

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

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AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.
In order to achieve this goal, AMRC upholds the principles
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Labour Law and Workers' Rights in Cambodia¹

Malcolm Falkus and Stephen Frost

Cambodia is one of the poorest countries in the world and still reeling from the effects of a civil war that ended in 1991. Its economy is predominantly agrarian, and more than three quarters of the workforce are engaged in agriculture. However, since 1993, the Cambodian Government, in consultation with the World Bank and International Monetary Fund, has implemented a programme of economic and structural adjustment designed to stabilise the economy and attract foreign investment. The programme has been partially successful; Cambodia has attracted investment but only in a narrow band of manufacturing ventures (garments in the main, with a smattering in the footwear sector). Investment in garment production has caused the number of factories in the sector to increase from 44 in 1997 to nearly 250 in 2002.

Cambodia adopted the labour law detailed in this chapter in 1997. In spite of many shortcomings, it is a progressive law, which guarantees freedom of association and the right to strike, provides for the free registration of labour unions and collective bargaining, and sets a minimum age of employment. However, it covers only the for-



mal employment sector, which is a small proportion of the total labour force.

Of particular interest here is the US-Cambodia Textile Agreement signed on 20 January 1999. This three-year (extended in December 2001 for another three years) Trade Agreement on Textile and Apparel sets an export quota for garments from Cambodia to the USA. However, the agreement ties annual increases (originally up to 14 percent but since increased to 18 percent) in Cambodia's export entitlements to compliance with Cambodia's Labour Code as well as internationally recognised core labour standards. This requires the International Labour Organisation (ILO) to monitor registered factories to ensure they meet the relevant standards. Although the ILO bases its monitoring programme on the laws outlined below, the unique nature of the project deserves more attention than we give here.

In theory, Cambodian labour law is well equipped to meet the needs of an expanding industrial workforce. In practice, enforcement is weak – despite the US-Cambodia Textile Agreement – and employers routinely disregard workers' rights enshrined in the Law.

Political and legal structure

Since the overthrow of the monarchy in 1970, a number of political parties and regimes have prevailed in Cambodia. Following their victory in the civil war that resulted after the toppling of the monarchy, the Khmer Rouge instituted a programme of 'communist' reform in 1975. Renamed Democratic Kampuchea (DK), the new regime fought a war with Vietnam until in 1979 the Khmer National United Front for National Salvation – with Vietnamese backing – deposed them. Few in the world community recognised the new pro-Vietnamese regime of the Peoples' Republic of Kampuchea (PRK), and in the United Nations (UN) the deposed DK held Cambodia's seat as the legitimate government until 1990. In 1989, after Vietnamese troops withdrew, the PRK renamed itself the State of Cambodia, abandoned 'communism', and implemented free-market reforms. The PRK and DK fought for control of the country. During this period, the Kampuchean People's Revolutionary Party (KPRP) was the only legally recognised political organisation and ruled supreme. In 1991, the

KPRP changed its name to the Cambodian People's Party (CPP). After the UN-brokered Paris peace accord of 1991, a UN protectorate helped rule the country until elections in 1993. More than 20 parties competed for seats, but a royalist party (FUNCINPEC) and the CPP – led by Hun Sen – won the vast majority. A three-party coalition formed government, with Prince Norodom Ranariddh of FUNCINPEC sharing the prime ministership with Hun Sen. The new constitution of 1993 restored the monarchy and the country was renamed the Kingdom of Cambodia. In 1997, Hun Sen ousted Ranariddh and his party subsequently dominated the 1998 election. Ranariddh and Sam Rainsy (an opposition candidate) claimed the election was unfair, and consequently the CPP and FUNCINPEC formed a new coalition government in 1998, with Hun Sen as prime minister and Ranariddh presiding over the National Assembly.

Cambodia has 20 provinces and three municipalities. Governors administer all units. The King is Cambodia's head of state, but his role is mostly confined to ceremony and providing advice. Cambodia has a bicameral parliament in which is vested legislative authority. The National Assembly is the more powerful lower house. A constitutional amendment in 1999 created a Senate. The 1993 constitution provides for an independent judiciary under a Supreme Court. The government drew up a new labour law in 1997, and mandated the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY) with the power to implement it. The government also promised to provide labour courts but has not yet done so. As a result, the common court system handles all breaches of labour law. In addition, the government has provided a Labour Inspectorate with considerable powers to impose penalties and to act as arbitrators. It has also developed provisions for a council of arbitration, although like the labour courts it has yet to see the light of day.

Cambodia's legal system revolves around a hierarchy of codified laws. Cambodia's Constitution is the supreme law, which explicitly and unambiguously commits Cambodia to fundamental principles relevant to labour law. Article 36 provides for the rights of all Khmer citizens to choose their employment, to equal pay for equal work, and to membership of trade unions. Article 37 provides the right to strike and non-violent

Box 1

ILO Conventions

Cambodia joined the ILO in 1969 and the government has since ratified 12 ILO conventions, the last in August 1999. They are:

