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LABOUR RELATIONS AND REGULATION IN CAMBODIA: THEORY AND PRACTICE*

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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 IMF, has implemented a program of economic and structural adjustment designed to stabilise the economy and attract foreign investment. The program 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 shoe 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 report 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 formal employment sector, which is a small proportion of the total labour force.

***This paper is part of a larger project on labour regulation funded by the Southeast Asia Research Centre, City University of Hong Kong. Studies of the situation in Malaysia, Singapore and Vietnam will also be published as working papers. Each report follows a similar structure. They will also become part of an Internet site that sets out the regulatory environment in those countries.**

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 United States. However, the agreement ties annual increases (originally up to 14 per cent but since increased to 18 per cent) in Cambodia's export entitlements to Cambodia's success in promoting compliance with – and effective enforcement of – Cambodia's Labour Code as well as internationally recognised core labour standards. This requires the ILO to monitor registered factories to ensure they meet the relevant standards. Although the ILO bases its monitoring program 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.

1. POLITICO-LEGAL FRAMEWORK

1.1 Political 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 program 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 (KNUFNS) – 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 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 3 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, and Veteran Affairs (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.

1.2 Legal Structure

Cambodia's legal system revolves around a hierarchy of codified laws, as shown in Table 1. Cambodia's Constitution is the supreme law, as article 131 makes clear:

> This Constitution shall be the supreme law of the Kingdom of Cambodia. Laws and decisions by the state institutions shall have to be in strict conformity with the Constitution.

Table 1: Hierarchy of Laws and Regulations

Constitution
Legislative and Executive Law
Royal Decrees
International Law
Customary Law

1.2.1 The Constitution

The Constitution provides Cambodians with a range of rights and obligations based on, as stipulated in Article 31, recognition and respect for:

> human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights, women's and children's rights (for all quotes, see Constitution of Cambodia, 1993).

The Constitution explicitly and unambiguously commits Cambodia to fundamental principles relevant to labour law. The most important are as follows.

- The recognition and respect for human rights as stipulated in various international instruments. These include the rights of women and children (Article 31).
- The equality of all Khmer citizens before the law (Article 31).
- The rights of all Khmer citizens to choose their employment, according to their capacities 'and to the needs of society' (Article 36).
- The right of all Khmer citizens, of either sex, to equal pay for equal work ((Article 36).
- The rights of all Khmer citizens to social security (Article 36).
- The rights of Khmer citizens to form, and to be members of trade unions (Article 36).
- The right to strike, and to non-violent demonstration (Article 37).
- The prohibition of discrimination against women (Article 45).
- Women cannot lose their jobs because of pregnancy (Article 46).
- Women have the right to maternity leave with full pay (Article 46).
- The state will protect children 'as stipulated in the Convention on Children'. This includes the right to education (Article 47).
- The State protects children from acts that are 'injurious to their educational opportunities, health and welfare' (Article 48).
- The Kingdom of Cambodia adopts the 'market economic system' (Article 56).
- The State will provide 'free primary and secondary education to all citizens in public schools' (Articles 66 & 68).
- The State will assist the disabled (Article 74).
- The State will establish a social security system for workers and employees (Article 75).
-

In summary, the Constitution guarantees:

- Equality before the law
- The right to form unions and to strike
- Explicit prohibition of discrimination against women
- Equal pay for equal work
- Protection and education for children, and recognition of children's rights
- Respect and recognition of international charters and conventions on human rights
- Explicit recognition of particular needs (e.g., disabled and pregnant women).

1.2.2 Legislative and Executive Law

The most important legislation with respect to this paper 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 Ministry in charge of labour; that is,

the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY).

1.2.3 Royal Decrees

The King of Cambodia directly issues royal decrees, which normally relate to high official appointments such as the Council of Ministers and judges.

1.2.4 International Law

Cambodia has signed and ratified a number of international declarations and conventions, and such instruments then become part of Cambodia's national law. For instance, Cambodia has been a member of the ILO since 1969 and ratified a number of ILO Conventions (see Section 3.3).

1.2.5 Customary Law

Customary and traditional law are also sources of labour law, for example, in dispute settlement. Labour Law explicitly recognises the role of custom in a number of its provisions.

2. LABOUR FORCE STRUCTURE

2.1 Distribution of Labour Force by Economic Sector

Cambodia is an overwhelmingly rural and agricultural society, with the vast majority of workers engaged in small family farms producing rice and other foods for subsistence. There are few major towns and urban centres, and even in urban areas, agriculture employs a large section of the workforce. The manufacturing sector is small, mostly concentrated in the capital city, Phnom Penh, and is dominated by the garment sector. Sihanoukville (Kompong Som), as Cambodia's only deep-sea port, is the only other centre with a significant manufacturing sector (including garments, footwear, and brewing). Although data on the size and composition of the labour force are not satisfactory, the General Population Census of Cambodia in 1998 (NIS 1999) and the annual Cambodian Socio-Economic Survey of 1999 (NIS 2000) provide reasonably reliable information. Tables 2 and 3 provide a breakdown of the overall employment pattern according to the Socio-Economic Survey for 1999. This includes all employed persons over 10 years of age.

The 1998 census and economic survey officially record only about half the total Cambodian population 'employed'. This is because of the very high proportion of children in the population (43 per cent under the age of 15 in 1998). Agriculture is the main source of employment for both males and females.

Table 2: Percentage Distribution of Labour Force in Cambodia, 1999

Sector	Male	Female	Total	Number (Million)
Agriculture	73.8	79.0	76.5	4.21
Industry	6.3	6.5	6.4	0.36
Service	19.9	14.6	17.1	0.95
Total	**100.0**	**100.0**	**100.0**	**5.52**

Source: NIS, 1999 & 2000

The workforce consists of approximately the same numbers of males and females. For manufacturing, according to the 1998 Census, females constitute over half the workforce (78,000 out of 150,209 employed over the age of 15). The category of 'Wholesale and Retail Trade, Vehicle and general repair' (see Table 3) employs twice the number of women (223,949 out of 334,237). Women also predominate in agriculture (2.035 million out of 3.67 million). Males predominate overwhelmingly in Construction, Transport and Communications, and Public Administration.

2.2 Structure of Enterprises

Since 1994, when the government encouraged the development of the first factories, the garment sector has become the overwhelmingly dominant source of export revenue. In 2000, garments and shoes combined accounted for 88 per cent of total exports (Ministry of Commerce, 2001).

In the most comprehensive study to date on the sector, the number of garment factories as of late 2001 stood at 246 (WAC 2002d: 22-23). Shoe factories numbered around 18 (WAC 2002d: 22). Estimates of the number of workers in the sector vary. The Ministry of Commerce puts the number at 163,000; the Ministry of Industry estimates 184,000, but this number includes shoe factories. MOSALVY presents the lowest figure of just over 145,000. During peak season, WAC estimates the number is around 190,000 (WAC 2002d: 26), a figure that probably more accurately estimates the true size of the workforce. This latter figure means that garment workers account for around 50 per cent of the industrial workforce (PEAO 2002: 2).

The number of workers per factory is likewise hard to determine. The WAC study noted that although the maximum number of workers employed by one factory as per the official list was 7,032, one of the biggest factories had released a media statement to the effect that its workforce numbered 10,000 (WAC 2002d: 26; Richardson 2002). The smallest enterprise employed 50 workers. Table 4 shows the number of workers per factory based on 210 observations.

Table 3: Percentage Employment by Sub-sector, 1999

	Total	Male	Female
Agriculture			
Agriculture, Forestry, Hunting	74.6	70.9	78.0
Fishing	1.9	2.8	1.0
Industry			
Mining and Quarrying	0.1	0.1	0.0
Manufacturing	4.7	3.3	6.0
Utilities	0.1	0.2	0.1
Construction	1.5	2.7	0.4
Services			
Wholesale and Retail Trade, Vehicle and general repair	7.3	3.9	10.4
Transport and communications	2.2	4.3	0.3
Hotels and restaurants	0.5	0.4	0.5
Public administration, armed forces, etc.	3.4	6.4	0.5
Education	1.6	2.3	0.9
Other	2.1	2.6	2.0

Source: NIS, 1999 & 2000

Most of the factories are located within Phnom Penh Municipality (83%), while the remainder are located in Kandal, Sihanoukville, Kompong Cham, Kompong Speu, and Svay Rieng (WAC 2002d: 23).

Ninety per cent of workers are women, commonly aged between 18 and 25. Many come from rural areas and find their jobs through personal contacts and other informal means, such as notices posted at the factory gate.

Table 4: Number of workers per factory, 2001

Number of factories observed	Minimum	Maximum	Sum	Mean
210	50	7032	184,740	879.71

Source: Adapted from Table 12, WAC 2002d: 26

The workers in these enterprises are unskilled on commencement, and the factory trains them on-the-job, usually over a period of two months. In many factories, supervisors are foreigners (e.g., from Hong Kong, Taiwan, China, and Korea) who rely on the services of interpreters for communication purposes.

Hong Kong is the most common source of investment, followed by Taiwan, Cambodia and the People's Republic of China. Table 5 shows the investment source.

Table 5: Investment Source for the Cambodian Garment Sector, 2001

Nationality	Number	Per cent	Nationality	Number	Per cent
Hong Kong	55	24.7	Cambodia-HK	3	1.3
Taiwan	49	22.0	Thailand	2	0.9
Cambodia	23	10.3	Cambodia-Thailand	2	0.9
China	23	10.3	HK-USA	2	0.9
Korea	13	5.8	Cambodia-USA	1	0.4
Malaysia	10	4.5	HK-Malaysia	1	0.4
Singapore	8	3.6	Portugal	1	0.4
USA	6	2.7	Malaysia-Taiwan	1	0.4
UK	5	2.2	Bangladesh	1	0.4
Macau	4	1.8	HK-Macau	1	0.4
Indonesia	3	1.3	HK-Australia	1	0.4
Australia	3	1.3	EU	1	0.4
Canada	3	1.3	US-Taiwan	1	0.4
			Total	**223**	**100**

Source: Table 9, WAC 2002d: 24

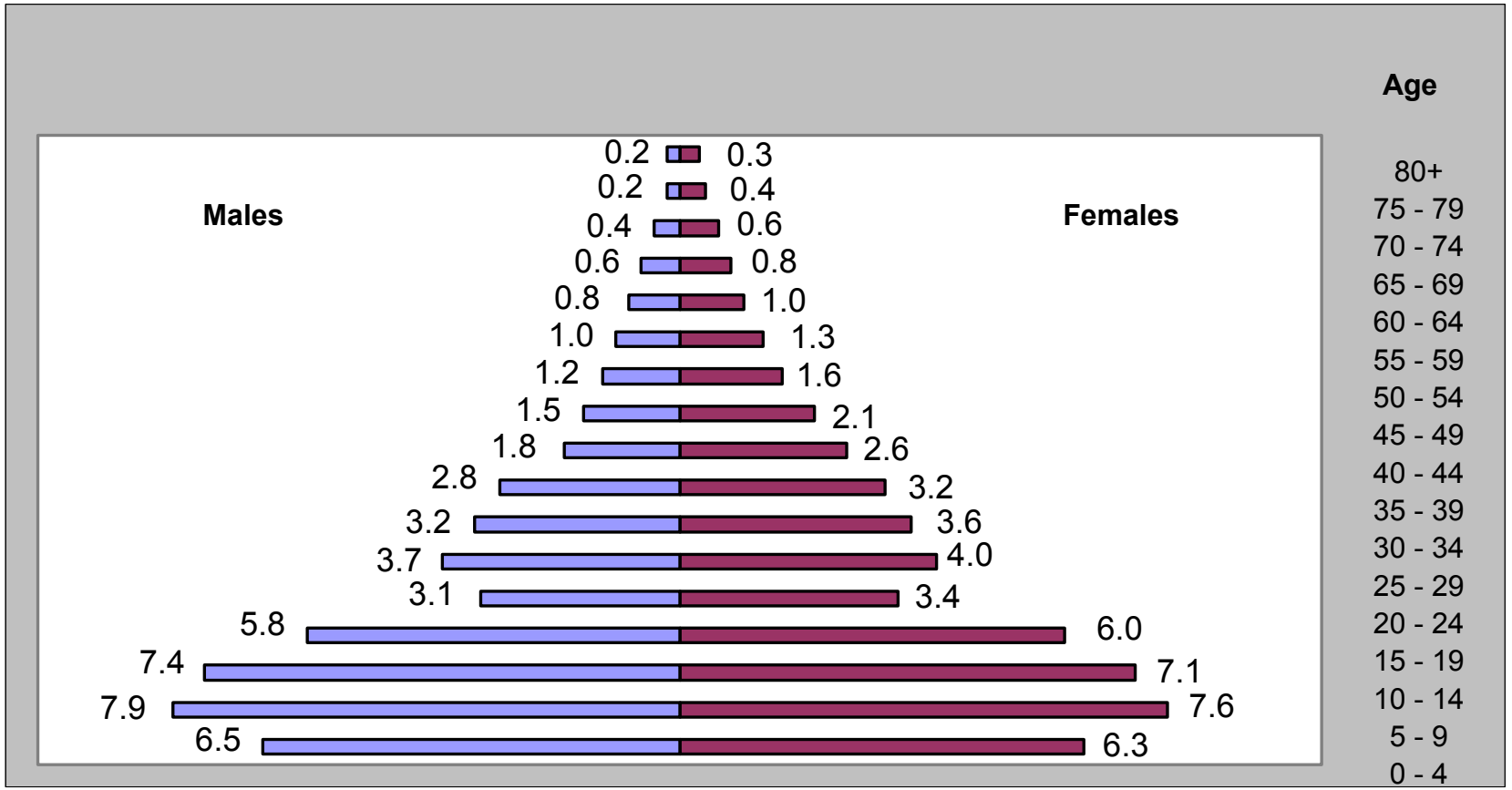
2.3 Demographic Characteristics

The 1998 census of Cambodia recorded a total population of 11.4 million, 5.9 million of whom were female and 5.5 million males. In mid-2001, the Cambodian government estimated the population at 13.2 million. Figure 1 shows the population pyramid.

Note that there are very few people in the oldest age groups, but towards the bottom of the figure, in the youngest age groups, the proportions grow very rapidly. No fewer than 42.8 per cent of the entire Cambodian population are aged between 0-14. This is around double the proportion in countries like England, France, or Australia. Given that the total population of Cambodia in 1998 was 11.4 million, this means not less than 4.8 million Cambodians are under the age of 15, and 6.2 million, well over half, are 19 or younger. Moreover, the population of Cambodia is growing quite fast. The present growth rate is 2.3 per cent a year, which again is much higher than in developed countries.

