escape routes are among the most basic precautions mandated by law and established in industry occupational safety standards.

Numerous workers gave mutually corroborative testimony to the effect that Sinolink management had locked workers inside the factory or in certain production areas, during night shifts. During these periods, workers are sometimes required to work through the night until 5:00 am while supervisors slept in separate quarters that are locked from the factory floor. This finding is based upon mutually corroborative testimony from multiple Sinolink factory employees, union officials, and a government officer. Based on the WRC's research, it appears that this practice was common among apparel suppliers within the Mombasa Export Processing Zone at the time of the compliance assessment.

The grave dangers posed by this practice are illustrated by the experience of one employee, whose case has been corroborated independently by several workers. The employee, who at the time of his interview with the Assessment Team worked in Sinolink's cutting department, was performing a shift of mandatory overtime on the evening of July 14, 2004 when, at roughly 1:45 am, he experienced a severe hand injury. The worker immediately sought to leave his production room in order to access the nearest first aid kit, which was located in an adjacent area. However, all of the doors to the room were locked. The key for the door was with one of the supervisors who was sleeping in a room nearby. The injured worker and several of his colleagues proceeded to yell and pound on the doors of their production room in an effort to wake up the supervisor. According to the testimony, roughly 30 minutes had elapsed by the time the supervisor was awoken and arrived to open the door. Upon being let in the room, the injured employee and several coworkers sought to access a first aid kit. However, the workers found that the first aid kit was lacking basic materials, including bandages and analgesic for body wounds, necessary to treat the injury. Consequently, the injured employee was forced to walk to the public hospital located several kilometers away to seek treatment. The worker had to walk the entire distance because the company did not provide a vehicle and the worker did not have the required travel fare. When the worker arrived at the hospital, because of staffing shortages at the hospital during the night, he

was not able to obtain basic treatment for his injury until approximately 7:30 am the next morning. By this time, he had endured substantial pain and loss of blood.

Failure to provide adequate health and safety materials

The provision of first-aid materials is an element of general health and safety standards under all mainstream code of conduct regimes. It is also specifically provided for under Kenya law. Section 50(1) of the Factories Act (Chapter 514, Laws of Kenya) requires companies to provide and maintain a readily accessible first-aid box or cupboard. The Act (Section 50(4)) further requires that “Each first-aid box or cupboard shall be placed under the charge of a responsible person, who shall always be readily available during working hours, and a notice shall be affixed in every workroom stating the name of the person in charge of the first-aid box or cupboard provided in respect of the room.” The Assessment Team found that the company did not, prior to the WRC’s investigation, keep and maintain a readily accessible first-aid kit or notices regarding its location and did not have a system of delegated persons to administer the first aid that was available, as required by law and applicable codes of conduct.

Lack of provision of personal protective equipment

Based upon worker testimony, the Assessment Team found that employees had generally not been provided with protective masks and uniforms, contrary to Section 53 of the Factories Act (Chapter 514), Laws of Kenya. Workers testified that masks and uniforms were typically provided only in advance of scheduled visits from buyers. When uniforms have been provided in such cases, the costs of these items have been deducted from workers’ wages. During interviews with the Assessment Team, workers emphasized that they would very much wish to have protective masks and other clothing given the large amount of airborne dust in the facility.

Unsanitary restroom facilities

The obligation of employers to avail safe and clean sanitary facilities is specifically provided for in Employment (Sanitary) Rules: Legal Notice No. 159/1977 and in Section 18(1) of the Factories Act (Chapter 514) of Kenya. That latter states, “Sufficient and suitable sanitary conveniences for the persons employed in the factory shall be provided, maintained and kept clean, and effective provisions shall be made for lighting the conveniences; and where persons of both sexes are or are intended to be employed (except in the case of factories where the only persons employed are members of the same family dwelling there), such conveniences shall afford proper separate accommodations for persons of each sex.” The Assessment Team found, on the basis of extensive worker testimony, that the facility’s restroom facilities have frequently been filthy, poorly maintained, and often unavailable to workers. Sinolink workers interviewed testified that the restroom facilities were typically cleaned and restocked only in advance of scheduled visits from buyers. Workers testified that some bathrooms have generally been closed and unavailable to workers and are only made available during visits from buyers.