Convention No. 4	Night Work (Women), 1919. Ratified 24 February 1969
Convention No. 6	Night Work of Young Persons (Industry), 1919. Ratified 24 February 1969
Convention No. 13	White Lead (Painting), 1921. Ratified 24 February 1969
Convention No. 29	Forced Labour, 1930. Ratified 24 February 1969
Convention No. 87	Freedom of Association and Protection of the Right to Organise, 1948. Ratified 23 August 1999
Convention No. 98	Right to Organise and Collective Bargaining, 1949. Ratified 23 August 1999
Convention No. 100	Equal Remuneration, 1951. Ratified 23 August 1999
Convention No. 105	Abolition of Forced Labour, 1957. Ratified 23 August 1999
Convention No. 111	Discrimination (Employment and Occupation), 1958. Ratified 23 August 1999
Convention No. 122	Employment Policy, 1964. Ratified 28 September 1971
Convention No. 138	Minimum Age, 1973. Ratified 23 August 1999
Convention No. 150	Labour Administration, 1978. Ratified 23 August 1999

demonstration. Article 46 states that women cannot lose their jobs due to pregnancy, and gives the right to maternity leave. Article 75 stipulates the role of the state to establish a social security system for workers.

However, the most important legislation with respect to this chapter is the Labour Law, enacted by the National Assembly and promulgated by Royal Decree No. CS/RKM/0397/01 of 13 March 1997. Other legislation also affects labour; for example the law on the export of Cambodian labour to foreign countries. In many cases, statutory regulations govern the implementation of Labour Law. Most of these take the form of *Prakas* issued by the MOSALVY.²

Other laws are also important, such as royal decrees by the King of Cambodia, the signing and ratification of a number of international declarations and conventions that have become part of Cambodia's national law, and customary and traditional law, which are also sources of labour law, for example, in dispute settlement.

Labour force

The 1998 census of Cambodia recorded a total population of 11.4 million, 5.9 million females and 5.5 million males. In mid-2001, the Cambodian government esti-

mated the population at 13.2 million. 76.5 percent of Cambodian workers are engaged in the agricultural sector, with a mere 6.4 cent in the industrial sector, and the remainder in the service industry. Because 43 percent of the population is under 15 years old, only about half the population is employed. The workforce consists of approximately the same numbers of males and females.

It was only in 1994 that the government encouraged the development of the first factories, and since then the garment sector has become the overwhelmingly dominant source of export revenue, accounting for 97.2 percent of all exports in 2001. In the most comprehensive study to date on the sector, the number of garment factories as of late 2001 stood at 246.³ Shoe factories numbered around 18.⁴ Estimates of the number of workers in the sector vary, but 190,000 is the most realistic figure, which means they account for around 50 percent of the industrial workforce.⁵

The labour Law

The Cambodian Labour Law is extensive. It consists of 19 chapters and 396 articles, and covers the labour contract, collective labour agreements, general working conditions (including wages, hours of work, holidays

and leave, and provisions for children and women), health and safety (occupational health and safety, the rights of the labour inspectorate, and accident compensation), trade union freedom, settlement of labour disputes, provisions on strikes and lockouts, the labour advisory committee, and the labour courts. Space here is too limited to do anything but offer an overview of important aspects of the law and make note of some of the shortcomings between the theory of the law and actual practice.⁶

Employers and employees

Most importantly, the Law defines employers and employees. Article 2 includes the following stipulation: ‘All natural persons, or legal entities, public or private, are considered to be employers who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously.’⁷

Article 3 defines employees, in part as: ‘Workers ... are every person of all sex and nationality, who has signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private.’

Although the law defines employees as persons who have ‘signed an employment contract,’ workers need not actually sign their name on paper to lay claim to a valid contract of employment. The contract might instead be verbal. Nevertheless, there must be a contract, recognised in law.

The Law covers *all* employees (including part-time and casual workers) with a valid contract of employment *unless* there is a provision that exempts them. Article 1 provides a list of exemptions, which includes judges, persons appointed to a permanent post in public service, personnel of the police, the army, and the military police (who are governed by a separate statute), personnel serving in air and maritime transportation (who are governed by special legislation), and domestic or household servants (unless otherwise expressly specified under this law). Domestic or household servants are entitled to apply the provisions on freedom of union under this law.

Internal regulations

Articles 22-31 of the Labour Law relate to what are termed ‘internal regulations of the enterprise’. Under

Article 22, each enterprise to which the Labour Law applies and employs eight or more workers must have and display internal regulations. These include conditions of hiring, calculation and payment of wages and perquisites (such as tips), benefits in kind (such as meals or uniforms), working hours, breaks and holidays, notice of termination period, health and safety measures, duties of workers and sanctions that can be imposed, and other matters required by the Labour Inspectorate. Internal regulations cannot infringe existing labour laws, nor can they limit the rights of workers under ‘conventions or collective agreements applicable to the establishment’.

Of particular importance are stipulations that ‘disciplinary sanction must be proportional to the seriousness of the misconduct’ and that the ‘Labour Inspector is empowered to control this proportionality’. Moreover, employers are not permitted to impose fines for misconduct.

The employment card

‘Every person of Cambodian nationality working as a worker for any employee’ must possess an employment card. Although the law stipulates Cambodian nationality, foreign workers must also hold one, but special conditions apply. The card not only identifies the holder, but ‘the nature of work for which he has contracted, the duration of contract, the agreed wages and the method of payment, as well as the successive contracts.’ When workers are hired or dismissed, ‘wages and wage increases’ are recorded on the card. In effect, the employment card is a record of the employee’s employment history, and contains a record of successive jobs, employers, and wages.