This demographic pattern has a number of important implications for working women and children, and for the problems that Cambodia faces.

FIGURE 1 - CAMBODIA POPULATION, 1998, BY SEX AND GROUPS



1. Children constitute a large proportion of the population. This means there will be greater pressure on children to work.
2. Cambodia is a poor country and poverty will drive many children to seek work.
3. Only a small proportion of the population is of full working age. If we regard the dependent population as people younger than 15 and older than 65, then the proportion of these to the *working population* (those aged 16-64) is the dependency ratio. Using this equation, Cambodia's dependency ratio is 86 per cent, one of the highest in the world. A high dependency ratio indicates that many children will need to work.
4. There are more females than males in Cambodia. Indeed, there are around 25 per cent of families where the female is the head of the household. Again, this means (a) that many females will be obliged to work, and (b) children in female-headed families will often have to work.
5. The population pattern also has implications for education. Because there are so many young children, the cost of providing adequate education, including buildings, facilities, and teachers is very high. As children become older, the need for more advanced (and more costly) education rises. Poor education reinforces a cycle of poverty, and prevents a large proportion of the labour force from developing skills or attaining an education.

Therefore, the present circumstances in Cambodia, with poverty and demographic pressure, as well as limited education opportunities, means that many young boys and girls in Cambodia have to work.

2.4 Educational Characteristics of the Total Population

The educational levels of the Cambodian population are poor, with females having significantly lower attainments than males.

Table 6 shows the educational attainment of the Cambodian labour force according to the Socio-Economic Survey for 1999.

Table 6: Percentage Educational Attainment of Population, 1999

	Male	Female	Both Sexes
Some Tertiary	1.0	0.5	0.7
Some Secondary	31.0	16.5	24.0
Some Primary	49.0	45.0	47.3
No Schooling	19.0	38.0	28.0
Total	**100.0**	**100.0**	**100.0**

Source: NIS 2000

As Table 6 shows, only about one quarter of the total workforce had schooling beyond primary level in 1999, while for females the figure was 17 per cent.

Lack of schooling results in very low literacy rates. An official source published in 2000 (NIS 2000) suggests that most estimates of literacy (based on the socio-economic surveys that asked respondents if they can read or write) are too high. According to the Cambodia Development Resource Institute (CDRI), in 2000 'the staggering implication is that 4.1 million Cambodians over the age of 15 (63 per cent of the total) are not functionally literate. The situation for women, for whom the proportion of illiterate is 71 percent, is worse than that of men (52 per cent). In both cases illiteracy poses huge problems for productive employment generation' (CDRI 2001: 6).

3. THE EMPLOYMENT/LABOUR CONTRACT AND COVERAGE BY LABOUR LAWS AND REGULATIONS

3.1 Coverage and Exclusions

Under Cambodian Labour Law (for all references to the law, see MOC 2002), an *employer* is a person or organisation that hires someone to perform work for them under a contract of employment. The law fails to recognise some forms of contract for work as 'contracts of employment'. For example, the law does not consider the engagement of a music teacher to provide lessons in a private house as a contract of employment. The householder is not an employer, and the music teacher is not an employee. This is a very important distinction, and we will discuss the contract of employment in more detail below. For now, however, we can simply define an employer as someone (a person or organisation) who employs another person under a valid contract of employment.

An *employee* is someone who works for another person (or organisation) under a valid contract of employment.

3.1.1 The Employer

Article 2 of Cambodian Labour Law 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.

When the Law uses the term 'natural persons', it is referring to ordinary individuals. Employment contracts will refer to employees by their name. 'Legal entity' refers to an organisation, or body, recognised in law. For example, the Catholic Church in Cambodia might employ a full-time security guard. Here the 'legal entity' would be the Catholic Church, rather than an individual. The law distinguishes between 'public or private'; 'public' means in the public, or government, sector, and 'private' refers to the private, non-government sector. 'Enterprise' is a very general term, and here means any organisation, body, concern, unit, or even an individual that carries out any form of legal business and employs a person or persons. Article 2 also states that an enterprise must

'employ one or more workers, even discontinuously'. This is a very broad definition of an enterprise. It means that many tens of thousands of small enterprises in Cambodia effectively come under the jurisdiction of Labour Law. Some other countries do not have such a wide definition. For example, in Thailand most labour laws apply only to enterprises that employ ten or more workers (Brown et al. 2002). 'Discontinuously' here means 'temporarily', 'intermittently', or 'casual'. It would thus appear that a small family farm, even if it employs just one worker at harvest time, would constitute an 'enterprise' under the Cambodian Labour Law.

3.1.2 The Employee

Article 3 of the Cambodian Labour Law defines employees, in part, in the following manner:

> 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.

In Khmer, the term '*kamakor niyochit*' means 'worker' or 'employee'. However, Cambodian Labour Law sometimes distinguishes between '*kamakor*' ('manual labour') and '*niyochit*' ('non-manual labour'). Sometimes, in the English language, we call these two groups of workers 'blue-collar workers' (*kamakor*) and 'white-collar workers' (*niyochit*). We often make a further distinction and say that blue-collar workers earn a 'wage', while white-collar workers a 'salary'. However, for practical purposes, the law, always use the terms 'employee' and 'worker' interchangeably, as is the case with 'wage' and 'salary'. Thus, a construction labourer would be an employee of a construction firm, and a schoolteacher an employee of a school.

Article 2 uses the term 'every person'. Note that an employee is always an individual. An employee cannot be an organisation, or other 'legal entity', unlike an employer.

The law stipulates that it applies to 'every person of all sex and nationality'. The law often repeats the principle of non-discrimination. It applies to all, equally, without regard to matters such as the sex of the employee, their nationality, their religion, or other characteristics.

The law also defines an employee as a person who has 'signed an employment contract'. The important matter here is the employment contract. As we will see later, an employee need not actually sign his or her 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.

'Remuneration' under law can include many kinds of earnings, as well as the basic cash wage. It might include tips, bonuses, or payment in kind (free food or accommodation).

Of most interest, perhaps, is the phrase 'under the direction and management'. These words are essential to the common law understanding of an employment contract. As we will see in the subsequent discussion of the employment contract, this is a key issue (as is 'remuneration'), and determines whether an employment contract is legally valid or not.

3.1.3 Coverage under the law

The Law covers *all* employees with a valid contract of employment *unless* there is a provision that exempts them. Article 1 of the Law provides a list of exemptions.

Article 1 states (in part) that the Law applies to all persons

> not governed by the Common Statutes for Civil Servants or by the Diplomatic Statutes as well as officials in the public service who are temporarily appointed.

Thus, the law does not apply to:

- Judges of the Judiciary
- Persons appointed to a permanent post in the public service
- Personnel of the Police, the Army, and the Military Police, who are governed by a separate statute.
- Personnel serving in the air and maritime transportation, who are governed by special legislation. These workers are entitled to apply the provisions on freedom of union under this law.
- 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.

The law, then, excludes some very important groups, even though they have legal contracts of employment. There are four main groups excluded under Article 1:

- State employees (including the military)
- Those covered by Diplomatic Statutes
- Air and sea transportation workers
- Domestic servants

State Employees: Article 1 specifically exempts five types of employees of the State.

1. Civil Servants

Civil servants are all those who work for the Executive Branch of the government, in whatever capacity. Various ministries directly employ most of them, and they are a very large group whose workplaces cover all of Cambodia. At present, there are more civil servants in Cambodia than garment workers. As Article 1 states, the Common Statutes for Civil Servants covers the employment rights of civil servants.

2. Temporary Public Servants

Article 1 uses the term 'officials'. This would seem to mean that the labour law does not cover persons seconded from elsewhere (perhaps from universities, private industry, or trade unions) to serve on public bodies (such as the Labour Advisory Committee). This is likely to be a very small group.

3. Judges of the Judiciary

Government power under the Constitution consists of three branches, the Legislature (the National Assembly), the Executive (the government and civil service), and the Judiciary. Labour Law does not recognise Judges as civil servants, and thus places them in a separate category. Although the Law does not say so, it would seem that the law also excludes all members of the legislature. Even if the legislature was includes, this, too, is a very small group.

4. Permanent Public Servants

It is not clear who falls into this category. It seems that the Labour Law attempts to distinguish between 'civil servants' and 'public servants', the former employed by the executive branch, and the latter employed under the Council of Ministers. This would also be a very small group, although it would depend on the definition of the term 'permanent public servants'.

5. Police, Military Police, and Army

The Khmer version of the Labour Law makes clear that this group includes all the armed services, not simply the army. This very large group has their conditions of work governed by separate statutes, and they therefore do not come under the Labour Law.

Those Covered by Diplomatic Statutes: Diplomatic officials, such as those working at embassies and consulates, are not technically part of the country where they are located, but are considered in law to be the territory of their country of origin. Thus, the Cambodian Embassy in Thailand is, in law, Cambodian territory. The Thai Embassy in Cambodia is Thai territory. Thus, in law, it is impossible for an embassy or other diplomatic office (including certain United Nations Offices) to be employers under the Cambodian Labour Law. Cambodian Labour Law does not pertain to persons working for embassies and

consulates; instead, international law protects their interests. Readers should note that this principle is not the same as 'diplomatic immunity'. Cambodian authorities can apprehend consular staff without diplomatic immunity committing crimes in Cambodia.

Air and Sea Transport: The Khmer version of the Labour Law makes clear that this section refers to air and maritime crews. Air and sea crews are covered by special employment laws, and do not come under the Cambodian Labour Law. Article 1 explicitly gives the right to air and sea crews to organise unions. Article 283 deals with the election of shop stewards by air and sea crews, while Chapter XI of the Law deals generally with the formation of labour unions.

Domestic and Household Servants: The Law excludes this very large group. Labour Law defines domestic and household servants under Article 4 as:

> those workers who are employed to take care of the home owner or of the owners' property in return for remuneration.

This group includes maids, guards, chauffeurs, gardeners, and others in similar occupations, as long as a 'home owner' employs them to work directly at his or her place of normal residence. Article 1 provides domestic and household servants the right to form unions (see Chapter XI of the Law), while Article 283 exempts them from the necessity to elect shop stewards. At several places in the Labour Law, domestic and household workers do receive specific protection. For example:

- Article 15 (domestic servants cannot be forced to work)
- Article 122 (wage-claims by domestic workers have the same priority as those due to other employees)
- Article 130 (limitations on the garnishment of the wages of domestic workers)
- Article 249 (work-related accidents)

3.1.4 Part-time and Casual Work

Many workers have full-time jobs. However, a significant proportion works casually or part-time. Common examples of *casual employment* in Cambodia include labourers paid by the hour, day or job on construction sites or at the docks. *Part-time* employment includes examples such as secretaries or sales assistants who work only in the mornings. No matter the definition, the important issue is whether the Labour Law covers casual and part-time contracts.

Articles 9, 10 and 11 suggest that Labour Law covers both casual and part-time workers.

Article 9, for instance, distinguishes between 'regular workers and casual workers, who are employed to perform an unstable job. It defines regular

workers as 'those who regularly perform a job on a permanent basis', while it describes casual workers as those contracted to:

- perform a specific work that shall normally be completed within a short period of time, and
- perform work temporarily, intermittently and seasonally.

Article 10 states that:

> Casual workers are subject to the same rules and obligations and enjoy the same rights as regular workers, except for the clauses stipulated separately.

Article 11 makes it clear that workers (employees) come under the Labour Law whether employers pay them by the time worked, by piecework, or on commission.

3.2 Obligations, Rights of Employers and Employees

The Ministry with responsibility for labour is MOSALVY, and its main responsibilities are:

- Implementing Labour Law
- Administering Labour Law
- Enforcing Labour Law
- Imposing Penalties for breaches of Labour Law

The department given principal responsibility for these matters within MOSALVY is the Department of Labour Inspectorate.

Under the Law, employers have the following obligations:

- Declaration of opening and closing the business
- Details of hiring and dismissing employees (movement of personnel)
- Internal Regulations
- Employment Card
- Payroll Ledger

Regulations about these matters apply to virtually all enterprises, large and small, which qualify under the Cambodian Labour Law. In addition, there are two other obligation that apply only to certain enterprises (mostly large enterprises in particular types of business): that is, company stores and sub-contractors.

Chapter II of the Labour Law, Articles 17-50, deals with the obligations on enterprises concerning these matters.

Article 17 requires all employers under the Labour Law to make and deliver to MOSALVY a 'declaration of the opening of the enterprise or establishment'. The

declaration is to be in writing, and an employer should submit it to MOSALVY before the opening of the business (although for small enterprises, employing less than eight workers and not using machinery, the declaration can be made within 30 days of opening).

Under Article 18, all employers must make a declaration of closing a business to MOSALVY within 30 days of closure.

Article 19 states that 'a *Prakas* of the Ministry in charge of Labour shall define the formality and procedure of the declarations to follow in each case'. A *Prakas* is an 'implementing regulation' pertaining to a general law, and has the same force of law. However, it cannot contradict the law, nor can it conflict with higher laws such as the Constitution. The *Prakas* usually clarifies the law, and lays down detailed means relating to the law's implementation.

There are many references in the Labour Law to implementing regulations (usually a *Prakas*) drawn up by a Ministry (nearly always by MOSALVY). The government has issued many such *Prakas*, but there are some important instances where it has not.

With reference to Article 19, MOSALVY issued *Prakas* 147/97 on 21 April 1997. It was titled '*Prakas* on the Opening and Closing of the Enterprise', and requires the owner of the enterprise to fulfil three basic obligations prior to opening by submitting:

(1) Plans of the facilities and an approval (by MOSALVY or another appropriate authority) of any construction projects.
(2) A Declaration of the opening of the enterprise.
(3) Details of future employees.

For items (2) and (3), the *Prakas* gives details of the information required and the format for providing the information. The Declaration of opening must include (among other items):

- Name, address, and nationality of the owner.
- Legal status, type of business, and location of the enterprise.
- A list of all employees by gender, with details of nationality and skill status.
- A list of all child employees aged 16-18, including their nationality.
- Details of night-work performed by women and children.
- Information about dangerous machinery.
- Information about the weekly day off.

Annex 2 of the *Prakas* gives additional information required for each employee:

- Sex, nationality, and date of birth
- Employee employment card number
- Monthly salary and method of payment

- Position in the enterprise
- Education and skills

3.2.1 Registration of an enterprise

Article 20 obliges each employer to 'establish and neatly keep a register of an establishment that was numbered and initialled by a Labour Inspector'. A *Prakas* issued in 1997 (92-97) sets out the format of the register, the purpose of which is to provide the Labour Inspector with a place to record visits and details of the labour inspection (for example about such matters as health and safety).