Lack of transportation for employees working late at night

Kenyan labor laws require employers to provide convenient means of transport to all employees who work late (beyond 6pm) or those who report early (before 6 am). The Regulation of Wages and Conditions of Employment Act (Chapter 229), Subsidiary Legislation L.N 11/1989 Section 24 makes it obligatory for employers to provide employees, at the cost of the employer, with “adequate healthy means of transport from an agreed point to their working place and from their working place to an agreed point”. Under the Act, employers are obligated to either provide transportation directly or provide employees with funds to procure the cheapest and convenient means of transport. The provision of transportation is of great importance to employees’ safety given the general insecurity situation in Kenya and specifically given that the region in which Sinolink is located is widely known to be a high crime area, particularly at night.

The Assessment Team heard consistent and mutually corroborative testimony from workers that the factory did not provide any form of transportation to employees, including those working at night. Workers complained that, at the close of late night shifts, ending generally between 10:00 pm and 5:00 am, they were forced to walk home, which for many workers is several kilometers away. In other cases, as noted, workers had been locked inside the factories until the following morning when they are able to walk back home safely. The WRC verified that the factory did not provide transportation to staff as required by Kenyan labor laws.

Recommendations regarding Occupational Health and Safety

The WRC recommended that Sinolink generally take the following corrective actions with respect to occupational health and safety:

- Cease the practice of locking workers inside of the factory. At no time should workers’ free and immediate exit from the facility be barred or delayed by reason of company policy or physical obstruction.
- Ensure that health and safety equipment, including first aid kits, are kept in full stock and available to employees. Ensure that individuals delegated to administer first aid supplies are trained in their proper usage and are available at all times.
- Ensure that workers are provided with personal protective equipment, including masks designed to prevent exposure to airborne dust particles as required under the Factories Act (Chapter 514).
- Ensure the facility’s restroom facilities are cleaned and restocked with materials regularly and made available to workers without unreasonable restrictions.
- Provide transportation free of charge to employees, especially those working at night, in accordance with the country’s relevant labor legislations.

Response from Sinolink

The WRC has confirmed that Sinolink has addressed health and safety concerns identified and demonstrated a positive attitude toward addressing new issues that arise.

- The practice of locking workers inside the facility has ceased. A factory walk-through found no obstacles in the path of exit in the facility.
- Sinolink has installed first aid kits throughout the facility. Factory management has organized training for delegated workers on the provision of first aid, fire fighting, and other health and safety issues. Testimony from workers indicates that access to the first aid kit has not been unreasonably restricted.
- Some workers have been provided with protective gear, such as protective masks. The steps taken in this area are positive, though there is need for additional improvements.
- Our review of the facility's sanitary conveniences shows that suitable and sufficient sanitary facilities have been provided by the factory. The facilities are fairly clean, effectively lighted and accessible to all staff at all times. This is consistent with the requirements of the Factories Act (Chapter 514).
- Since the company has not had orders sufficient for late night overtime to have occurred since the WRC issued its recommendations, there has not been an opportunity to verify that transportation to employees working at night has been provided.

Verbal and Physical Harassment and Abuse

Allegations

It was alleged that workers are frequently addressed in abusive and degrading language; that workplace discipline frequently involves corporal punishment, such as hitting and slapping; and that female workers are subjected to sexual harassment.

Findings

The Assessment Team concluded that factory management and supervisory personnel had frequently subjected workers to both verbal and physical abuse, and thereby violated provisions of applicable Codes of Conduct that prohibit harassment and abuse of employees.⁷

⁷ Currently, there are virtually no international instruments that deal with violence, especially those targeted at women in the workplace. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is still the most comprehensive international instrument in this

The Assessment Team heard credible and consistent testimony from workers that managers on frequent occasions used derogatory and insulting language, including racial epithets, as a routine part of discipline. Workers testified that they were frequently called names in Chinese, such as “Senjimi” (“Stupid”) and “Kuseari mama pio” (“Your mother’s cunt”). Several workers stated that supervisors have also made derogatory statements in English, such as pointing to their heads and saying, “Kenyan’s are small here” and “small brained”. According to the worker testimony, the most aggressive insults were typically made during instances in which workers did not understand commands issued by their supervisors in Chinese. Several workers also testified that supervisors had on some occasions slapped workers, also as a form of discipline. One male worker testified that, within the two weeks prior to the interview, a supervisor had shouted an instruction to the worker in Chinese. When the worker did not understand the command and consequently did not act, the supervisor hit the worker twice with his hand in the left side of the worker’s face in a slapping motion, and then yelled at the worker, “go home.” Other workers testified that the hitting of workers by supervisors occurred on an almost daily basis. Workers stated that the problem was especially pronounced in certain parts of the factory, including the cutting and sewing areas, and by particular supervisors.