Termination of the contract

Having signed a contract, it is difficult under Labour Law to break it. If a contract is broken, employees or employers may be entitled to compensation under certain circumstances. Article 73 recognises only three ways in which a contract can be terminated before the due date without damages:

- by mutual agreement between employer and employee;
- serious misconduct by either party (see section below);
- events (such as floods or earthquakes) over which the parties have no control.

If either the employer or the worker wishes to end a fixed term contract *without* the consent of the other party, they may incur damages. If the employer dismisses the worker, damages will be ‘at least equal to the remuneration he would have received until the termination of the contract’ (Article 73). If the worker leaves his or her job without the consent of the employer, damages may be ‘an amount that corresponds to the damage sustained’. Article 73 also includes provisions about the due notice the employer should give about the expiry of the contract, and an entitlement of the worker to receive ‘severance pay’. This severance pay must be ‘at least equal to five percent of the wages paid during the length of the contract’, unless there is a collective agreement concerning severance pay.

Serious offences

Articles 83 and 84 define serious offences with reference to the termination of contracts. Serious offences on the part of the employer include the use of fraudulent measures to entice a worker into signing a contract, refusal to pay all or part of the wages, repeated late payment of wages, abusive language, threat, violence or assault, failure to provide sufficient work to a pieceworker, and the failure to implement labour health and safety measures in the workplace as required by existing laws. Serious offences on the part of the worker include stealing, misappropriation and embezzlement, fraudulent acts committed at the time of signing a contract or during employment, serious infractions of disciplinary, or safety and health regulations, threats, abusive language or assault against the employer or other workers, inciting other workers to commit serious offences, and political propaganda, activities or demonstrations in the establishment.

Indemnity for dismissal

Articles 89 and 90 deal with the indemnity an employer must pay for dismissal when the labour contract ‘is terminated by the employer alone, except in the case of a serious offence by the worker’ (Article 89). If the worker has worked continuously between six and 12 months, the indemnity is ‘seven days of wage and fringe benefits’ (Article 89). If the worker has worked continuously for more than 12 months, the indemnity is 15 days of wage and fringe benefits for each year of service up to

a maximum of six months of wage and fringe benefits. For periods of over one year, the law considers a fraction of one half or more a full year. If an employer lays off a worker for ‘reasons of health’, the worker is also entitled to indemnity under Article 89. Article 90 specifies that if the employer ‘through his incitements, pushed the worker into ending the contract himself, or, if the employer treats the worker unfairly or repeatedly violates the terms of the contract, he also has to pay indemnities and damages to the worker’.

Mass lay-offs

In circumstances of mass lay-offs, Article 95 lists three measures for protecting workers:

- the employer must, in consultation with the workers’ representatives, take steps to minimise the effects of the lay-off on the workers;
- dismissed workers have priority for two years if the enterprise hires workers again;
- MOSALVY can, ‘in exceptional cases’, suspend the lay-off for a period ‘not exceeding thirty days in order to help the concerned parties to find a solution’.

Discrimination

Cambodian law (the Constitution, international law, and Cambodian Labour Law) strictly forbids all forms of discrimination in employment. Article 31 of the Cambodian Constitution states (in part) that ‘every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.’ Under international law, as stipulated in Article 31 of the Constitution, ‘The Kingdom of Cambodia shall recognise and respect human rights as stipulated in the UN Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.’ Cambodia has also ratified ILO Convention No. 111, which concerns discrimination (Employment and Occupation). The Government has also ratified the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

Under Article 12 of the Labour Law, ‘no employer shall consider race, colour, sex, religion, political opin-

ion, birth, social origin, union memberships or union activities to be the basis for deciding upon hiring, defining and assigning work, vocational training, advancement, promotion, remuneration, granting social benefits, discipline or termination of the employment contract'. We should note that the law also states that 'distinctions, rejections, or acceptances based on qualifications required for a specific job shall not be considered as discrimination.' Moreover, some laws, including provisions of the labour code, require the employer to discriminate based on sex. For example, Article 175 prohibits some forms of night work for women and children. Third, some laws, such as Article 264, restrict employers from hiring foreign workers.

Individual and collective contracts

At the heart of the Cambodian Labour Law (as in all systems based at least in part on common law principles) is the notion of contract.

An individual contract is a legally binding relationship between the employer and the employee. The arrangements for conciliation and arbitration of disputes ultimately depend on this contract. Various statutory entitlements, such as paid holidays, maternity leave, and so on, are usually conditional upon the formal existence of an employment contract. The existence or non-existence of an employment contract can be important for deciding an employer's *tort liability* (that is, civil offences that can give rise to claims for damages). For example, an employer may be liable to third parties for certain tortuous actions by employees, but not those of an independent contractor.

Given the significance of individual contracts, it is important to recognise that a person who works for someone else is not always an employee. The most important distinction here is between an employer and independent contractor. Whereas the Labour Law refers to the contract between the employer and employee as a contract *of service*, the law refers to any relationship involving an independent contractor as a contract *for services*. The Law does not cover this second sort of contract. Under a contract for services, an independent contractor does not join the employer's business, but provides an agreed service while remaining independent. This distinction means that the Law does not obligate employers to provide benefits (such as paid leave

and so on) to independent contractors. Moreover, an employer is not liable for damages caused by an independent contractor.