3.2.2 Hiring and Dismissing Personnel

Article 21 states that:

- Every employer must make the declaration to the Ministry in charge of Labour each time when hiring or dismissing a worker.
- This declaration must be made in writing within fifteen days at the latest after the date of hiring or dismissal. The period is extended to thirty days for agricultural enterprises. The declaration of hiring and dismissal is not applied to:
  1. Casual employment with a duration of less than thirty continuous days.
  2. Intermittent employment for which the actual length of employment does not exceed three months within twelve consecutive months.

Readers should note that Article 21 does not indicate what information is required about each worker. It is possible that the same information is required as per Annex 2 of *Prakas* 147/97, but this is not clear.

3.2.3 Internal Regulations

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

Under Article 22, each enterprise the Labour Law applies to that employs eight or more workers must have internal regulations, which it must clearly display for workers to see and understand (see also Article 29). The 'internal regulations' mentioned here are rules that cover the conditions under which employees work. Article 23 lists them as follows:

- Conditions of hiring
- Calculation and payment of wages and perquisites
- Benefits in kind
- Working hours
- Breaks and holidays
- Notice periods
- Health and safety measures

- Duties of workers, and sanctions that can be imposed
- Other matters required by the Labour Inspector (Article 25)

The list is not difficult to understand. 'Perquisites' might include tips, for example, while 'benefits in kind' might include free meals or uniforms. The important points are that the Labour Law cannot deal with every aspect of working conditions in each enterprise (nor should it), and that the Labour Law generally lays down *minimum* standards. Many establishments will provide more than the minimum, and workers must understand clearly their working conditions. The internal regulations will provide details of these.

Under Labour Law (Article 24), internal regulations have to be set within three months of the opening of an enterprise, and employers must write them in consultation with the workers' representatives (probably the shop stewards, if they exist). The Labour Inspector must approve (by giving a visa) of the internal regulations.

Under Article 25, the internal regulations cannot infringe the rights of workers under any of the existing laws (including the Labour Law). Further, the regulations cannot limit the rights of workers under 'conventions or collective agreements applicable to the establishment'.

The Labour Law is particularly concerned with the imposition of sanctions on workers under internal regulations. Articles 26-28 and 31 all deal with disciplinary action. There are in fact many sections of the Labour Law that deal, directly or indirectly, with disciplinary action taken by employers. Article 83 (in a section on the termination of the labour contract) deals with 'serious offences', or 'serious misconduct', on the part of both employees and employers. Other sections deal with, for example, hours of work. If an employee is late for work, the employer can discipline the worker.

The internal regulations, however, must follow four *general principles* in the matter of discipline.

1. The employer must take disciplinary action against the employee within 15 days of the employer (or the employer's representative) knowing of the misconduct. Otherwise, action cannot be taken (Article 26).
2. In cases of serious misconduct, where the worker is to be dismissed, action must be undertaken by the employer even more quickly, within seven days (Article 26).
3. Under Article 27, 'any disciplinary sanction must be proportional to the seriousness of the misconduct. The Labour Inspector is empowered to control this proportionality'. Clearly, this is an important safeguard for the employee, and is designed to prevent a minor case of misconduct being dealt with by a heavy and inappropriate penalty.
4. Article 28 stipulates that employers are not permitted to impose fines for misconduct (a fine is defined as 'any measure that leads to a reduction of the remuneration being normally due for the performance of work

provided'). Moreover, employers 'shall not impose double sanctions for the same misconduct'. While the wording of Article 28 is not completely clear, it appears to mean that under all circumstances, if a worker has performed work for an employer, then that work must be paid for at the regular rate. Of course, if work is not performed (perhaps because a worker arrives late, or is unjustifiably absent), then the employer is not obliged to pay the wage. We should note that this Article does not specify what sanctions (other than fines) are open to the employer.

3.2.4 Internal Regulations for Small Enterprises

As we have seen, the rules governing Internal Regulations in Articles 23-30 apply only to enterprises employing eight workers or more. For enterprises with less than eight employees, Article 31 allows that 'the employer may pronounce, according to the seriousness of the conduct of the workers concerned, a warning, a reprimand, a suspension of work without pay for not more than six days, or a dismissal with or without prior notice'.

The main purposes of the Articles dealing with the Internal Regulations of the enterprise are clear. They enable workers to understand clearly the basis of the hiring and the conditions of work, the types of misconduct and penalties for misconduct that the employer might impose, and to prevent arbitrary and unfair action by employers (or their representatives) against workers. However, there are several aspects of the rules for Internal Regulations that seem either impractical or unfair to employers.

The requirement that the Internal Regulations must specify 'the calculation and payment of wages and perquisites' may be appropriate where most workers perform similar tasks. However, a large establishment may have many grades of workers undertaking many different jobs, including skilled and professional workers. It would seem impractical and ill advised for internal regulations to specify every rate of pay. Further, in some cases, it may break confidentiality about remuneration, or lead to comparisons and jealousy among workers.

If we interpret Article 28 to mean that under no circumstances can an employer impose a fine on a worker (reduce wages) for misconduct, then this might seem unfair to employers in some cases. The penalty of 'suspension without pay' may be a sanction against the worker, but it is also a sanction against the employer, who loses the work of the employee for the period of the suspension.

3.2.5 The Employment Card

Articles 32-38 of the Labour Law lay down various rules relating to the Employment Card. Article 32 stipulates that:

> Every person of Cambodian nationality working as a worker for any employer is required to possess an employment card. No one

> can keep in his service who does not comply with the provision of the above paragraph.

However, Article 33 states that 'the possession of an employment card is optional for seasonal farm workers'.

Note that Article 32 speaks of 'Cambodian nationality'. Foreign workers also need employment cards (Article 261), but there are special conditions required for the employment of foreigners, and we will consider these below.
Article 34 clearly states the purpose of the Employment Card:

> The employment card is for the purpose of identifying the holder, 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. It is forbidden to use a worker's employment card for purposes other than those for which it is created. When the worker stops working for the employer, that employer shall not write any appreciation on the employment card.

Article 37 further states that:

> The hiring and dismissal of a worker, his wage and wage increase shall be recorded in his employment card. The above record made by the employer must be presented, within seven whole days following the date of entry and departure of the worker, for the visa of the Labour Inspector.

It is clear that the employment card is a record of the employee's employment history, and that it contains a record of successive jobs, employers, and wages. It is the employee's responsibility to obtain an employment card from the Labour Inspector (Article 35), and it would seem from Article 32 that an employer can accept a worker without a card, provided the worker then applies to the Labour Inspector for one.

3.2.6 Payroll Ledger

Articles 39-41 refer to the 'payroll ledger'. By *Prakas* 93-97, issued on 26 March 1997, MOSALVY prepared a sample payroll ledger. Employers may vary the format, but the Labour Inspectorate must approve any changes. Before use, a Labour Inspector must number and initial all pages of the payroll ledger.

Article 40 requires that the ledger records 'all information about each worker employed by the enterprise and all indications concerning the work performed, wage, and holidays'.

Articles 45-50 of the Labour Law deal with the issue of the relationship between entrepreneur and contractors. Article 45 states that the contract between an entrepreneur and a contractor must be in writing. Articles 49 and 50 state that

the names of both entrepreneur and contractor must be displayed at each worksite, and that the entrepreneur must inform the Labour Inspectorate of each sub-contracting arrangement within 7 days of signing the contract. Under Article 46 the contractor must pay fair wages to the workers and must not 'underestimate' the workforce (that is, the contractor must not try to increase profits by employing too few workers for the job contracted).

Article 47 is important. It states 'the labour contractor is required to observe the provisions of this law in the same manner as an ordinary employer and assumes the same responsibilities as the latter'. In other words, if the owner of a factory sub-contracts some work to another firm, and the contracting firm violates the labour law (perhaps by employing underage workers), *responsibility rests with the contracting firm*. However, Article 48 states that where the contractor becomes insolvent, or defaults on the contract, the entrepreneur must take over responsibility from the contractor 'to fulfil his obligations to the workers'.

3.3 Ratification of International Conventions

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

C4 Night Work (Women) Convention, 1919. Ratified 24 February 1969
C6 Night Work of Young Persons (Industry) Convention, 1919. Ratified 24 February 1969
C13 White Lead (Painting) Convention, 1921. Ratified 24 February 1969
C29 Forced Labour Convention, 1930. Ratified 24 February 1969
C87 Freedom of Association and Protection of the Right to Organise Convention, 1948. Ratified 23 August 1999
C98 Right to Organise and Collective Bargaining Convention, 1949. Ratified 23 August 1999
C100 Equal Remuneration Convention, 1951. Ratified 23 August 1999
C105 Abolition of Forced Labour Convention, 1957. Ratified 23 August 1999
C111 Discrimination (Employment and Occupation) Convention, 1958. Ratified 23 August 1999
C122 Employment Policy Convention, 1964. Ratified 28 September 1971
C138 Minimum Age Convention, 1973. Ratified 23 August 1999
C150 Labour Administration Convention, 1978. Ratified 23 August 1999

3.4 Dismissal Procedures

3.4.1 Termination of the Contract

It is difficult under Labour Law to break a labour contract once employers and employees agree upon and sign it. If a contract is broken, employees or employers may be entitled to compensation under certain circumstances. Article 73 deals with labour contracts of specified duration, and recognises only three ways in a contract can be terminated before the due date without damages:

1. by mutual agreement between employer and employee, in which case the termination has to be in writing, signed, and 'in the presence of a Labour Inspector'.
2. serious misconduct by either party. We will discuss later the nature of 'serious misconduct'.
3. Acts of God. The Labour Law mentions 'Acts of God' on several occasions, and we can interpret this to mean the same as the legal term '*force majeure*'. It means an event (such as flood or an earthquake) over which the parties have no control, and which prevents them from fulfilling obligations entered in good faith.

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 to 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.

3.4.2 Labour Contracts of Unspecified Duration

Articles 74-88 deal with the termination of labour contracts of unspecified duration. In general, a contract can be terminated by either party provided (a) due notice is given, in writing, and (b) in the case of an employer giving notice, 'no layoff can be taken without a valid reason relating to the worker's aptitude or behaviour, based on the requirements of the operations of the enterprise, establishment or group' (Article 74).

Article 75 sets out due notice, ranging from 7 days if the worker has worked less than six months continuously, to 3 months notice if the worker has been in continuous service for more than 10 years. During the notice period, the worker is entitled to receive full wages (Article 77) and is entitled to two days of leave per week with full pay to look for a new job (Article 79). No prior notice, however, is required in the case of

- a probationary contract
- dismissal for serious offences
- Acts of God.

Under Article 78, a worker who has given notice to the employer, and who finds a new job, can take up the new job at any time without having to compensate the employer.

3.4.3 Serious Offences

Articles 83 and 84 deal with serious offences, which refer to the termination of contracts of both specified and unspecified duration. They read as follows:

Article 83
The following are considered to be serious offences:
a. On the Part of the Employer

1. The use of fraudulent measures to entice a worker into signing a contract under conditions to which he would not otherwise have agreed, if he had realised it.
2. Refusal to pay all or part of the wages.
3. Repeated late payment of wages.
4. Abusive language, threat, violence or assault.
5. Failure to provide sufficient work to a piece-worker.
6. Failure to implement labour health and safety measures in the workplace as required by existing laws.

b. On the Part of the Worker

1. Stealing, misappropriation, embezzlement.
2. Fraudulent acts committed at the time of signing (presentation of false documentation) or during employment (sabotage, refusal to comply with the terms of the employment contract, divulging professional confidentiality).
3. Serious infractions of disciplinary, safety and health regulations.
4. Threat, abusive language or assault against the employer or other workers.
5. Inciting other workers to commit serious offences.
6. Political propaganda, activities or demonstrations in the establishment.

Article 84

Pending the creation of the Labour Court, the ordinary court has the jurisdiction to determine the magnitude of offences other than those included in the preceding article'

3.4.4 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 6 months 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 6 months of wage and fringe benefits. For periods of over one year, the law considers a fraction of six months 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'.

3.4.5 Damages

Article 90 raises the issue of damages, but Articles 91-94 deal with it in more detail.
Article 91 states that:

> the termination of a labour contract without valid reasons, by either party to the contract, entitles the other party to damages. These damages are not the same as the compensation in lieu of prior notice of the dismissal indemnity. The worker, however, can request to be given a lump sum equal to the dismissal indemnity. In this case he is relieved of the obligation to provide proof of damage incurred.

Article 92 states that:

> When a worker has unjustly breached a labour contract and takes a new job, the new employer is jointly liable for damages caused to the former employer if it is proven that he has encouraged the worker to leave the former job.

3.4.6 Mass Layoff

In some circumstances, an employer lay off large numbers of workers. Article 95 lists three measures for protecting workers in the even of a mass layoff.

1. The employer must, in consultation with the workers' representatives, take steps to minimise the effects of the layoff on the workers. Those with least qualifications and least seniority must be laid off first. But the employer has to give special weight to married workers with dependent children (one year of seniority for a married worker and one year of seniority for each dependent child).
2. Dismissed workers have priority for two years if the enterprise hires workers again, and 'if there is a vacancy, the employer must inform the concerned worker by sending a recorded delivery or registered letter to his last address'.
3. MOSALVY can, 'in exceptional cases', suspend the layoff for a period 'not exceeding thirty days in order to help the concerned parties to find a solution'.

3.5 Discrimination

Cambodian law strictly forbids all forms of discrimination in employment under the auspices of three legal regimes: the Constitution, international law, and Cambodian Labour Law

3.5.1 The Constitution

Three articles in the Constitution pertain to the issue of discrimination. Article 31 of the Cambodian Constitution states (in part):

> 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.

Article 36 states, in part, 'Khmer citizens of either sex shall receive equal pay for equal work'.

Article 45 states, in part, that 'The exploitation of women in employment shall be prohibited'.

3.5.2 International Law

Under Article 31 of the Constitution, 'The Kingdom of Cambodia shall recognise and respect human rights an stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights'.

It is not necessary here to go into the details of all these international instruments. However, it is useful to note that several deal with the principle of non-discrimination. For example, Cambodia has signed and ratified ILO Convention No. 111, which concerns discrimination (Employment and Occupation). Cambodia has also signed and ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW commits governments to ensure equal employment rights for women, including the right to work, to promotion, to job security, to vocational training and retraining, and to equal pay.

3.5.3 Cambodian Labour Law

Article 12 of the Labour Law deals with the principle of non-discrimination in employment and states:

> Except as otherwise expressed under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider

- race
- colour
- sex
- religion
- political opinion
- 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.

Distinctions, rejections, or acceptances based on qualifications required for a specific job shall not be considered as discrimination.