Testimony also indicated that female workers have been subjected to sexual harassment by male supervisors. According to the testimony, the supervisors had made aggressive and demeaning comments of a sexual nature to workers. Workers also complained that they were searched upon leaving the facility in an overly aggressive manner, in some cases by male supervisors.

Recommendations regarding Harassment and Abuse

The WRC recommended that factory management ensure that supervisors treat employees with dignity and respect, and that insulting, demeaning, or offensive language should never be used as a means of discipline or otherwise. Corporal punishment should never occur. The factory should adopt a clear policy prohibiting harassment and abuse, which should state clearly that abusive language, shouting and corporal punishment will not be tolerated. All supervisors should be provided training on harassment and abuse.

Response from Sinolink

The WRC has been able to verify that the treatment of workers by supervisors has improved. The use of offensive and demeaning language and physical discipline by supervisors has ceased. According to several Sinolink workers interviewed by the WRC during its recent visit to the company, recognition of the union by the company in April 2005 induced positive changes in the relationship between the factory’s workers and

area. Article 11 of the General Recommendation of the Convention prohibits sexual harassment. The violation is, however, not defined in either the Kenyan laws or ILO’s Conventions, although the ILO Committee of Experts has alluded to prohibition of harassment under Convention No. 111 on elimination of all forms of discrimination in workplaces.

management. The presence of the union in the factory also provided a structured procedure for reporting and dealing with cases of verbal, physical and sexual abuses in the company. The workers, however, feel that the present low visibility of the union in the facility might reverse the gains so far made in this area.⁸

Improper Use of Casual Employment Status

Allegation

It was alleged that workers are frequently kept on casual status for substantially longer than the law allows, and are consequently deprived of compensation and workplace rights to which they are entitled.

Findings

Interviews with Sinolink workers revealed that the majority of the facility's employees had been kept on "casual" terms of employment from the date the company began operations in 2001 up until an industrial strike undertaken by workers on July 21, 2004. The use of casual employment status beyond a period of ninety days is a violation of Subsidiary Legislations enacted under Section 7 of the Regulation of Wages and Conditions of Employment Act (Chapter 229), Laws of Kenya. Legal Notice No. 298/1987 for example provides that "A casual employee shall be confirmed to regular monthly terms of employment after working consecutively or intermittently for ninety days in any one year".

The Assessment Team heard testimony from numerous workers that they have been employed at the factory for substantially longer than three months, but were still considered to be on casual employment status. For example, one male employee, whose testimony was corroborated by additional workers, stated that he had been employed at the factory for more than two and a half years, but he is still compensated as a casual employee. Workers who had been employed longer than three months but were nonetheless considered "casual" were deprived of sick leave, maternity leave, annual leave, weekly rest days and other rights to which regular employees are legally entitled. According to consistent testimony, the factory did not provide employees hired on casual status with payslips or any other record of payment, but rather paid each worker with cash each week.

Following the strike of July 21, 2004, a Return-to-Work Formula was brokered between the representatives of Sinolink management, workers, and the Ministry of Labour. The agreement required that workers who had been kept on casual employment status for

⁸ A significant problem in this area is that the facility's Workers Committee was dissolved following the redundancies effected by the company in mid 2005. Many of the worker leaders present in the facility before the dismissals have not since returned. The loss of this system of elected worker representatives is a step backward.

unnecessarily long periods be conferred permanent/regular status in accordance with the law.

The WRC found, however, that the company subsequently violated both the spirit and the letter of this agreement. As indicated by copies of the documents in question, the factory issued its estimated 1,200 workforce with appointment letters after signing the Return-to-Work formula. The company, however, set the date of employment of the respective workers as July 26 2004, the same day the letters were issued rather than the date on which the workers actually began work. As a result, the employees were deprived of the accrued benefits of their previous years of service with the company. Moreover the Assessment Team found that the factory had reduced the monthly salary paid to employees upon issuing the appointment letters, such that worker salaries were now substantially lower than before the Return-to-Work agreement was entered into.

Recommendations regarding the Use of Casual Employment Status

The WRC made the following recommendations in this area:

- Strictly limit the use of casual employment arrangements to instances of no more than three months to accord with Kenya law.
- Compensate all employees at no less than the basic salary they earned before the issuance of the new appointment letters.
- Provide back pay and benefits dating back to the true start dates of all employees who were issued appointment letters on or after July 26, 2004.