Collective agreements are normally agreements that have been reached between an employer and a trade union, and deal with a great range of matters relating to employment conditions, such as wages, hours of work, breaks, duties, sanctions for misconduct, and many other matters. Article 98 stipulates that a collective agreement *cannot be less favourable* to the workers than existing laws or regulations (such as the Labour Law), or less favourable than existing collective agreements. By early 2002, MOSALVY had registered only 20 collective agreements, most of which simply reaffirmed existing labour rights.⁸

Minimum wage

Cambodia has minimum wage legislation, and Articles 104, 105, 107, 108, 109, and 111 specifically deal with this issue. In short, the minimum wage 'must ensure every worker of a decent standard of living compatible with human dignity,' based on recommendations from the Labour Advisory Committee (LAC). Article 108 deals with the difficult question of a minimum wage for piecework workers, stipulating that an *average* piece rate worker must be able to earn the minimum monthly wage by working the same hours as a worker on a contract of service. However, MOSALVY has not set a minimum wage.

That MOSALVY fails to set a minimum wage in the face of a Labour Law that clearly stipulates one is an anomaly partially explained by a Base Daily Wage. Although this is a minimum, it is one in name only and the government uses it to calculate the levels of fines for breaches of the Labour Law on minimum wages. The Ministry of Justice and MOSALVY issued a joint *Prakas* on the Base Daily Wage on 20 March 1998 where it was set at 8,000 Riels (approximately US\$2.10).

Although there is not yet a general minimum wage in Cambodia, on 17 January 1997, MOSALVY and the Garment Manufacturers Association of Cambodia (GMAC) agreed on a minimum wage (though it should be understood more accurately as an award) for garment workers. Following a series of strikes and demonstrations by garment workers, the LAC struck down a new agreement on 13 July 2000. Effective from 1 August

2000, the new agreement awarded garment workers an increase on the guaranteed minimum wage from US\$40 to US\$45 per month. Further provisions relate to public holidays, pay during the probationary period, extra payments for seniority, and for meals or meal allowances when workers do overtime.

In practice, many workers earn less than the US\$45 per month stipulated in the revised agreement. Surveys by Womyn's Agenda for Change (WAC) and the Cambodian Labour Organisation (CLO) detail regular underpayment of wages.⁹ Some factories, prior to the increase, paid a minimum wage of US\$15-20 for a 48-hour week. The survey by WAC found that 51.4 percent of workers on probation were paid less than US\$30 per month. For those who had finished probation 28.7 percent received less than US\$45 per month.¹⁰ It is also worth noting, as both WAC and CLO indicate, that the minimum monthly wage for six eight-hour days per week is well below that required to live in Phnom Penh.

Hours of work, overtime, and holidays

The Labour Law regulates that 'the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week'. MOSALVY issued *Prakas* 80-99 in 1999, which specified that employers must *request permission* from MOSALVY for overtime work. Overtime is allowable in special circumstances, 'such as inventory and balance, audit and closing an account', and for work 'caused by abnormal circumstances which do not' allow the employer to wait for other action. According to the *Prakas*, overtime must be voluntary, and an employer cannot discipline workers who do not volunteer for overtime.

In essence, the law stipulates that employers cannot extend hours on more than 30 days per year, that the daily working day cannot be extended by more than one hour, and that hours of work cannot exceed 10 hours per day. All workers are entitled to one rest day of 24 consecutive hours per week, paid public holidays, paid annual leave, sick leave, maternity leave, and special leave (for births, deaths, marriages, and so on).

These laws are regularly ignored within the garment sector. Workers' routines include four to six hours of overtime per day during busy periods, and it is not unusual for employers to grant only one rest day per month.¹¹

Special conditions for women, children, disabled, and foreign workers

Cambodian law provides for special working conditions for all groups mentioned.

The rights of women under Cambodian legislation include the provisions of (a) the Constitution, and International Conventions and Declarations (such as CEDAW), and (b) the Labour Law.

The Labour Law makes special provisions for women and children in Chapter VI, Section VIII. Although not completely clear, the title 'joint provisions' suggest that the group of articles (172-176) apply to women as well as children. Thus, like children, women should not undertake hazardous or strenuous work, and there are restrictions on night work. Articles 182-187 refer specifically to women, and concern provisions for maternity leave and breaks for breast-feeding, and the establishment of day-care centres (the latter for establishments employing more than 100 females). With regard to children, 'all forms of sexual violation (harassment) are strictly forbidden' (Article 172).

Apart from these provisions, several different legal frameworks protect children's rights in Cambodia: the Constitution, ILO Convention 138 (which Cambodia ratified in 1999), and the Labour Law. The Cambodian Constitution includes the UN Convention on the Rights of the Child. One of these rights is a right to an education. Furthermore, Article 32 prohibits children 'from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.' Cambodia has also signed and ratified ILO Convention No. 138, concerning the Minimum Age for Admission to Employment. The Convention specifies a minimum age for employment of 'not less than 15 years' and not below the age of compulsory schooling (Article 2.3). Cambodian Labour Law also affords protection. Section VIII of Chapter VI explicitly deals with Child Labour and Female Labour, while Chapter III deals with apprentices.