We should note a number of important points about Article 12. First, 'discrimination' does not simply apply to decisions to hire or dismiss employees, but is a standard for all aspects of employment. The law forbids forms of discrimination based on personal characteristics and beliefs, but allows employers to make hiring decision based on qualifications, merit and ability. Second, 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.

3.6 Contract Types

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. Although much of the Labour Law is concerned with such matters as collective agreements and the rights of trades unions, the notion of employment as a formal contract, recognised in law, between an individual worker and an employer is a key concept of the Cambodian Labour Law.

3.6.1 Significance of the Individual 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 employer-employee relationship (that is, 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.

3.6.2 Categories of Employment

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 distinctions to make are those between an employer and employee and between an employer and independent contractor.

Cambodian Labour Law refers to the contract between the employer and employee as a contract *of service*. This is the normal employment relationship covered by the Law. Under this relationship, an employer contracts with the employee, who then works for the employer under the terms of the contract. However, the Law distinguishes this sort of contract from a contract with an independent contractor, which it refers to as a contract *for services*. Cambodian Labour 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 is important. Under the Labour Law, employers have certain duties towards their employees. Examples of these duties include paid leave, maternity leave, or sickness benefits. However, the law does not obligate employers to provide these benefits to independent contractors. Further, an employer may be liable for damages caused by an employee, but not for those caused by an independent contractor. Again, if an independent contractor breaks the law (for example by employing underage workers), the employer is not responsible for the contractor's unlawful behaviour. It is therefore important to determine whether a person is an employee under a legal contract, or an independent contractor.

Examples of workers employed under contracts of service (that is, normal individual contracts) include garment workers, full-time shop assistants, schoolteachers, and airline pilots.

3.6.3 Collective Labour Agreements

A cornerstone of the Cambodian contract law is the *individual* employment contract. Each individual worker has a contract, written or verbal, with the employer. In practice, however, many of the terms and conditions under which workers perform their jobs are the result of *collective agreements*. Collective agreements are normally agreements that have been reached between an employer and a trade union, and will 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.

Under the Labour Law, the term of a collective agreement can be *definite* or *indefinite*. According to Article 96, the maximum period for a definite term is three years, although 'at its expiration, it shall remain in effect unless it has been cancelled, on the condition of keeping a three months' notice, by either party'. An indefinite agreement can be cancelled, 'but it continues to be in effect for a period of one year to the party that forwarded a complaint to cancel it'. In effect, this means that either party can cancel an indefinite agreement by providing one year's notice of cancellation.

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. This is an important point. A collective agreement can be *more favourable* to workers, and Article 98 allows negotiating parties to insert clauses and provisions that are more favourable into existing labour agreements. However, the Labour Law does not specify who has the authority to decide what conditions are more, or less, favourable to workers.

Article 99 states:

> At the request of a professional organisation of workers or employers that is representative in the relevant scope of application, or on its own initiative, the Ministry in charge of Labour, after consultation with the Labour Advisory Committee, may extend all or some of the provisions of a collective agreement to all employers and all workers included in the occupational area and scope of this agreement.

This seems to suggest that if, for example, a trade union successfully concludes a collective agreement with a particular garment firm to pay higher wages, the union can ask MOSALVY to extend the benefit to *all* workers in similar conditions. Alternatively, MOSALVY can extend the benefit to all workers on its own initiative. Note that Article 99 mentions the Labour Advisory Committee (LAC). LAC is a tripartite body and includes representatives from employer groups, unions, and the government.

Article 100 allows MOSALVY, with the approval of the LAC, to lay down 'the working conditions for a particular occupation' where there is no existing collective agreement.

On 31 March 1998, MOSALVY issued *Prakas* 197-98, regulating 'Procedures for Regulating, Publishing and Monitoring Enforcement of Collective Agreements' in accordance with Article 101 of the Labour Law. Under this *Prakas*, the employer (or employers' organisation) must register the Agreement with MOSALVY, and the employer must provide copies to the shop stewards and display the Agreement at the workplace. The Labour Inspectorate has the authority to monitor the working of the Collective Agreement, and the ordinary courts can

settle any disputes arising (pending the creation of a Labour Court), unless the parties 'request conciliation prior to initiating legislation'. This last provision of the *Prakas* appears to contradict Article 303 of the Labour Law. Under Article 303, the parties involved *must take* any collective dispute to the Labour Inspector, who then initiates procedures for conciliation. Under Article 309, if conciliation fails the collective dispute then moves to arbitration.

3.7 Wage Structure

3.7.1 The Minimum Wage

Cambodian has minimum wage legislation, and Articles 104, 105, 107, 108, 109 and 111 specifically deal with this issue.

Article 104 stipulates that employers must pay all employees covered by the Labour Law *at least* the minimum wage laid down by Law. Under Article 105, any agreement that remunerates a worker 'at a rate less than the guaranteed minimum wage' is void. Article 104 also defines the minimum wage, and states that it 'must be at least equal to the guaranteed minimum wage; that is, it must ensure every worker of a decent standard of living compatible with human dignity'.

Article 107 lays down procedures for setting the minimum wage. It specifies (in part):

> The minimum wage is set by a *Prakas* of the Ministry in charge of Labour, after receiving recommendations from the Labour Advisory Committee.

Under Article 107, the wage can vary from region to region, and in setting the wage MOSALVY and the Labour Advisory Committee must consider (a) the economic needs of families, and (b) economic factors such as Cambodia's economic development and the need to maintain a high level of employment.

Article 108 deals with the difficult question of a minimum wage for piecework workers. It states:

> For task-work or piecework, whether it is done in the workshop or at home, the wage must be calculated in a manner that permits the worker of mediocre ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker.

The wording here is not completely clear, but 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. Thus, according to the law, a garment worker should earn US$40 per month, which consists of four 48-hour weeks (or 192 hours). A piece rate worker making garments should be able to earn US$40 by

working 192 hours every four weeks. Readers should note that the Labour Law does not indicate how the output of the 'average' (or 'mediocre') worker is determined.

The law, therefore, clearly stipulates that workers must receive a minimum wage. However, MOSALVY has not set a minimum wage.

3.7.2 The Base Daily 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 the setting of a Base Daily Wage. Although this is a minimum, it is one in name only and should not be confused with the concept of a minimum wage *per se*. The government uses the Base Daily Wage simply to calculate the levels of fines for breaches of the Labour Law on minimum wages (we will explore how the government calculates penalties for breaches below). 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)

3.7.3 Minimum Wage for Garment Workers

Although there is not yet a general minimum wage in Cambodia, on 17 January 1997, MOSALVY met with the Garment Manufactures Association of Cambodia (GMAC) to discuss the terms and conditions of employment in garment factories in Phnom Penh. This meeting resulted in an Agreement announced on 3 March 1997. The main provisions were as follows:

- The minimum wage for garment workers should be US$40 a month.
- Before reaching this position, workers must undergo training for training and probationary periods.
- Training can last a maximum of two months, during which the wage should be US$30 a month. After a successful test, the trainee will commence a Probationary period for three months.
- The wage during the Probationary period should be US$40 a month.
- When working for a new employee, each garment worker must repeat the three-month Probationary period, at a minimum wage of US$40 a month.

The Agreement between MOSALVY and GMAC is *not* a minimum wage as defined under the Labour Law. We can better understand it as an *Award* to a particular group of workers (the garment workers in Phnom Penh).

3.7.4 Revised Agreement 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 then the US$45 per month stipulated in the revised agreement. Surveys by WAC (2002d) and the Cambodian Labor Organization (CLO 2000) detail regular underpayment of wages. Some factories, prior to the increase, paid a minimum wage of US$15-20 for a 48-hour week (CLO 2000). A 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 per cent received less than US$45 per month (WAC 2002d: 65). It is also worth noting, as both WAC and CLO indicate, that the minimum monthly wage for six eight-hour days is well below that required to live in Phnom Penh.

3.8 Hours of Work, Overtime, Holidays

The Labour Law regulates the hours of work that workers may undertake for an employer. Article 137 stipulates the general principle that for all establishments 'the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week'. Note that Article 137 uses the term 'hours worked'. This may mean that employers can interpret the law to mean that breaks are not included.

Article 138 allows employers to spread work into shifts, one of which is normally an afternoon shift.

Article 139 sets rates for overtime, 'for exceptional and urgent jobs'. Overtime rates are set at 50 per cent above the normal rate or 100 per cent above if the overtime is at night or during the weekly time off.

3.8.1 *Prakas* on Overtime

On 1 March 1999, MOSALVY issued *Prakas* 80-99 on 'Overtime Work out of Normal Work Hours'. The *Prakas* 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. To apply for the right to request employees work overtime, an employer must send a letter of request at least 15 days before commencing overtime work, and a 'certified letter from every shop steward or an agreement from half the workers in an enterprise where there is no shop steward' to MOSALVY.

According to *Prakas* 80-99, overtime must be voluntary, and an employer cannot discipline workers who do not volunteer for overtime. Overtime rates are the same as those provided under Article 139 of the Labour Law. Employers must provide transport home for night workers, or 'provide a place for night workers to sleep'.

The right to ask employees to work overtime is crucial to many enterprises, particularly in the garment sector where short lead times and fashion seasons dictate several peak seasons per year. Overtime can also be an important source of earning extra money for workers. Given these two issues, *Prakas* 80-99 contains three problems for both employers and employees.

1. The *Prakas* requires the employer to request permission for conducting overtime, which implies that MOSALVY can withhold permission. However, the *Prakas* makes no mention of the grounds for refusing permission, and does not stipulate how much time the Labour Inspectorate has to inform the employer of the decision to refuse or accept the request.
2. The need for overtime may occur suddenly and unexpectedly. A 15-day notice period may not be possible if extra work is suddenly required.
3. The Labour Law does not call for a MOSALVY *Prakas* on permission for overtime. It is not clear, therefore, why MOSALVY has issued one.

3.8.2 Limits on Overtime

The Labour Law allows MOSALVY to modify the general regulations for overtime in two ways.

First, under Article 140, MOSALVY can extend daily work hours to make up for working time lost through certain circumstances, including 'mass interruptions in the work or a general slowdown from either accidental cases or Acts of God, abnormally bad weather, or because of holidays, local festivals, or other local events'. There are three prohibitions on extending hours in this way:

- hours cannot be extended on more than 30 days in a year, and must be worked within 15 days (one month for agriculture) after the resumption of work;
- the daily working day cannot be extended by more than one hour;
- hours of work are not to exceed 10 hours a day.

Second, Article 141 stipulates that employers can allocate or change overtime hours only under specific conditions. Overtime can be:

- allocated to allow for a break on Saturday afternoon 'or any other equivalent approach; as long as the extra time does not add more than one hour to the regular working day.
- allocated to fit a time period which is not a week, as long as 'the average length of working time calculated by the number of weeks does not surpass forty-eight hours per week, that the daily hours do not surpass ten hours, and that the extra hours do not exceed one hour per day'.
- changed as 'permanent special waivers' where there is particular preparatory or supplementary work, or for 'certain categories of workers whose work is essentially intermittent'.

- changed as 'temporary special waivers 'for seasonal work, urgent and unforseen work, where materials might perish, for special tasks, or to handle periods of extra work in exceptional circumstances'.

Article 142 authorises MOSALVY to issue a *Prakas* to regulate overtime for casual and intermittent work. So far, MOSALVY has issued no *Prakas*.

Article 143 specifies that overtime provisions 'can be suspended for war or other events that threaten national security'.

3.8.3 MOSALVY *Prakas* for Article 141

On 6 March 1998, MOSALVY issued three *Prakas*: *Prakas* 89/98, *Prakas* 92/98, and *Prakas* 90/98.

Prakas 89/98 deals with 'Organising a Weekly Work Schedule to Allow a Saturday Afternoon Leave'. Under this *Prakas*, employers can increase the normal daily hours from eight to nine. To implement this, the employer must obtain the 'agreement from the shop steward' or, if there is no shop steward, from at least half of the total employees, voting by secret ballot. The employer must inform the Labour Inspectorate of any such agreement.

Prakas 92/98 deals with 'Employment of Some Categories of Workers During Hours other than the regular Working Hours'. Under this *Prakas*, employers can employ the following categories of workers outside the normal working hours of the enterprise:

- those working on the maintenance of engines and equipment
- those employed in cleaning, serving, driving, and providing maintenance
- security guards

Employers must maintain a list of such employees and their working hours for inspection. All employees working outside normal working hours have the same rights as other employees with regard to hours, daily work schedules, wages, overtime, and compensation for extra hours worked.

Prakas 90/98 is entitled 'On the Reallocation of Working Hours other than the Ordinary Week'. Under this *Prakas*, employers may allocate working hours on a different scale, provided that:

- the *average* duration of work over a period of 12 weeks does not exceed 48 hours a week
- the duration of daily work cannot exceed 10 hours
- overtime cannot exceed one hour a day
- when more than 48 hours a week are worked, overtime rates are to be paid as set out in Article 139 of the Labour Law.

Any agreement under this *Prakas* needs unanimous agreement from the shop stewards. The employer must also

- provide transport for night workers to and from work
- use an automated time system to record working hours, and keep this information for three years
- notify the Labour Inspectorate.

3.8.4 Night Work

Article 144 defines 'night' as 'at least eleven consecutive hours that includes the interval between 22.00 and 05.00 hours'. It also states:

> Besides continuous work that is performed by rotating teams who sometimes work during the day and sometimes at night, the work at the enterprise can always include a portion of night work. Night work is paid at the rate set in Article 139 of this law.

The meaning of 'night' in Article 144 is not clear. The period mentioned, 22.00 to 05.00, is seven hours, but the law defines night as *at least* eleven consecutive hours. Without clarification from MOSALVY, there seems no way to make sense of this regulation.

Article 139 states that the rate for *overtime* night work is 100 per cent higher than normal (that is, at a double rate). It is possible that Article 144 requires that employers pay employees working between 22.00 and 05.00, whether as normal work or overtime, at double the regular rate, though the law is ambiguous.

3.8.5 Weekly Rest Days

All workers are entitled to one rest day per week (a 'minimum of twenty-four consecutive hours' under Article 147). In general, the rest day should be Sunday (Article 147). In many sectors, garments in particular, enterprises operate seven days per week. In such cases, some workers will need to work on Sundays. Under such circumstances, the employer can rotate the day off among staff.

Articles 148-156 of the Labour Law cover the various exceptions to the 'Sunday off' principle, and the ways in which employers can allocate working hours. Articles 157-160 cover procedures in such cases. Of particular importance is the provision for employers to cancel the weekly rest day under certain circumstances. Article 154 specifies that retail stores can cancel the weekly rest day if it coincides with a holiday, but the Labour Inspector must authorise this, as is the case for all similar cases (Article 160).