Response from Sinolink

The WRC can report the following actions by Sinolink in this area:

- Sinolink has effectively stopped the inappropriate use of casual employment arrangements. There are presently few if any workers employed on a casual worker arrangement at the facility. However, a majority of the factory's workers have been reabsorbed and engaged under contract employment. Although contract employment is provided for under Kenya's labor statutes, the company erred by neglecting to negotiate with the TTWU before introducing it. The company's failure to do so violated the parties' recognition agreement and collective bargaining principles.
- Sinolink has increased employee salaries such that workers who were issued new appointment letters, changing their employment status from casual to regular, earn more than they did prior to the issuance of the letters.
- Subsequent to issuing the new appointment letters, Sinolink did not provide back pay and benefits to employees dating back to the employees' true start dates.

Forced and Improperly Compensated Overtime

Allegation

That workers have been forced to perform overtime work on a frequent basis, and that this work is either under-compensated or uncompensated, in violation of Kenyan law.

Findings

The Assessment Team concluded that the factory has violated workers' rights by requiring employees to work overtime and failing to compensate them at the rate established by Kenyan law for overtime hours worked. Kenyan law defines the regular workweek for employees in the apparel trade as forty-five hours of work spread over six days in one week, comprising, unless otherwise agreed upon by the parties, five days of eight hours of work per day and one day of five hours of work.⁹ Any work that workers perform beyond the regular workweek is overtime. All overtime work must be carried out voluntarily by each employee and compensated at a rate of 1.5 the normal hourly rate.¹⁰

The Assessment Team heard consistent credible testimony from multiple employees who stated that they have been required to work substantial amounts of overtime against their will and that they have not been paid appropriately for this work. It appears, based upon this testimony, that overtime work has been required or coerced through two primary means.

The first means is through outright verbal orders by managers and supervisors and the associated practice of locking workers inside the factory overnight, as discussed in the section on Health and Safety. Workers testified that on certain occasions, as recently as the month prior to the interview with the Assessment Team, they have been told by supervisors that they needed to perform overtime in order to complete an order in time for a shipping deadline. If workers did not comply with the order to work overtime, they were told they would be fired. In addition, according to credible and mutually corroborative worker testimony, workers have been locked inside their production areas throughout the night. In some cases, the workers' supervisors slept in separate rooms while the employees continued working. As discussed in the section on Health and Safety, the practice of locking workers inside the factory places workers in extraordinary physical danger and represents a severe violation of their rights under Kenyan law, international norms, and applicable codes of conduct.

The second means by which overtime is not fully voluntary concerns the setting of unreasonably high production targets for the time allotted for the completion of work assignments. Several workers testified that they, as well as the majority of other workers

⁹ Article 5 of the Regulation of Wages (Tailoring, Garment Making and Associated Trades) Order L.N. 169/1972

¹⁰ Ibid.

in their section, have on a frequent basis needed to work well beyond an eight hour work day in order to achieve their target. The setting of unreasonably high targets by the company was also confirmed during our interviews with the Ministry of Labour officials. According to the officers, the targets set by the company's management are unachievable. The officers stated to the Assessment Team that the targets are not consistent with existing domestic laws. The Regulation of Wages and Conditions of Employment Act (Chapter 229, Laws of Kenya) provides for payments based on hourly, daily, weekly or monthly rates and not as per targets achieved. The setting of targets at a level that cannot be achieved in a normal eight-hour shift puts unreasonable and excessive pressure on employees to work beyond the workday in order to make a basic salary and have any hope of obtaining production bonuses. The practice is thereby a violation of workers' rights under both the Employment Act, Cap. 226 and the Regulation of Wages and Conditions of Employment Act, Cap. 229 Laws of Kenya.

Recommendations regarding Forced and Inappropriately Compensated Overtime

The WRC issued the following recommendations in this area:

- Ensure that any work carried out in excess of the normal work week, as well as any work carried out on Sundays, the employees' normal rest day, and on public holidays is entirely voluntary and is compensated in accordance with the law.
- Ensure that all managers and supervisors are adequately trained to adhere to the law and the company's overtime policy.
- Ensure that factory production targets do not have the effect of coercing employees to perform overtime.

Response from Sinolink

Since the time that the WRC issued its findings and recommendations, Sinolink has not had sufficient business for overtime work to take place. Thus, it has not been possible thus far to verify the company's adherence to these recommendations. However, a factory walk through found that the company had posted notices explaining the legal requirements for the minimum wage and overtime payments prominently in the facility, a good sign of compliance. Given management's positive response regarding the other recommendations discussed in this report, there is good reason to expect that the related overtime problems will not continue.