Implementation

There are, however, several serious omissions. First, the law defines specific areas of prohibition but does not define criteria. For instance, it prohibits 'hazardous and

strenuous' work for children under 18 (and they are forbidden to work underground or in quarries), yet neither 'hazardous' nor 'strenuous' are defined by law. And again, children from 12-15 can be employed in enterprises for 'light work,' but there is no definition of 'light work'. Second, the Law covers only a minority of working children, and excludes children working within the family unit (e.g. in agriculture), the informal sector, and those in domestic service. Third, the law contains provisions absolving enterprises from age and occupation restrictions where there are 'considerable difficulties' involved. This opens the way for widespread use of child labour. Fourth, even though all employers must keep a register of the dates of birth of children under 18 in their employment, Article 179 does not indicate the documentation employers should provide. Moreover, there is no general registration of births in Cambodia, which makes it hard for employers to meet this provision.

The proportion of disabled people in Cambodia is among the highest in the world (Between 200,000 and 300,000 people suffer from physical disabilities including approximately 50,000 who have survived landmines, 60,000 with paralysis from polio, 100,000 who are blind, and 120,000 who are deaf). Despite obvious problems, the disabled also face discrimination by employers and a lack of facilities (ranging from specialist medical facilities to ordinary resources like ramps into buildings). To some extent, the Constitution protects the rights of the disabled in general provisions for all Khmer citizens to equal opportunities in employment, education, and participation in society. Article 31 of the Constitution explicitly recognises various UN instruments, including the Universal Declaration on Human Rights. These instruments accord people with disabilities equal rights. The Constitution, therefore, maintains the equality of the disabled with those not disabled. Article 74 of the Constitution further provides that 'the State shall assist the disabled and the families of soldiers who sacrificed their lives for the nation'.

Article 261 states that foreign nationals must not only possess a workers' identity

card, issued by MOSALVY (the same provision as for Cambodian nationals), but also a work permit issued by the same Ministry. The work permit is valid for one year, but foreign workers may extend this so long as the work permit does not go beyond the workers' residency permit. Article 262 allows the government to revoke the work permit for a number of reasons. These include 'when the job to be extended by the holder in the Kingdom of Cambodia is competing with Cambodian job seekers in the country' (Article 262).

Legal status of unions

Cambodia has ratified ILO Convention Nos. 87 and 98: the Freedom of Association and Protection of the Right to Organise Convention, and the Right to Organise and Collective Bargaining Convention respectively. The Cambodian Constitution and Labour Law guarantee the rights of citizens to form and join trade unions.

Since the proliferation of the garment sector and the development of a large industrial workforce in a relatively small number of workplaces, trade union organising has accelerated. As of January 2002, there were 245 registered trade unions in Cambodia.¹² (See Appendix 2 for the list of Federations). Of those, 218 represented workers in the garment sector. The remainder represented workers in tobacco, rubber, cement, construction, wood processing, and hotel and beverage industries. There were 76 strikes in 1999, 90 in 2000, and 80 in 2001.¹³ According to the USA Embassy, trade union membership across the board stands at one percent of the



Young women selling textiles (Credit: Eugene Kuo)

workforce (which accounts for 13 percent of its total industrial workforce), though it also estimates that 25 percent of garment workers ‘knowingly belong to a union’.¹⁴ Despite the higher figure in the garment sector, trade unions face several challenges.

First, in the race to attract members, emerging unions devoted considerable resources to expanding membership rather than assisting workers with their problems. This trend has diminished somewhat as numbers have stabilised. Nowadays, trade unions are less likely to compete for members than they are to focus their energy on developing links inside the factories to assist workers with their concerns.¹⁵ In fact, according to the American Centre for International Labour Solidarity (ACILS) in Cambodia, several trade unions are at the stage of negotiating collective bargaining agreements on behalf of their members.¹⁶ Nevertheless, trade unions are still very weak.

Second, factory owners and managers have developed their own ‘trade unions’. According to ACILS, Cambodia has about 60-70 of these fake ‘unions’, and they serve to dilute the efforts of active unions. Factory-owned trade unions present a clear conflict of interest with regard to workers’ ability to represent their own interests.¹⁷

Third, despite claims that union membership stands at 130,000, the real figure is closer to 50,000, which is a very small proportion of the total workforce. With low wages, few members can afford to pay union dues, and none of the federations/unions are yet able to support themselves financially on the basis of the dues collected (unions usually set dues at around 1,000 Riels per month) from their membership.¹⁸ Some federations and unions privately admit that only about 10 percent of members are paid-up. All trade unions suffer from a lack of resources, training, and experience.

Fourth, the CPP – the ruling party – wields considerable power over some of the union federations. Engquist argues that the CPP provides several trade union federations with much needed funds.¹⁹ Labour organisers concur, and both ACILS and the Coalition of Cambodia Apparel Workers Democratic Union (CCAWDU) believe that the CPP control three or four federations.²⁰ The USA Embassy believes that five federations are ‘pro-government’.²¹ The CPP has a strong interest in the garment industry’s success and will sometimes reign in

trade unionists they believe pose a threat to the revenues generated by the sector.

Fifth, and this has implications for the role of the government in general and labour law in particular, some trade unionists now believe that the most appropriate organisation with which to bargain is not the Cambodian government or factory owners/managers but the multinational garment companies (such as Gap and Nike). Unionists believe that these are the only parties with enough power to exert pressure on all other parties to ensure decent working conditions.²² They may be right, but only time will tell.