In general, where an employee loses a rest day, the employer must provide him or her with another rest day in compensation during the following week.

3.8.6 Paid Public Holidays

All employees are entitled to certain public holidays each year with their full pay. The law specifies that such holidays are not part of an employee's paid annual leave (Article 161). MOSALVY issues a list of such holidays each year by. *Prakas* 318-99, issued on 4 November 1999, listed 13 such holidays, with a total of 18 days for the year 2000.

Where public holidays occur on a Sunday, workers are entitled to a holiday the following Monday (Article 162).

Under Article 164, workers who are obliged 'because of the nature of their activities' to work during holidays, are entitled to extra pay. This is 'an indemnity in addition to wages for the work performed'. MOSALVY *Prakas*, 77/98 defines this indemnity by stating that work must be voluntary, and that that payment will be at double the normal rate.

3.8.7 Paid Annual Leave

Paid annual leave is an important entitlement under the Labour Law for Cambodian workers. Article 166, for instance, stipulates that:

> Unless there are more favourable provisions in collective agreements or individual labour contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service.

Any worker who has not worked for two continuous months is entitled, at the termination of his or her labour contract, to compensation for paid leave calculated in proportion to the amount of time worked in the enterprise. For jobs not performed regularly throughout the year, the law considers that a worker has met the condition of continuous service if he or she works an average of 21 days per month. The law also increases the length of paid leave according to the seniority of workers at the rate of one day per three years of service. Article 166 does not count official paid holidays and sick leave as paid annual leave.

Article 167 states, in part:

> The right to use paid leave is acquired after one year of service. If the contract is terminated or expires before the worker has acquired the right to use his paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker.

Employers expect the workers will take their annual leave at the Khmer New Year, unless there is a different arrangement between employer and worker (in which case the Labour Inspector must be informed). If annual leave exceeds 15 days, employers can grant the extra leave at another period, except for children and apprentices under the age of 18.

Since the issue of annual leave is so important, both for employers and employees, it is unfortunate that Article 166 is unclear and inconsistent on how basic and seniority leave is calculated, it the entitlements for part-time and casual workers.

3.8.8 Entitlements

As mentioned above, after one year of continuous service a worker is entitled to paid annual leave. If an employee has worked for less than a year, he or she should receive compensation in proportion to the time worked. If an employee has worked for 4 months and then leaves the job, he or she is entitled to 4 X 1.5 days, or 6 days regular pay, in compensation for paid annual leave not taken. However, much work is not permanent, but is casual or part-time. Article 166 states that if an employee works on average for 21 days a month, the law considers the work 'continuous'. Although it is not clear, this last regulation appears to mean that the law considers a 'day' consists of eight hours work.

Article 166 raises the issue of 'continuous service', and so does Article 169. The latter defines continuous service as 'the entire period during which the worker has a labour contract with the employer, even if the work is suspended without a termination of the contract'. Thus, paid leave accrues during:

- weekly time off
- paid holidays
- sick leave
- maternity leave
- annual leave and notice period
- special leave granted up to a maximum of seven days during any event directly affecting the worker's immediate family.

3.8.9 Sick Leave

Article 169 mentions sick leave, but makes no provision for time off on full pay for the duration of the illness.

3.8.10 Special Leave

Under Article 171 the employer may (but does not have to) grant a worker special leave for immediate family reasons. Under *Prakas* 76-98, issued on 19 February 1998, such reasons could include

- the employee's marriage
- birth of the employee's child
- marriage of employee's children
- illness or death of husband, wife, children, or parents.

Under this *Prakas*, an employer can deduct special leave from an employee's annual leave. If an employee has taken annual leave, an employer can require work in compensation as long as (a) such work is completed within three months of the special leave, and (b) does not involve the employee working more than 10 hours a day, or 54 hours a week.

In practice, as is the case with wages, laws regulating hours of work, overtime, and other entitlements are routinely disregarded. Given that the minimum wage of US$45 per month is insufficient (and that many workers do not earn even this), workers need to work overtime. The WAC survey (2002d: 70) notes that many workers regard ten-hour days as constituting normal hours. Eighty-one per cent worked overtime regularly, with 6.5 per cent saying they regularly worked six hours overtime per day (WAC 2002d: 71-2). Sixty-two per cent said they regularly worked two hours overtime per day (WAC 2002d: 72). WAC has documented workers routinely working until 10:00 PM or midnight and managers allowing workers only one Sunday off in three (or even in some cases one Sunday off per month) (WAC 2002d: 72). Three refusals to do overtime can in some instance lead to dismissal, and workdays of 24 hours are not unknown during peak season (WAC 2002d: 72).

3.9 Conditions of Work

Cambodian Labour Law makes no special provisions for conditions of work.

3.10 Special Conditions: Women, Children, Disabled and Other Identified Groups

Cambodian Law provides for special working conditions for women, children, the disabled, and foreign workers.

3.10.1 Women

Cambodia's Labour Law pays particular attention to women. This is important for the following reasons:

- Women dominate Cambodia's labour force. The World Bank (2002) estimates that female participation in the labour force is 52 per cent (a high proportion).
- Women are especially important in particular occupations. It is estimated that they form:
    - 60 % of the agricultural workforce
    - 85 % of the commercial workforce, including informal occupations
    - 70 % of the industrial workforce
    - 90 % of the workforce in garments factories
    - 60 % of the service sector workforce
- Women play a significant role in Cambodia's labour movement.

- Unfortunately, Cambodia's traditional male-dominated social values have disadvantaged women. This means that women tend to be poorer and more illiterate than their male counterparts. They are therefore particularly in need of legal support.
- Growing international concern over gender issues also makes it important for Cambodia to address problems confronting women.

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

The Constitution, and International Conventions and Declarations: As we have noted above, there are explicit provisions for women in the Constitution. With concern to labour laws, these include the principle of non-discrimination in employment, equal pay for equal work, and the right to maternity leave. Moreover, Khmer citizens of either sex have the right to form and to be members of trade unions.

Cambodia has ratified important international instruments that guarantee the rights of women, of which one of the most important is CEDAW. This Convention (Article 11), obliges governments to take all appropriate measures to eliminate discrimination against women in employment, and to ensure their equal employment rights (the right to work, to job security, promotion, to training, and to equal pay). The United Nations Charter on Human Rights also recognizes the rights to work, equal pay for equal work, and the right to form trade unions.

We should emphasise that Cambodian law does not conflict with these various provisions.

The Labour Law: Cambodian 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). You should note that, as for children, 'all forms of sexual violation (harassment) are strictly forbidden' (Article 172).

Various legal frameworks thus protect women. However, we should note several points. First, the joint and specific provisions covering women's work calls for a Ministry *Prakas* to implement Articles 173 (hazardous work), 174 (underground work), 175 (night work), and 187 (conditions and supervisions of nursing rooms and day-care centres). Second, the government has issued only one relevant *Prakas*. Third, the heading of Section VIII, 'Child Labour – Women Labour' and the sub-heading, 'Joint Provisions', are confusing. The language of the Joint Provisions appears to refer only to children, yet the Section heading and term

'Joint Provisions' makes it clear that the provisions should cover all women (that is, adult women as well as girls). Fourth, the provision that forbids sexual harassment has no reference to any implementing regulation to enforce the provision. Fifth, the provision for maternity leave, nursing mothers and day-care centres are in advance of those in many other countries.

3.10.2 Children

Several different legal frameworks protect children's rights in Cambodia: the Constitution, ILO Convention 138 (which Cambodia ratified in 1999), and Labour Law.

The Constitution: The Cambodian Constitution includes the United Nations Convention on the Rights of the Child. This Convention is therefore part of Cambodian Law, and no other legislation can conflict with it. The UN Convention on the Rights of the Chile comprises 54 articles, and only two countries in the world have so far become members. The UN General Assembly adopted it unanimously 1989.

We cannot here detail the entire Convention, although it is most important that all involved with the issue in any way (educators, government officials, lawyers, and employers, for example) should be familiar with the entire document. Nevertheless, key sections of the Convention include the role of education. Children possess human rights and are entitled to have those human rights protected by law. One of these rights is a right to an education. Article 29.1.a states that the 'development of the child's personality, talents and mental and physical abilities to their fullest potential'. Moreover, according to Article 29.1.d, education should prepare 'the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all people, ethnic, national and religion groups and persons of indigenous origin'. Thus, the Convention (and the Cambodian Constitution) guarantees non-discrimination in education.

Furthermore, Article 32 provides that:

> States Parties recognize the right of the child to be protected from economic exploitation and 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.
>
> States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
>
> (a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;
(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

We should note here the issues of economic exploitation, hazardous work, minimum age legislation, regulation of working hours and working conditions, and appropriate penalties.

ILO Convention 138: Cambodia has 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). However, the Convention recognizes that the less developed countries may not be able to fulfil a minimum age of 15 immediately, and provides for a lower age under these circumstances (Article 2.5 and Article 7.1 and 7.4). The effect of these provisions is to allow, as a minimum, work for children of 12 years of age, provided that it is 'light work' which is 'not likely to be harmful to their health or development', and 'not such as to prejudice their attendance at school...' The Convention also provides that the minimum age for employment in work 'which by its nature or the circumstances in which it is carried out in likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years (Article 3.1). A lower age, 16, is possible, as long as the 'health, safety and morals of the young persons concerned are fully protected...'

The Cambodian Labour Law: Section VIII of Chapter VI of the Labour Law explicitly deals with Child Labour and Female Labour, while Chapter III deals with apprentices.

Under Labour Law, all employers and managers where women, children, or apprentices under 18 years of age work 'must watch over their good behaviour and maintain their decency before the public' (Article 172).

The Ministry in charge of Labour shall specify work 'hazardous or too strenuous', and therefore prohibited to 'children less than eighteen years'. The *Prakas* shall also 'establish the special conditions under which minors can be employed in insalubrious or hazardous establishments where the staff is exposed to arrangements harmful to their health' (Article 173).

The law prevents the employment of children under 18 years in underground mines or quarries, although a *Prakas* of the Ministry in charge of Labour 'shall determine the special conditions of work and apprenticeship for minors aged from sixteen to less than eighteen years for underground work' (Article 174).

The law generally forbids night work. 'Children, employees, labourers, or apprentices aged less than eighteen years cannot be employed to perform night work in any enterprises covered in Article 1 of this law' (Article 175). However, a

MOLSAVY *Prakas* 'shall determine the conditions under which special dispensation can be allowed for teenagers over sixteen years of age:

- For work performed in the industries listed below, which, because of their nature, must operate day and night:

  - iron and steel factories;
  - glass factories;
  - paper factories;
  - sugar factories;
  - gold ore refineries

- For an inevitable case that obstruct the normal operations of the establishment' (Article 175).

Furthermore, 'the night-time break for children of either sex must be a minimum of eleven consecutive hours' (Article 176).

Articles 177-181 explicitly deal with Child Labour (as opposed to women and child workers jointly).

Article 177, 1 sets the minimum age at 15 years.

The law prohibits any kind of hazardous work to those under eighteen, and a MOLSAVY *Prakas* specifies the types of employment 'in consultation with the Labour Advisory Committee' (Article 177, 2).

Under certain conditions, the above clause can be relaxed upon the authorization of the Ministry in charge of Labour, and a minimum age of 15 set (Article 177, 3).

Enterprises can hire children from 12 to 15 under certain conditions to do 'light work', and a Prakas determines the types of employment and the working conditions ('particularly the maximum number of hours of work') (Article 177, 4 and 5).

However, MOLSAVY (after consulting the LAC), 'can wholly or partially exclude certain categories of occupation or employment from having to implement this article (i.e., Article 177) if the implementation of this article for these types of occupation or employment create considerable difficulties' (Article 177, 6).

The Labour Inspector can request a physician to examine children under 18 to establish that they are physically capable of carrying out the work assigned (Article 178).

All employers must keep a register of children under 18 in their employment, indicating their date of birth. 'This register must be submitted to the Labour Inspector for visa, observation and warning' (Article 179).

There are also provisions for protecting children from long hours of vocational training in orphanages and other institutions, and providing that children under 18 can only work with the consent of their parents or guardian (Articles 180 and 181).
There are number of issues that remain unresolved with respect to children and Cambodian Labour Law. The first is that the government has not issues all *Prakas*. The Law calls for a *Prakas* to be issued defining hazardous occupations and conditions under which children between 16-18 can undertake various forms of work (e.g., in underground mines and night work), and also a definition of 'light work' for children over 12. However, although more than 3 years have passed since the ratification of the Labour Law, MOSALVY has issued only one *Prakas* (MOSALVY, No. 298), which refers to the night time employment of children aged 16 to 18 in the industries referred to in Article 175 of the Law. This *Prakas* directs that children aged 16-18 may work in the specified industries at night subject to certain conditions (the work not to exceed 8 hours a day, with a break between shifts of at least 13 hours) (*Prakas* 298, Article 3). Thus, Cambodia still has no definition of hazardous industries, or conditions under which children aged 16-18 may work in these industries. Nor does it yet have any definition of 'light work' for children aged 12-15, and of the hours that such children may work.

Second, the Labour Law covers only a small minority of working children; that is, it excludes children working within families (e.g., in agriculture) and in the informal sector (e.g. scavenging, or street trading), and generally excludes those in domestic service.

Third, the failure to provide a definition of hazardous industries is a matter for concern. Children are often exposed to dangerous and unhealthy conditions at work, such as open machinery, flying glass or metal fragments, fires, dust in the atmosphere, and so on. Children, for a number of physiological reasons, face greater risks working in unhealthy conditions than adults. Cambodian Labour Law exacerbates these risks by failing to provide a set of safety standards, either for children or for the working population generally.

Fourth, the provision that the Ministry can absolve enterprises from the age and occupation restrictions contained in Article 177 of the Labour Law, if there are 'considerable difficulties', appears to open the way to the widespread use of child labour.

Fifth, 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. Finally, Article 179 states that an employer must submit the register to the Labour Inspector, but does not mention when, or how often.

However, even laws with loopholes provide some protection if they are enforced. In the absence of effective enforcement, the reality for Cambodia is that children of very young ages perform all sorts of work, for long hours and little pay, and often in unsafe and unhealthy conditions. By any standard, the situation of working children in Cambodia is poor. There are numerous cases of accidents in the workplace, including children killed and disabled, and many cases of employers exploiting children.