Access to Maternity and Sick Leaves

Allegation

It was alleged that workers have been deprived of access to paid sick leave and paid maternity leave to which they are legally entitled.

Findings

The Assessment Team found that the factory had repeatedly violated employees' rights under Kenyan law and applicable codes of conduct with respect to the provision of sick leave and maternity leave.

The domestic laws relevant to labor conditions in this area are located in the Regulation of Wages and Conditions of Employment Act (Chapter 229, Laws of Kenya). In addition to outlining the minimum statutory terms and conditions of employment for all categories of workers in the country, the Act contains subsidiary legislation which prescribes the basic terms and conditions of employment for various industries, including firms dealing in tailoring, garment and apparel activities (Tailoring, Garment Making and Associated Trades Order, Legal Notice No. 169/1972). According to the Order, an employee in the garment manufacturing, apparel and tailoring enterprises with at least three weeks of consecutive service with an employer is entitled to 30 days sick leave with full pay and thereafter a sick leave of 21 days on half pay.

Interviews with Sinolink workers, union representatives, and officials of the Ministry of Labor indicated that Sinolink did not, hitherto, grant sick leave to its employees. According to this testimony, in some cases employees who have failed to report to duty as a result of illness have been terminated. More often, employees stated that they were allowed to take sick leave, but were not paid for this time. During some instances, unpaid sick leave was granted without constraint. In other instances, workers were pressured to refrain from taking even unpaid sick leave. For example, one employee testified she had asked her supervisor several times for leave because of a stomach illness, but each of these requests was denied. Only when the worker became severely ill with diarrhea was she allowed to take sick leave, though she was not paid for any of the several days she took off from work. The practice of denying paid sick leave is a clear violation of Kenyan law.

The Assessment Team investigated allegations that the factory has failed to grant maternity leave to its female employees. Article 13 of the Regulation of Wages (General) Order stipulates that all workers covered by the act, including garment workers, are entitled to two-months of maternity leave with full pay. The Assessment Team heard consistent credible testimony from numerous workers that the factory has a current policy of granting maternity leave to workers, but that workers are not paid for any of the time they take off of work due to pregnancy. Numerous workers stated that, in the past, the factory had fired workers who became pregnant. Several workers referred to the case of an employee who, upon returning from unpaid maternity leave, was dismissed. According to the workers interviewed, the practice of denying female employees maternity leave, coupled with the high unemployment, in Kenya has been a key contributor to social unrest in the facility and increased rates of abortion.

Recommendations regarding Access to Maternity Leave and Sick Leave

The WRC made the following recommendations in this area:

- Provide employees with access to compensated sick leave and maternity leave.
- Offer reinstatement to all employees for whom evidence indicates that they have been dismissed as a result of illness.

Response from Sinolink

The WRC confirmed through worker testimony that, during the period since the WRC issued its recommendations, Sinolink has provided paid sick leave to employees. According to this testimony, paid sick leave has been granted without hurdles for employees.

With respect to paid maternity leave, it does not appear that any workers have requested such leave since the issuance of the WRC's findings and thus is not possible to verify compliance in this area. As noted elsewhere, the company's demonstrated compliance in other areas augurs well for successful remediation in this area.

Conclusion

As discussed in this report, the Sinolink factory has made significant positive steps forward in its treatment of employees. The facility's willingness to demonstrate respect for employees' associational rights by recognizing a trade union lawfully elected to represent workers is unprecedented in the Mombasa free trade zone. Treatment of employees in other areas of concern has improved markedly. Problems in the areas of occupational health and safety, harassment of employees, and access to sick leave have all been effectively corrected. However, despite this significant progress, the factory has been forced to lay off the great majority of its workforce due a lack of orders. At present, the facility is operating at only a fraction of its full capacity and faces an uncertain future.

The difficulty Sinolink has experienced in attracting orders is indicative of a key problem at the heart of current code of conduct enforcement strategies. The process of pressing factories to fully comply with code of conduct standards in an industry in which violations of such standards are rampant entails asking the factories to take on costs that most of its competitors are able to avoid. As a practical matter, if positive change is to be sustainable in this context, it is essential that factories that choose to separate themselves from their competitors by making fundamental improvements in their labor practices be rewarded by the industry. Without such rewards, it is difficult to see how positive change is viable in the long term.