Conflicts and disputes

Cambodian Labour Law outlines two key principles for calling a strike; first, Article 319 guarantees and recognises the right to strike, and second, workers can only engage in strikes the law regards as legal, which involves certain procedures and restrictions. Provisions for strikes and lockouts are contained in Chapter XIII, Articles 318-337. Labour Law also recognises the right of employers to a lockout, with similar qualifications and procedures to those of legal strikes (Articles 319-322). A lockout is a strong weapon that employers often use during labour disputes. It entails closure of the workplace and the withdrawal of the rights of workers to enter the site. Under these circumstances, *all* workers, including those who do not wish to strike, lose their pay.

Labour Law legitimises four reasons for calling a strike if:

- both parties reject an arbitral decision;
- the Council of Arbitration fails to deliver its decision within the fifteen-day time limit set under Article 313;
- a union ‘deems that it has to exert this right to enforce compliance with a collective agreement or with the law’;
- unions believe that it is the only way to ‘defend the economic and socio-occupational interests of workers’.

Workers can strike only after they agree to do so by secret ballot (Article 323) and give at least seven working days prior knowledge.

Articles 330-337 of the Labour Law concern the effects of strike action. Strikes must be peaceful (Article 330), and non-strikers have freedom to work and to be

‘protected from all form of coercion or threat’ (Article 331), although the Law does not explicitly deal with picket lines or behaviour whilst picketing.

The strike suspends (but does not terminate) the labour contract. Therefore, the employer is not legally bound to pay workers during the strike. However, employers must reinstate workers after the strike is settled (Article 332). Moreover, an employer cannot punish or impose any sanctions on a worker ‘because of his participation in the strike’ (Article 333). During the strike, the employer cannot recruit new workers to replace those striking except to ensure the minimum service is provided under Articles 326 and 328, or if existing workers do not provide this service (Article 334). Moreover, ‘any violation of this rule obligates the employer to pay the salaries of the striking workers for the duration of the strike’ (Article 334).

However, the Labour Law also imposes a number of important restrictions before a party can call a strike. Under Article 320, ‘the right to strike can be exercised only when all peaceful methods for settling disputes with the employer have already been tried out’. The Law ignores the important question of who is to decide when the parties have exhausted ‘all peaceful methods’. Workers in ‘essential services’ are prohibited from striking (Article 327). Under some circumstances, strikes are *illegal*. Workers cannot if they do not comply with the regulation set out under the Labour Law, or if they use violent methods. The Labour Court (or, since there is no Labour Court, a general court) deems a strike legal or illegal. If the court declares a strike illegal, strikers must return to work within forty-eight hours or the law can find them guilty of serious misconduct (Article 337).

The labour inspectorate

In the first eleven months of 2001, the Ministry conducted 1,287 labour inspections.²³ However, the major problem with regard to inspections remains the lack of resources and political will to enforce MOSALVY’s recommendations.²⁴ The inspectorate can impose fines and refer serious cases to the common courts. However, the penalty clauses outlined in the Law contain many omissions. In fact, there are no fewer than 262 Articles in the Labour Law for which there is no specific Penalty Clause attached.

Monitoring factories under the US-Cambodia Textile Agreement

The US-Cambodia Textile Agreement sets an export quota for garments from Cambodia to the USA and offers a potential increase in Cambodia’s export entitlements if garment factories comply with the Labour Law. This unique situation has provided for a government mandated foreign inspectorate to monitor and assess Cambodian factories. Whilst unable to enforce the law, this quasi-inspectorate recommends factories to the USA Government that they believe have complied with the law and should be given permission to increase their quota of garments to USA markets (a considerable financial incentive). This is the first time a government has directly linked trade with labour standards, and the role of the USA and its partners in inspecting factories deserves a brief mention.

The Agreement stipulates that the USA will determine on 1 December of each Agreement period (starting 1 December 1999) ‘whether working conditions in the Cambodian textile and apparel sector substantially comply with [Cambodian Labour Law and international labour standards]’. After signing the Agreement, both governments requested that the ILO develop a programme to ensure factories complied with the terms. In consultation with MOLSAVY, GMAC, the Cambodian trade union movement, and the USA Government, the ILO appointed a Chief Technical Officer and began to monitor factories in January 2001.²⁵

Unlike inspections and monitoring under the Cambodian Labour Law (where all factories are legally subject to inspection), the ILO monitoring system relies on factories registering if they want to participate in the programme. However, the Ministry of Commerce issued a *Prakas* indicating ‘that only registered factories would be eligible to use allocated export quotas and/or buy export quotas through official bidding for the export of textiles to the USA’.²⁶ Clearly, the incentive to register is very strong, but factories are not legally bound to do so. As of September 2002, factories registering numbered 202. Participating factories sign a Memorandum of Understanding, which outlines duties and responsibilities of the ILO and the factory.

The system also lays out very clearly the procedures for undertaking monitoring visits. To September 2002, the ILO had trained eight inspectors to monitor facto-

ries. Inspectors use a detailed 156-point checklist corresponding to the Labour Law. They write reports and conduct follow-up visits. The interesting issue at stake here is the formation of a parallel system of monitoring overtly associated with linking trade to labour standards.

Occupational health and safety

Cambodia does not have any occupational health and safety regulations. In their place, the Labour Law stipulates very briefly and vaguely in Articles 229 and 230 a number of general provisions, such as an exhortation that all ‘establishments and work places must always be kept clean and must maintain standards of hygiene and sanitation’ and that ‘all establishments and work places must be set up to guarantee the safety of workers’.