Because some groups are explicitly excluded from the Labour Law (e.g., domestic servants), and because the law is applicable only to those employed by an 'enterprise', most informal sector workers get no protection. Family work on a farm does not appear to be included. It is widely recognised that, especially in poor countries, some forms of child labour are inevitable, and even welcome. Child labour adds to family income, can provide training, and may be preferable to any realistic alternative. The government may therefore use Labour Law to pinpoint, and abolish, the worst forms of 'intolerable' child labour. There is general agreement that such forms of labour include:

- hazardous occupations
- working in unsafe and unhealthy conditions
- working in an environment likely to lead to physical or sexual abuse
- all forms of bonded labour
- the employment of very young children.

3.10.3 Disabled

The proportion of disabled people in Cambodia is amongst the highest in the world. According to MOSALVY, some 8 to 9 per cent of the population – nearly 1 in every 10 – have significant physical or mental disability, which limits their ability to lead normal independent lives. These large numbers are direct products of war and internal conflict, landmines, poverty, and inadequate health and other services. 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). Large numbers of Cambodian also suffer from various mental disabilities.

Despite these 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 of Cambodia 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 Cambodian 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'.

The Cambodian Constitution provides for equality of opportunity and equality before the law for the disabled, and obligates the State to assist those with disabilities.

Cambodian Labour Law, which contains sections dealing with the employment of women and children, has no provisions concerned with the disabled. Labour Law provides no provision prohibiting employment discrimination against the disabled, and no protective legislation (for example, restrictions on certain hazardous occupations). The overriding reason for the lack of labour laws dealing with the disabled is that authorities believe that a comprehensive law is necessary to protect the rights of the disabled in all spheres (not just labour). However, the government has not enacted such legislation, and until it does, the disabled have little specific legal protection in labour matters.

3.10.4 Foreign Workers

Articles 261-65 (Section 2 of Chapter 10) deal with the employment of foreign workers.

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).

A MOSALVY *Prakas* sets conditions for issuing work permits and employment cards to foreign workers.

Article 263 orders employers to give first priority to Cambodians. ‘Enterprises of any kind and professionals such as lawyers, bailiffs, and notaries who need to recruit staff in their profession must appeal to (i.e., employ) Cambodians as first priority’ (Article 263).

Under Article 264, a MOSALVY *Prakas* stipulates the maximum percentages for foreign workers in three categories:

- Office personnel
- Specialized personnel
- Non-specialized personnel

Moreover, each enterprise ‘during the entirety of its existence’ must show that it employs at least the minimum number of Cambodians in each of these categories.

It is common for governments to enact legislation that gives priority in employment to its own citizens. Thailand, for example, reserved a number of occupations for Thai citizens (such as taxi driving) in the 1940s, and put considerable restrictions on foreigners owning and operating businesses and working in Thailand under the Alien Business Law of 1971. MOSALVY has issued no *Prakas* to implement regulations for the employment of foreigners (as called for in Articles 261, 262, and 264), and thus the actual implementation of the regulations is difficult at present.

Some of the Labour Law provisions relating to foreigners are unclear. For example, 'foreigners must be fit for their job and have no contagious diseases' (Article 261). However, there are no regulations concerning documentation, and the law makes no distinction between diseases acquired before entry to Cambodia and diseases contracted while working in Cambodia. Moreover, the three categories of workers specified in Article 264 are inappropriate for many types of enterprise. For example, to lay down fixed percentages of permitted foreign workers as 'office' and 'specialised' personnel, whether the enterprise sells insurance or conducts geological exploration firm seems to make little practical sense.

4. COLLECTIVE EMPLOYMENT PROVISIONS

4.1 Legal Status of Unions

As mentioned above, Cambodia has ratified ILO Conventions 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. Article 36 of the Constitution states, in part, that 'Khmer citizens of either sex shall have the right to form and be members of trade unions. The organisation and conduct of trade unions shall be determined by law'. Article 37 upholds 'the right to strike and to non-violent demonstration shall be implemented in the framework of the law.

4.2 Union Formation and Membership

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 (PEAO 2002: 2). 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 (Arnold 2001), 90 in 2000, and 80 in 2001 (PEAO 2002: 6). According to the US Embassy, trade union membership across the board stands at 1 per cent of the workforce (which accounts for 13 per cent of its total industrial workforce), though it also estimates that 25 per cent of garment

workers 'knowingly belong to a union' (PEAO 2002: 2). 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 (WAC 2002a). In fact, according the American Center for International Labor Solidarity (ACILS) in Cambodia, several trade unions are the stage of negotiating collective bargaining agreements on behalf of their members (WAC 2002a). 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 more active unions. Factory-owned trade unions present a clear conflict of interest with regard to workers' ability to represent their own interests (WAC 2002a).

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 PEOA 2002: 2). Some federations and unions privately admit that only about 10 per cent 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 (2001: 10) argues that the CPP provides several trade union federations with much needed funds. 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 (WAC 2002a; WAC 2002b). The US Embassy believes that five federations are 'pro-government' (PEAO 2002: 2). 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 (WAC 2002a). They may be right, but only time will tell how such a strategy might play out in reality.

Most of Cambodia's 245 registered trade unions now fall under one of nine trade federations/national unions (PEAO 2002: 2-6).

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 LAC.
2. **Cambodian Unions Federation (CUF)**. The CUF claims a membership of 55,700, 90 per cent of which work in 125 factories in the garment sector (7 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 FUF.
5. **The National Independent Federation of Textile Unions in Cambodia (NIFTUC)**. A local non-government organisation, the Cambodia Labour Organisation (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 Federation.
6. **Coalition of Cambodia Apparel Workers Democratic Union (CCAWDU)**. CCAWDU result from NIFTUC's dispute with 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 MOSLAVY. 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 (CWLFU)**. A garment factory administrator leads CWLFU, and claims to represent 4,000

garment workers in eight MOSALVY-registered unions. It is a relatively inactive Federation, and has been silent 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.

4.3. Roles and Functions of Unions

Chapter XI of the Labour Law deals with the subject of trade unions, trade union freedom, and worker representation, the principles of which can be summarised as follows:

- A trade union is an association of workers, formed to benefit the association's members.
- Generally, no union can force an employee to join a particular union or any union at all.
- Unions undertake collective bargaining on behalf of *all* those (not just union members) affected by the bargaining agreement.
- The employer usually bargains with just one 'representative union', which is the largest in the enterprise.
- The union appoints candidates for election as shop stewards.
- The union lays down the responsibilities of the shop steward.

As noted above, the Constitution guarantees the right to form unions in Cambodia. Article 266 states that:

> Workers and employers have, without distinction whatsoever and prior authorisation, the right to form professional organisations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organisation's statutes.
>
> Professional organisations of workers are called 'workers' unions'. Professional organisations of employers are called 'employers' associations'.
>
> For the purposes of this law, trade unions or associations that include both employers and workers are forbidden.

Article 267 states that:

> Workers' unions and employers' associations have the right:

- to draw up their own statutes and administrative regulations, as long as they are not contrary to laws in effect and public order;
- to freely elect their representatives
- to formulate their work programme.

There are two significant points from the above Articles. First, employers, like workers, have the right to form associations. There are several employers' associations in Cambodia. One of the largest is the (GMAC). Second, under Article 266, it appears to that the government defines a 'trade union'. This is important, because the term 'trade union' occurs often in Labour Law.

All associations (of workers and employers) must register with MOSALVY. Under Article 268, associations must sent a 'request for registration' to MOSALVY, together with a copy of the constitution of the organisation, statutes, and a 'list of names of those responsible for management and administration'. They must also send copies to the Office of the Council of Ministers, the Ministry of Justice, and the Ministry of the Interior. If the association makes any changes to the statutes or management then it must inform the above bodies.

A key aspect of union operation is the legal recognition of the union as a 'juristic person'. Article 274 of the Labour Law explicitly recognises this right. 'The professional organisations covered by Article 266 have the legal capacity to sue in court and to acquire personal property or real estate without authorisation, for free or for payment. More generally, they have the right to enter into contract'.

Articles 269 and 270 lay down qualifications for office holders in unions and employers associations. Under Article 269 (which appears to refer only to Cambodian nationals), officials must be at least 25 years of age, be able to read and write Khmer, have engaged in the relevant profession for at least a year, and must not have been convicted of a crime. Article 270 refers only to foreigners. In the case of an employers' association, office holders must be at least 25 years of age, have legal permanent residence in Cambodia, and have worked for at least two consecutive years in Cambodia. In the case of a union, foreign office holders must have the same qualifications as these, and, in addition, must be able to read and write Khmer.

Under Articles 271 and 273, individuals are free to join unions and associations of employers, and are free to withdraw at any time.

4.3.1 Union representatives

Unions have a major role to play in industrial relations, and they have a legal right to represent workers in dispute resolution. The key here is the issue of representation, and Article 277 of the Labour Law lays down various rules for deciding on whether a union is representative. The most important factor is that a union must *request* the status of representative union from MOSALVY. Only MOSALVY 'shall give an official decision on the recognition'. In other words, recognition, or withholding of recognition, is in the hands of the government.

In granting representative status, MOSALVY under Article 277 looks at three factors:

- geographical area of the union
- work covered by the union's members
- type of work covered by the union's member

Article 277 (Paragraph 1) states:

> The representativeness of a professional organisation or a union of professional organisations is recognised in the framework of a geographical area or a profession or, if necessary, by the type for which the union was registered to operate. The representativeness is determined by the following criteria:
>
> (a) be legally registered as provided for in Article 268 above;
> (b) have more members holding valid membership cards than the others. Any trade unions having the largest number of members in the order of the first and the second majority will be considered to be the representative unions within the enterprise. However, any trade union whose number of members is over 51 per cent of the total number of workers in the enterprise shall be considered as the most representative union;
> (c) receive dues from at least 33 per cent of its members;
> (d) have programmes and activities indicating that the union is capable of providing professional, cultural and educational services to its members, as provided for in Article 266 of this law.

A number of Articles in the Labour Law deal with the elections, powers, and responsibilities of workers' representatives and shop stewards.

Under Article 283, 'In every enterprise or establishment where at least eight workers are normally employed, the workers shall elect a shop steward to be the sole representative of all workers who are eligible to vote in the enterprise or establishment'. Article 283 states that if 'there is no agreement between the employer and the representative union organisations in the enterprise on the number of distinct establishments required for the election for shop stewards, such a dispute shall be submitted to the Labour Court, which has jurisdiction to determine the nature of a distinct establishment'. Apart from the problem that Cambodia has no Labour Court, Article 283 assumes there will be a representative union at the establishment. It appears that all workers under the jurisdiction of the Labour Law as defined in Article 1 are subject to the regulations governing workers' representatives. Even those excluded from the provisions of the law (judges, civil servants, and other groups) can elect shop stewards under implementation procedures by *Anukret*. However, the relevant authorities have not issued an *Anukret* on this subject. Moreover, the law

excludes domestic or household servants from the provisions of the regulations covering workers' representatives.

Articles 284-292 cover the roles of shop stewards, their numbers in an enterprise, and their election.

Under Article 284, the 'missions of the shop steward' are very limited, as shown in Figure 2.

Figure 2: Shop Steward's Roles under Article 284

Employers and other parties must consult shop stewards on matters concerning internal regulations and on any redundancy, reduced work, or internal organisation of the enterprise. The stipulations in Article 284 on the role of shop stewards is reinforced by *Prakas* 80-99, which *requires* employers gain the unanimous agreement of shop stewards for overtime work. Article 96.2 referring to collective agreements also refer to the role of shop stewards: a collective agreement can be signed 'between the employer and the shop stewards who have been duly elected under Section III, Chapter XI', if 'there is no trade union organisation representative of workers in an enterprise or establishment'. However, the law contradicts itself here. Article 96 allows shop stewards to conclude collective agreements when there is no representative trade union. This is despite the fact that Article 288, Section III, Chapter XI, states clearly that

'the shop stewards are elected from the candidates nominated by the representative union organisations within each establishment'.

Article 285 ensures that the numbers of shop stewards are proportional to the numbers of workers in an establishment. The range is from one 'official shop steward' and one 'assistant shop steward' for enterprises of 8 to 50 workers, two of each category for enterprises of 51 to 100 workers, and one more of each category for every additional 100 workers.

Article 288 makes it clear that shop stewards are union representatives. It states:

> The shop stewards are elected from the candidates nominated by the representative union organisations within each establishment. A union organisation cannot nominate more candidates than the seats available for the prospective shop stewards to fill, and, if necessary, this must apply to each electoral body.

The reference to 'electoral body' here, and elsewhere in the Labour Law, is unclear and the term is not defined.

Articles 293-295 refer to the procedures for dismissing shop stewards. In short, the law gives protection to shop stewards from unfair dismissal by an employer. Article 293 states (in part):

> The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector. The same protective measures apply to former shop stewards three months following the end of their terms and to unelected candidates during three months following the proclamation of the results of the ballot. Any reassignment or transfer that would end the shop steward's term is subject to the same procedure.

4.4 Collective Agreements

Section 3.6.3 on contract types deals with collective agreements in some detail. It is clear that the law is quite progressive on the issue, but the reality is another matter. As indicated in Section 4.2, some trade unions are only now beginning to develop the capacity to negotiate with management over collective agreements. By early 2002, MOSALVY had registered only 20 collective agreements (PEAO 2002: 9), most of which simply reaffirmed existing labour rights. The lack of trade union capacity severely hampers any significant increase in collective agreements. Moreover, in November 2002, MOSLAVY defined clear procedures for 'determining the unions that have the right to represent workers for the purpose of collective bargaining' (PEAO 2002: 9).

4.5 Employer Organisations

The most important employer organisation in Cambodia is the Garment Manufacturers Association of Cambodia (GMAC). Its chairman, Van Sou Ieng, owns three garment factories in Phnom Penh, and is a vocal critic of strikes and Western-influenced organisations, which he believes 'tell the workers to strike first, kill first' rather than negotiate (McEvers 2000). Despite this, GMAC has joined forces with the US Department of Labor (DOL), the ILO and the Cambodian Government and contributed US$200,000 to a three-year project (beginning January 2000) to monitor working conditions in Cambodian garment factories.

5. CONFLICTS, DISPUTES AND SETTLEMENTS

5.1 Dispute Resolution

Cambodian Labour Law makes adequate provision for dispute resolution. It distinguishes between individual and collective disputes, and stipulates the process of conciliation and legally binding agreements. It also defines the role of the judiciary and the labour inspectorate. The following section outlines these processes in some detail, along with procedures for calling a strike.

5.2 Strikes and lockout

There are two key principles concerning strikes under the Cambodian Labour Law; 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. The Constitution also explicitly recognises the right to strike (though makes no mention of a lockout). Article 37 of the Cambodian Constitution states:

> The right to strike and to non-violent demonstration shall be implemented in the framework of a law

Provisions for strikes and lockouts are contained in Chapter XIII, Articles 318-337 of the Labour Law.