In the case of Sinolink, the WRC's efforts to persuade the facility to undertake corrective actions were strongly aided by an explicit commitment to Sinolink by Steve and Barry's University Sportswear to place substantial orders at the facility once the recommended

actions were taken. This commitment contributed to the facility's prompt remediation on the core issues concerning freedom of association and ultimately improvements in a range of other areas. Steve and Barry's did follow through with this commitment in part by placing a relatively small order with facility in late 2005. In the context of what licensees are have typically been willing to do in terms of rewarding positive progress on labor issues through the placement of orders, this action was significant – particularly given that Steve and Barry's did not previously have a direct relationship with the facility. In the context of the volume of orders that were needed in practice to enable steady and secure employment, however, the size of the orders placed by Steve and Barry's – in combination with orders from other buyers – has not been sufficient, nor has it been reflective of a deep or long-term commitment to the facility. At present, it is not clear that the facility will be able to remain operational without an influx of substantial business.

The inability of Sinolink to attract steady orders has undermined progress on labor rights issues. Since the formal recognition of the union, negotiations between management and workers toward the finalization of a collective bargaining accord have stalled, principally due to the shortage of orders and economic uncertainty at the facility. The completion and implementation of such an accord is critical to fortify the improvements made thus far, to formalize core terms and conditions of employment, and to guide the relationship between workers and their employer. Given the lack of effective enforcement of domestic labor law in Kenya (as in many other apparel producing countries), self-regulation within the framework of collective bargaining is the most viable and sustainable means of ensuring respect for worker rights in the long run.

A positive outcome at Sinolink would likely have positive multiplier effects within Kenya. If Sinolink can demonstrate it is possible to attract stable orders on the basis of exemplary labor practices, this reality would send a powerful, positive signal to other employers in the Mombasa free trade zone – where violations of associational rights are rampant and where Sinolink remains the only facility to recognize union representation of its employees. Additionally, at present, the relatively low level of code compliance in Mombasa has the documented effect of undermining progress on labor rights issues in other regions of Kenya.¹¹ Improvements in the level of code of conduct compliance in Mombasa could therefore have positive ripple effects in other regions of the country.

For all of these reasons, significant efforts by universities, their licensees, and others should be directed at ensuring that Sinolink is able to secure steady and substantial enough orders to stabilize its economic state. Indeed, in view of the significant progress made by Sinolink to date, the strong potential for additional progress, and the broader

¹¹ For example, apparel industry employers in the Athi-River export processing zone, located on the outskirts of Nairobi – the only zone in Kenya in which employers have negotiated a master collective bargaining accord with employees – have made repeated and explicit threats to revoke the extant collective bargaining agreement and refuse any future agreements until firms in the Mombasa EPZ accept union representation of their employees. Wages levels and other terms of employment in Mombasa are inferior as compared to Athi-River and other export processing zones within Kenya.

positive impacts that a successful outcome could engender, the WRC strongly recommends that licensees and other apparel brands source products from the facility.

The WRC will remain engaged with Sinolink to ensure that the remaining issues highlighted in this report are fully addressed and that the progress made thus far is sustained.

Appendix

Members of the WRC Assessment Team for Sinolink Garment Manufacturing

Jeremy Blasi

WRC Field Representative/ Africa

Jacob Omolo

Mr. Omolo is an Assistant Research Fellow at the Institute of Policy Analysis and Research in Kenya, where his research focuses on employment, labor market policies, and development of Micro and Small Enterprises. An economist by training, Mr. Omolo has extensive experience on labor market issues in Kenya and East Africa generally, and has had a long working relationship with Kenya's employers' organizations, trade unions, General Wages Advisory Board and Industrial Court. Mr. Omolo is a member of the Research and Development Committee of the Productivity Centre of Kenya (PCK), a body established through tripartite arrangement to nurture and mainstream productivity in Kenya.

Elisa Slattery

Ms. Slattery is currently the Legal Fellow for the Africa Program at the Center for Reproductive Rights. Prior to that, she worked at the Federation of Women Lawyers in Kenya as a Third Millennium Foundation Human Rights Fellow. Elisa has a broad range of experience in legal advocacy and human rights, having worked on UN human rights mechanisms at the Columbia Human Rights Institute, women's rights issues at Legal Momentum (previously NOW LDEF), and prisoners' rights at NYU's Brennan Center for Justice, among other professional experiences. Elisa received her law degree from Columbia Law School, her M.A. in History from Duke University, and her B.A. from the University of Virginia.