In practice, Cambodia has no mechanism to determine standards of hygiene and sanitation or the safety of machinery, tools, and hazardous materials. Moreover, it has no laws to punish managers for non-compliance. According to the ILO Garment Sector Working Conditions Improvement Project’s latest quarterly report, the failure to implement even the most basic health and safety policies is widespread (ILO 2002). In July 2002, the Project took matters into its own hands and published *Occupational Safety and Health in Cambodia’s Garment Sector: A Basic Safety and Health Policy and Self-assessment Checklist*. It is still too early to assess the influence of this document, but at the time of writing (November 2002) health and safety levels in the garment sector were inadequate. Keep in mind that monitors regularly assess garment factories to ensure compliance to Cambodian Labour Law (with a 14 percent increase in exports per annum acting as an incentive) and they are thus the workplaces most likely to meet international standards and norms on worker safety. As the comments below suggest, few have met even basic health and safety standards.

By mid-2002, less than five percent of 65 garment factories monitored had implemented any sort of health and safety policy.²⁷ Sixty-six percent maintained records on accidents in the workplace, but only 10 percent reported those accidents to the relevant authorities as obliged by the law. With regard to compensation for injury, a legal entitlement, only one factory provided ‘almost full compensation’. Thirty-five percent of factories paid some compensation, but employers in three facto-

ries simply deducted compensation payments from the claimants’ wages. Although there are no regulations on the issue, the majority of factories had adequate emergency procedures (unblocked fire exits, functional fire extinguishers, emergency evacuation drills, and so on), but 29 percent of enterprises had not trained personnel how to use a fire extinguisher, and 14 percent had locked one or more emergency exit. As with emergency procedures, the Law offers no guidelines on the handling of hazardous waste. Of the factories using a substantial amount of washing and dyeing products, 87 percent did not provide data sheets in Khmer, and workers in 80 percent of those factories indicated they had received no training in the use of potentially hazardous materials. Machine safety, thus far not regulated, was inadequate in 43 percent of factories, and only 17 percent of enterprises took any measurements to ensure sufficient ventilation and air circulation. Even on basic issues such as the provision of drinking water and general cleanliness, factories falls short. On the former, 34 percent of those that provided water (and all but one factory did) placed it in unhygienic locations (such as near the toilets). On the latter, only 43 percent met basic standards of cleanliness. Seventeen percent of enterprises did not comply with the law on the provision of hygienic and appropriate toilets for workers.

Monitoring and enforcing occupational health and safety regulations are essential for worker safety. Cambodia lacks all the most basic regulations.

Conclusion

Cambodia’s Labour Law is a progressive document that could protect workers if the relevant institutions rigorously implemented and enforced it. However, the small industrial workforce, a lack of resources and capacity, the dominance of the garment sector as an employer and source of revenue (in the context of the US-Cambodia Textile Agreement), and the clear link between trade and labour standards have resulted in a number of as yet unresolved contradictions. The gap between theory and practice remains wide on key issues.

Looking to the future, the over-reliance on the garment sector may have profound implications when the Agreement on Textiles and Clothing (ATC) phases out the current quota system for garments, the Multi-Fibre

Agreement (MFA), in 2005, although GMAC and the Government have appealed to the USA to continue sourcing from Cambodia. Only time will tell if Cambodia's fledgling industrial workforce will bear the brunt of lost orders under the dismantling of the MFA. If they do, an already low level of compliance on major conditions will most likely diminish with disastrous consequences. Even if Cambodia's economy grows steadily, current labour law seems poorly positioned to provide little more than at best minimum standards.