Labour Law also recognises that 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, will lose their pay.

5.2.1 Legitimate reasons for striking

The Labour Law legitimises four reasons for calling a strike:

(1) The right to call a strike (or a lockout) 'can be exercised by one of the parties to a dispute in the event of rejecting the arbitral decision' (note the use of the word 'reject', not 'appeal') (Article 319).
(2) Employees can call a strike if the Council of Arbitration (see the previous chapter) fails to deliver its decision within the fifteen-day time limit set under Article 313 (Article 320).
(3) A representative union can call a strike if the union 'deems that it has to exert this right to enforce compliance with a collective agreement or with the law' (Article 320).
(4) Unions can exercise the right to strike 'in a general manner, to defend the economic and socio-occupational interests of workers' (Article 320).

Employees can proceed with strikes only within a framework of regulations and procedures. First, and most important, workers can strike only after they agree to do so by secret ballot (Article 323). Article 323 states that a 'strike shall be declared according to the procedures set out in the union's statutes, which must state that the decision to strike is accepted by secret ballot'. Article 323 also stipulates that workers must give *prior notice* of a strike to the enterprise and to MOSALVY. The notice period is 'at least seven working days'. During the notice period, MOSALVY must try to bring the parties together by conciliation.

5.2.2 Minimum Service

During the prior notice period, the two parties must meet to arrange 'minimum service' (Article 326). 'Minimum service' ensure such essentials as maintenance of equipment and service of machinery and installations that would otherwise fall into disrepair or become dangerous if left unattended (as through strike action). Minimum service is especially important where health and safety is concerned, or where there is machinery that needs servicing for safety reasons (such as lifts in mine shafts), or when enterprises can incur substantial costs if workers fail to maintain installations (such as fires in a blast furnace).

If the parties cannot reach agreement on minimum service, MOSALVY is required to impose the standard of service necessary (Article 326). Any worker refusing to undertake work required for minimum service 'will be considered guilty of serious misconduct'.

5.2.3 Rules governing the Strike

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).
Articles 336 and 337 deal with the legality of strikes, and we deal with this in detail in Section 5.3.

5.3 Exclusions

5.3.1 Restrictions on Strikes

The provisions of Article 320 seem to give a very general justification for strike action. However, the Labour Law imposes a number of important restrictions before a party can call for 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'. Labour Law is silent on the important question of who is to decide when the parties have exhausted 'all peaceful methods'.

Under Article 321, parties *cannot* undertake strike action in disputes over interpreting a judicial ruling on the Labour Law, or interpreting an arbitration decision 'accepted by the concerned parties'. Nor can parties conduct a strike to reverse an accepted arbitration decision or to reverse an agreed collective agreement (Article 321).

There are further restrictions on strikes, including those which affect 'essential services' (Article 327). An essential service is one where interruption of the service 'would endanger or be harmful to the life, safety, or health of all or part of the population'. For such services, the prior notice of a strike must be fifteen working days rather than seven days. During this extended period of fifteen working days, MOSALVY is required to decide the minimum standard of service required during the strike and, again, any worker refusing to provide this service is guilty of serious misconduct (Article 328). Although it does not say so, it seems clear that MOSALVY can order a standard of service which will prevent any danger to the life, safety, or health of the population. It would appear, therefore, that in effect the government could forbid strikes in essential services.

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 provisions for declaring a strike illegal are unsatisfactory. The judicial process can be slow and costly and is open to corrupt practices (as discussed below in Section 5.4.1).

5.4 Role of Third Parties (Courts, Government and Mediation/Arbitrat-ion)

5.4.1 Settlement

Cambodian Labour Law recognises two distinct types of dispute, the *individual dispute* and the *collective dispute*, and settlement procedures vary according to the type of dispute. An *individual dispute* is a dispute between one employer and one or more employees who act as individuals. A *collective dispute* involves a group of employees, acting as a group (usually represented by a union) who are in dispute with one employer or a group of employers. No matter whether the law classifies the dispute as individual or collective, there are two fundamental processes for resolution, judicial and non-judicial.

Judicial Settlement: Article 387 of the Labour Law states that:

> Labour Courts shall be created that have jurisdiction over the individual disputes occurring between workers and employers regarding the execution of the labour contract or the apprenticeship contract.

Further, Article 389 states that 'pending the creation of the Labour Courts, disputes regarding the application of this law shall be referred to common courts'.

As mentioned above, Cambodian has no Labour Court and so various parties can refer disputes to the ordinary courts, as allowed for under Article 389. It is worth noting that Article 387 deliberately excludes collective disputes from the jurisdiction of Labour Courts, and it is possible to interpret Article 389 to mean that parties involved in collective disputes refer them to the ordinary courts. However, most serious disputes are likely to involve collective disputes, and such disputes will usually involve trade unions. It is puzzling, therefore, that the law excludes the settlement of collective disputes from the judicial process in Cambodia.

Nevertheless, the judicial process has many advantages for the settlement of labour disputes. The courts can hand down clear decisions, and court rulings have the enforcement powers of the state. However, the judicial process can be slow and very expensive. Moreover, legal experts sometimes suggest that members of the judiciary come from a particular background and class, and are more likely to favour that class (usually the employers).

It is important to note several other factors that negatively influence the judiciary's claims to fairness. First, the government pays judges very low salaries and they are therefore susceptible to bribes (WAC 2002c). Second, the government does not appoint judges because of their expertise in legal matters (judges do not attend law school), but because of their political views and connections. A lack of judicial training and resources means that judicial decisions are often flawed and based on erroneous interpretations of the law.

Non-judicial Settlement: The three principal forms of non-judicial settlement are mediation, conciliation, and arbitration.

Mediation involves a neutral third-party, the Mediator, who tries to bring the two parties in a dispute together. Parties in dispute often mistrust and dislike each other, and the mediator's role is to bring them to negotiate a settlement. The mediator has no power to suggest or impose solutions.

Conciliation also involves a neutral third-party, who usually tries to help the parties in a dispute to reach an agreement by suggesting agendas for discussion, possible areas of agreement, possible solutions, and ideas for compromise. Mediation and conciliation are similar, except that the conciliator usually plays a more active role in arranging meetings and suggesting solutions. The conciliator, like the mediator, has no power or authority to impose solutions. However, if parties reach agreement because of conciliation, such an agreement may be legally binding on the parties concerned.

Arbitration is quite different from the two processes above, and involves an arbitrator (who may be an individual or a commission) listening to the cases of both parties, studying the evidence, and making a decision on the dispute. Arbitration is similar to a court case. Depending on the law, an arbitration ruling can be legally binding on the parties (and hence is enforceable under the law), or it can be non-binding, and open to acceptance or rejection by either party (or both parties). In Cambodia, arbitration is not binding under the Labour Law.

5.4.2 Dispute Settlement and the Law

Chapter 12 of Cambodian Labour Law stipulates various procedures for dispute settlement. Figure 3 summarises these procedures. As explained above, parties may either refer *individual disputes* directly to a court, or to a Labour Inspector for conciliation. Under Article 301, within three weeks of parties informing him or her, the Labour Inspector must arrange a meeting to resolve the dispute. The Labour Inspector, as conciliator, must write an official report, signed by the Inspector and by the parties in dispute. The Report details the agreement reached, or the lack of agreement. If there is agreement, the law considers the agreement is legally binding. If there is no agreement, one of the parties can submit their claims (within two months) to an appropriate court.

Articles 302-308 deal with conciliation procedures for *collective disputes*. Unless there is a different settlement procedure laid down in a collective agreement (or

the two sides can agree on a procedure), the Labour Inspector must be informed about the dispute. Within forty-eight hours, MOSALVY must appoint a conciliator for the dispute (Article 304). The Law provides no guidance on the choice of the conciliator, but it will almost certainly be a senior official of LAC. Any agreement is binding on the parties in the same way as a collective agreement. There is, however, an exception to this under Article 307. If the group representing the workers is not a union, the agreement is not binding on the union or its members. If the parties fail to reach an agreement, the conciliator sends a Report to MOSALVY, noting the key points where the conciliation failed (Article 308). The dispute then moves to Arbitration.

Articles 309-317 of the Labour Law deal with arbitration procedures for collective disputes. When conciliation fails, Arbitration must take place either under the terms included in a collective agreement, or under Articles 310-317 of the Labour Law. The key point of these procedures is that a collective dispute, where conciliation has failed, *must* go to the Council of Arbitration.

Article 311 states that 'Members of the Council of Arbitration shall be chosen from among magistrates, members of the Labour Advisory Committee, and generally from among prominent figures known for their moral qualities and their competence in economic and social matters'. The Council of Arbitration can investigate all circumstances of the dispute (Article 312) and must send its arbitration decision to MOSALVY within 15 days of the start of proceedings. The arbitration decision is *not binding* on the parties, and either (or both) party can reject the decision by informing MOSALVY within 8 days of receiving the decision. Where the parties do not reject the arbitration decision, the decision is enforceable under law in the same way as a collective agreement.

There appears to be no further appeal from an arbitration decision (though the English translation of the labour law often uses the term 'appeal' rather than 'reject'). When arbitration fails, the onus falls on the parties in the dispute to consider further action. This may lead to demonstrations, strikes, or lockouts.

5.5 Role of Third Parties

Although the law makes provisions for one, Cambodia does not have a Labour Court, and thus there is no role for third parties.

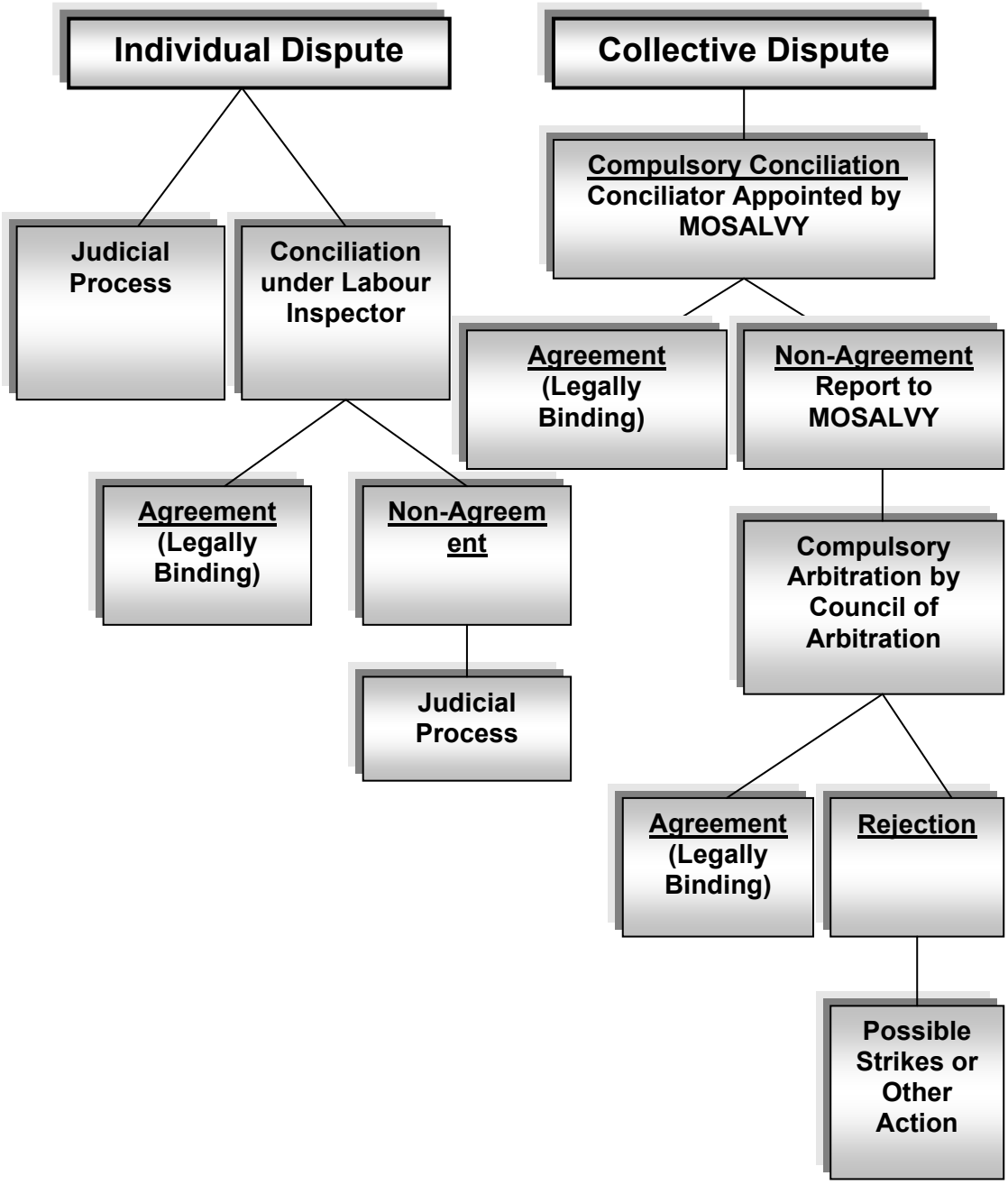
6. INSPECTIONS, MONITORING, HEALTH AND SAFETY

6.1 Labour Inspectorates and Their Duties

Despite a lack of resources, the Cambodian government has provided MOSALVY with the right to conduct inspections of all workplaces. In the first eleven months of 2001, the Ministry conducted 1,287 labour inspections (PEAO 2002: 7). The major problem with regard to inspections remains the lack of resources and political will to enforce MOSALVY's recommendations. (For

copies of an Inspector's report sheet, warning notice, and record of special inspections, see Appendices 1-3).

Figure 3: Dispute Settlement under the Labour Law



Cambodian Labour Law classifies breaches of the Labour Law as procedures for civil law. The provisions of the Labour Law clearly indicate that court proceedings will not normally arise unless other procedures have failed.

The Law provides the Labour Inspectorate with the power to enforce it (Chapter 14, Section 2 of the Labour Law).

Article 344 includes the following:

> The Labour Inspection shall have the following missions:
>
> To ensure enforcement of the present Labour law and regulatory texts that are provided for, as well as other laws and regulations that are not yet codified and that relate to the labour system...

Article 347 stipulates that Labour Inspectors and Controllers have the power 'to impose fines on those guilty of violating the provisions of this law and any enforcement-related text of these provisions'. Furthermore, Article 359 provides penalties under which offenders 'shall be fined or imprisoned or both'.