Notes

1. The authors gratefully acknowledge funding from SEARC Project No XX. A much longer version of this paper was published as a SEARC 'Working Paper', (November 2002). See Malcolm Falkus and Stephen Frost, 'Labour Relations and Regulations in Cambodia: Theory and Practice', City University of Hong Kong, Southeast Asia Research Centre Working Paper No. 37 (Hong Kong: SEARC, 2002), at <http://www.cityu.edu.hk/searc/WP.html>
2. A 'Prakas' is an 'implementing regulation' pertaining to a general law, and has the same force of law.
3. Womyn's Agenda for Change, 'Labels to Wear Out: A Social Study of Women Workers in the Cambodian Garment Industry' (Phnom Penh: n.p., 2002, pp. 22-23).
4. *Ibid.* p. 22.
5. *Ibid.*, p. 26; Political and Economic Affairs Office, US Embassy, 'Labour Trends Report, April 2002' (Phnom Penh: US Embassy, 2002, p. 2).
6. For a more detailed discussion of the law, see Falkus and Frost, 'Labour Relations and Regulations in Cambodia'.
7. For all reference to the Law, 'Labour Law of the Kingdom of Cambodia', (Ministry of Commerce, 1997), at http://www.moc.gov.kh/laws_regulation/rkm_labor_law_97.htm
8. 'Labour Trends Report', (Political and Economic Affairs Office, p. 9).
9. Womyn's Agenda for Change, 'Labels to Wear Out'; CLO, 'Report on the Working Condition of the Garment Industry Sectors in Cambodia from September 1999 to February 2000' (Phnom Penh: CLO, 2000).
10. Womyn's Agenda for Change, 'Labels to Wear Out', (p. 65).
11. *Ibid.*
12. 'Labour Trends Report', Political and Economic Affairs Office, p. 2).
13. Wayne Arnold 'The AFL-CIO organizes in Cambodia,' *New York Times*. 12 July 2001; 'Labour Trends Report', (Political and Economic Affairs Office, p. 6).
14. 'Labour Trends Report', (Political and Economic Affairs Office, p. 2).
15. Womyn's Agenda for Change, 'Interview with American Center for International Labor Solidarity (ACILS) official', (27 July 2002).
16. *Ibid.*
17. *Ibid.*
18. 'Labour Trends Report', (Political and Economic Affairs Office, p. 2).
19. Michael Engquist, 'Making Garments worth Producing: A Survey on the Trade Union Movement within the Cambodian Garment Industry'. (April 2001, p. 10).
20. Womyn's Agenda for Change, 'Interview with ACILS official'; Womyn's Agenda for Change, 'Interview with Coalition of Cambodia Apparel Workers Democratic Union (CCAWDU) official,' (15 July 2002).
21. 'Labour Trends Report', (Political and Economic Affairs Office p. 2).
22. Womyn's Agenda for Change, 'Interview with ACILS official'.
23. 'Labour Trends Report', (Political and Economic Affairs Office, p. 7).
24. For copies of an Inspector's report sheet, warning notice, and record of special inspections, see Appendices 1-3 in Falkus and Frost, 'Labour Relations and Regulations in Cambodia'.
25. International Labour Office, 'First Synthesis Report on the Working Conditions Situation in Cambodia's Garment Sector', November 2001, at <http://www.ilo.org/public/english/dialogue/cambodia.htm>.
26. 'Fourth Synthesis Report on the Working Conditions Situation in Cambodia's Garment Sector,' (International Labour Office, September 2002), at <http://www.ilo.org/public/english/dialogue/ifpdial/publ/cambodia4.htm>
27. ILO, 'Fourth Synthesis Report'.

Appendix 1

Labour organisations

Most of Cambodia's 245 registered trade unions now fall under one of nine trade federations/national unions.*

1. Cambodian Federation of Independent Trade Unions (CFITU). A direct descendent of the 'communist-era' trade union, the CFITU claims 24,807 members in 56 enterprises, 48 of which are garment factories. Other CFITU unions are in rubber, cement and beverage industries, and the Sihanoukville port. The Federation has a history of preventing workers from taking part in strikes, and holds a seat on the LAC.

2. Cambodian Unions Federation (CUF). The CUF claims a membership of 55,700, 90 percent of who work in 125 factories in the garment sector (seven factories from other sectors are also affiliated). The CUF has registered 60 of those with MOSALVY. CUF receives funds from the ILO, and its president serves as the vice-chairman of LAC. Members of the Federation rarely participate in strikes and its union leaders play down workplace issues.

3. The Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC). The FTUWKC claims 23,000 members in 80 factories (45 registered with MOSALVY), and is an affiliate of the opposition Sam Rainsy Party. It has a history of calling strikes and demonstrations, some of which have included violence. In 2002, the FTUWKC has called for a reduction in the working week from 48 to 44 hours. It holds a seat on LAC.

4. The Cambodian Labour Union Federation (CLUF). The CLUF claims 7,000 members in 14 factories, 11 registered with MOSALVY. This Federation is directly descended from the Free Unions Federation (FUF), whose president at the time invested in garment factories and advised the Prime Minister. The CLUF praises the government and criticises members who partake in strikes, although in the last twelve months it seems to be taking a tougher stand on labour law. The current president, Som Aun, previously represented the employees of a small real estate company owned by the same person who established the FUF.

5. National Independent Federation of Textile Unions in Cambodia (NIFTUC). The CLO helped create NIFTUC as a coalition of grassroots garment unions. It claims 17,000 members in 24 factories, including one shoe factory and two textile factories. It has been a vocal advocate of workers' rights and called several strikes. In 2000, a public falling out with CLO fragmented the NIFTUC.

6. Coalition of Cambodia Apparel Workers Democratic Union (CCAWDU). CCAWDU result from NIFTUC's dispute with the CLO when members broke away from the Federation. It claims to represent 7,000 workers in 14 garment factories, 11 of which CCAWDU registered with MOSALVY. It is a vocal advocate of workers' rights, and garners funds from union dues and Oxfam (Belgium). CCAWDU is among the most active and independent labour federations in Cambodia (along with FTUWKC and NIFTUC). It is not a member of LAC.

7. Cambodian Workers Labour Federation Union (CWLUFU). A garment factory administrator leads CWLUFU, and claims to represent 4,000 garment workers in eight MOSALVY-registered unions. It is a relatively inactive Federation, and has been silent on labour policy.

8. Khmer Youth Federation of Trade Unions (KYFTU). In 2001, several CFITU-affiliated unions broke away and formed KYFTU. It claims 16,000 members in 10 MOSALVY-registered unions. Apart from a jewellery fabrication plant, all affiliated factories are in the garment sector. It mediates factory disputes, and joined the call for shorter working hours.

9. Cambodian Union Federation of Building and Wood Workers (CUFBWW). CUFBWW claims 1,600 members in several cement, brick, and plywood factories. CUFBWW has close links with CUF, depends on it for financial support, and shares office space.

* 'Labour Trends Report', (Political and Economic Affairs Office, pp. 2-6).