Moreover, the law provides Labour Inspectors with a key role in the conciliation process for the settlement of disputes (Chapter 7, Articles 300-317). Since the Labour inspectorate cannot impose prison sentences, the law expects that they will refer serious cases to the common courts. It is the right of an interested party to refer a labour dispute directly to the courts, regardless of the role of the labour Inspectorate.

The law provides for both repeat and multiple offences. There are two penalties for repeat offences.

- In the case of multiple offences carrying the same penalty (where, under Article 383, the fine is proportional to the number of offences up to a maximum of five times the maximum rate of fines), a subsequent offence triples the rate of the fine (Art. 383).
- The second provision for a repeat offence concerns the hiring of a foreign worker without an employment card (art. 372).

For a first offence, the penalty is a fine of 61 to 90 times of the base daily wage, or to imprisonment for 6 days to one month. For a subsequent offence (Article 372), the penalty on conviction is imprisonment of the employer for a term of one month to three months. The penalty for a repeat offence for hiring a foreigner without a valid employment card is the only case under the Penalty Clauses where the penalty is mandatory imprisonment (no optional fine).

Article 383 of the Labour Law deals with multiple offences. In the case of multiple offences with the same penalty, a fine will be in proportion to the number of offences, with a limit of five times the maximum rate of fines (Article 383). The law makes no provision for multiple offences where the possible sentence includes a term of imprisonment.

6.1.1 Penalties and obligations

Chapter XVI of the Labour Law lays down penalties that the Labour Inspectorate and the courts can impose for violations of the Law. Penalties consist of fines, or imprisonment, or both. MOLSVY and the Ministry of Justice sets fines as

multiples of the base daily wage (Article 360). Under *Prakas* 86, dated 20 March 1998, the base daily wage is set at 8,000 riels. (See Appendix 4 for comprehensive details on specific penalties and obligations).

Omissions. The Penalty Clauses have many omissions. Although a number of penalties are laid down for specific breaches of the law, with a wide range of punishment, many Articles are not covered. In fact, there are no fewer than 262 Articles in the Labour Law for which there is no specific Penalty Clause attached. While some of these Articles are informative or explanatory, and have no breach involved, many can be breached, and therefore appear to require penalties. It is a matter for discussion and opinion as to why Penalties are laid down for some breaches of the Labour Law, but not others. (See Appendix 5 for comprehensive examples of specific omissions).

Two penalties for the same breach of law. The Penalty Clauses mention breaches for the same Articles in separate places, giving different penalties, on one important issue: Minimum Age Legislation (child labour). The relevant Articles in the Labour Law are 173-178. Articles 173-178 are dealt with under Penalty Clause 368. However, Articles 173-178 are also dealt with under Penalty Clause 374. Under Penalty Clause 368, the penalties are fines of 31-60 days times the basic wage. Under Penalty Clause 374, the penalties are fines of 30-120 days times the basic wage. (See Appendix 6 for an example regarding this aspect of the Law).

Wide Range of Penalties. The penalties to be applied by the labour Inspectorate and the Courts all have a range of fines and sometimes imprisonment. Sometimes the range is quite narrow, for example penalties of fines of 10-30 times the basic wage or 31-60 times. Sometimes imprisonment is an alternative to fines (e.g., Articles 260 and 261, Penalty Clauses 369 and 372). More often, where prison sentences are possible, these can be either alternative to, or jointly with, fines. The widest range of penalties affects Articles 240,242, 243, 244, 245, 246 and 247, all concerning the Labour Health Service. The penalties (Penalty Clause 377) for breaches are all of fines of 120 to 360 times the basic wage and/or imprisonment of 1 to 5 years. The range, then, is a minimum of a fine of 120 times the daily wage and a maximum of both a fine of 360 times the basic wage and a five year term of imprisonment. (See Appendix 7 for an example of the wide range of penalties).

Penalties Seem Inappropriate. We have already seen that penalties for provision of a Labour Health Service seem high by comparison with penalties for other offences. There are also examples where penalties seem low. (See Appendix 8 for examples of inappropriate penalties).

No Clear Obligation. The Penalty Clauses include a number of cases where a penalty is laid down, but the obligation for carrying out the particular Article on a particular interested party is not clear. (See Appendix 9 for examples of cases where there is no clear obligation).

Obligation on Inappropriate Party. The Law should be clear on: (a) upon whom obligation falls, (b) the extent of the obligation, and (c) who the offending party is. The offending party must be appropriate. We have seen that it is not always clear in the Labour Law on whom obligation falls. There is also at least one case where obligation appears to fall on an inappropriate party (see Appendix 10).

No Breach Possible, but Penalty. In order for there to be a penalty, there must be a clear breach of a regulation. However, in a few cases there are penalties laid down under the Penalty Clauses, but no obvious breach of the Articles in question possible (see Appendix 11).

Anomalous Penalties. We have already considered several cases where penalties seem surprisingly heavy or light by comparison with other penalties laid down under the Penalty Clauses. Other anomalous occur with the use of fines and terms of imprisonment. Sometimes there can be fines and imprisonment, sometimes one or the other. We should note that the Labour Inspectorate has the power to fine, but not to imprison. If the maximum sentence includes a prison term for the offence, does the Labour Inspectorate have the obligation to bring the matter before the common court?

6.1.2 Monitoring factories under the US-Cambodia Textile Agreement

As mentioned above, the US-Cambodia Textile Agreement sets an export quota for garments from Cambodia to the US 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 US Government that they believe have complied with the law and should be given permission to increase their quota of garments to US markets (a considerable financial incentive). This is the first time a government has directly linked trade with labour standards, and the role of the US and its partners in inspecting factories deserves a brief mention.

The Textile Agreement stipulates that the US 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 program to ensure factories complied with the terms. In consultation with MOLSAVY, GMAC, the Cambodian trade union movement and the US Government, the ILO appointed a Chief Technical Officer and began to monitor factories in January 2001 (ILO 2001).

Unlike inspections and monitoring under 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 program. 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' (ILO 2002). 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 (MOU), 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 has trained eight inspectors to monitor factories. 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 the linking of trade and labour standards.

6.2 Rights of Inspectorate

Cambodian Labour Law outlines the rights of the labour inspectorate in Articles 233-237. Article 233 states, in part:

> Visits to establishments and inspections for the purpose of enforcement of the legislative provisions and regulations regarding health, working conditions and safety shall be made by Labour Inspectors and Labour Controllers. Labour Medical Inspectors and experts in work safety shall collaborate to implement these inspection missions.

In the case of infractions, Labour Inspectors can serve notice on the management to indicate non-compliance with the provisions of Chapter VIII – Health and Safety of Workers: Scope of Application – of the Labour Law (that is, the Chapter that details the rights of the inspectorate and other aspects related to occupational health and safety, see Section 6.3 below). After serving formal written notice, management must comply with a deadline (which the law does not stipulate) for remediation. If not, the Law obliges the Labour Inspector to submit an official report to serve formal notice to the management. The law fails to stipulate actionable offences and does not specify the inspection process beyond serving formal notice. For instance, the Law does not stipulate proceedings in the face of management refusal to act on a Labour Inspectors report.

6.3 Occupational Health and Safety Issues

Cambodia does not 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. In effect, the Law offers two sentences on the issue. Article 229 state in part that:

> All establishments and work places must always be kept clean and must maintain standards of hygiene and sanitation or

> generally must maintain the working conditions necessary for the health of the workers.

Article 230 adds that:

> All establishments and work places must be set up to guarantee the safety of workers. Machinery, mechanisms, transmission apparatus, tools, equipment and machines must be installed and maintained in the best possible safety conditions. Management of technical work utilising tools, equipment, machines, or products used must be organised properly for guaranteeing the safety of workers

Article 229 offers a vague provision that MOSLAVY and other relevant ministries 'shall prepare a *Prakas* to monitor the measures for enforcing this article'. The government has issued some *Prakas*, such as Prakas 052/00 regarding hygiene:

> Enterprises should establish hygienic and appropriate toilets for workers. The number of toilets to be established depends on the number of workers in the enterprise. Toilets must be built according to certain specifications, which include waterproof floors and walls, a door with a latch, appropriate lighting, and appropriate and hygienic drainage. Toilets should be cleaned at least once a day.

Chapter IX (Articles 248-257) covers work-related accidents. Article 249 stipulates that 'managers of enterprise are liable for all work-related accidents [as defined in Article 248] regardless of the personal status of each worker'.

On the issue of compensation, Article 252 ensures that 'the victim or his beneficiaries are entitled to compensation from the manager of enterprise or the employer in the event of work-related accidents inflicting on him and resulting in temporary incapacitation'.

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 are inadequate. Keep in mind that monitors regularly assess garment factories to ensure compliance to Cambodian Labour Law (with a 14 per cent 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 5 per cent of 65 garment factories monitored had implemented any sort of health and safety policy (ILO 2002). Sixty-six per cent maintained records on accidents in the workplace, but only 10 per cent 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 factories 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 per cent of enterprises had not trained personnel how to use a fire extinguisher, and 14 per cent 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/dying products, 87 per cent did not provide data sheets in Khmer, and workers in 80 per cent 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 per cent of factories, and only 17 per cent 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 housekeeping (cleanliness), factories fells short. On the former, 34 per cent of those that provided water (and all but one factory did) placed it in unhygienic locations (such as nearby the toilet). On the latter, only 43 per cent met basic standards of cleanliness. Seventeen per cent 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.

7. CONCLUDING COMMENTS

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 resolved 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) in 2005, although GMAC and the Government have appealed to the US 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.

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APPENDIX 1: Report on Inspections

Kingdom of Cambodia

Nation Religion King

Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation

Report
on
Labour Inspections

I. INSPECTORS

- On the day of _____, _____, _____ at _____
  - By:
    1. _____
    2. _____
    3. _____
    4. _____
    5. _____

II. ESTABLISHMENTS

- Enterprise Name: _____
- Address: No. ____, Street _____, Sangkat _____, Khan _____.
- Telephone No. _____, Fax No. _____
- Owner's Name: _____, Nationality _____
- Director's Name: _____, Nationality _____
- An Establishment of: _____
- Business Activities: _____

III. ADMINISTRATION INQUIRY

1. Date of the Opening of Establishment: _____
2. Declaration on the Opening of the Enterprise: Yes □ No □
3. Declaration of Personnel: Yes □ No □
4. Complaint of the Movement of Personnel Yes □ No □
5. Register of the Establishment: Yes □ No □
6. Payroll Ledger Yes □ No □
7. Internal Regulations Yes □ No □

IV. HEALTH AND SAFETY OF LABOUR

1. Number of Workshops: _____, Exits: _____, Steps: _____
2. Lightings _____, Noise _____, Dust level: _____
3. Temperature _____, Humidity _____, Odour _____
4. Infirmaries/First Aid Boxes:___, Nurseries ___, Breast-feeding rooms ___
5. Water _____, Beverages _____, Glasses _____
6. Storage _____, Laboratories _____, Generators House _____
7. Canteens _____, Meal Cabinets _____, Lavabos _____
8. Accommodations for Workers _____, Changing rooms _____
9. Number of Toilets ____, Lack ____, Number of Bathrooms ___, Lack ___
10. Sewers System _____

11. Waste Area _____
12. Labour Safety Signs _____
13. Internal Traffic Signs _____
14. Staff responsible for Labour Safety _____
15. Provision of individual protection equipment _____
16. Providing of equipment for collective protection _____

V. WORKERS

1. Total _____, Female _____, Male _____

2. Age Classification
   - from 12 to under 15 years old, Female _____, Male _____
   - from 15 to under 18 years old, Female _____, Male _____
   - from 18 and up, Female _____, Male _____

3. Nationality Classification
   - Cambodian _____, Employment cards _____
   - Foreigner _____, Work permits and Employment cards _____
   - Number of staff medically certified _____

VI. GENERAL WORKING CONDITIONS

1.Wage:
- Basis of wage _____
- Actual wage: Lowest _____ Riels, Average _____ Riels, Highest _____ Riels
- Wage in kind _____
- Allowances and bonuses _____
- Total actual wage: Lowest _____ Riels, Average _____ Riels, Highest _____ Riels
- Payment of wage _____
- Period of wage: Workers _____/each, Employees _____/each
- Distribution of tips _____

2. Hours of Work and Time off
- Number of hours work per day or per week _____
- Night work _____
- Weekly time off _____
- Paid holiday _____
- Paid special leave _____
- Paid annual leave _____
- Paid sick leave _____

3. Child Labour and Women Labour
- Women Labour _____
- Maternity Leave _____
- Child Labour _____
  - Number of working children and type of employment
    - from 12 to under 15 years old _____, type of employment ____
    - from 15 to under 18 years old ____, type of employment _____
  - Working conditions of children
    - worked in non-hygienic conditions Yes □ _____ No □

- worked with machineries, equipment and tools that unsafe Yes □ _____ No □
- underwater work Yes □ _____ No □
- underground work Yes □ _____ No □
- high altitude work Yes □ _____ No □
- workplace subject to physical violation Yes □ _____No □

- Living conditions and working children
  - Number of children working with his/her parents or with guardians _____
  - Number of children working and living with his/her parents or with guardian _____
  - Number of children working and dropping from school[1] _____
  - Number of children working and leaving from school[2]_____
  - Reason for the child working:
    - Increase family income □ - Debt settlement □ -Own profit □
    - Help his/her family □ - Experiences □ - Miscellaneous □
    - Remarks _____

VII. LABOUR-RELATED ACCIDENTS

- No. ____ times, serious: ___ times, average ____ times, light _____ times
- Number of children ___ times, serious: ___ times, average ___ times, light ___ times

VIII. LABOUR CONTRACT

1. Verbal labour contract □
2. Written labour contract □ Specific duration □ Unspecific duration □

IX. PROFESSIONAL REPRESENTATIVES

- Shop stewards Yes □ No □ Official shop stewards ___
- Trade unions, Yes □ Name _____, No □
- Shop steward unions, Yes □ Name _____, No □
- Employees' associations Yes □ Name _____, No □

X. LABOUR DISPUTES

- Individual disputes Yes _____ times, No □. Termination of shop stewards or former shop stewards or shop steward candidates or trade unions Yes □, No _____.

- Collective labour disputes:
  - Wage Yes □ No □
  - Overtime Yes □ No □
  - Paid holidays Yes □ No □

[1] Children who left school after finishing 9th grade
[2] Children who left school before finishing 9th grade

- Miscellaneous _____ Yes □ No □
- Number of Strikes _____ times, conformed to legal procedures
  Yes □ No □

XI. REMARKS

_____
_____
_____
_____

XII. ADVICES

_____
_____
_____
_____

XIII. RESTRICTIONS

_____
_____
_____
_____

The labor inspection was completed at _____ of the same day.

Phnom Penh,

_____
Signature of report Receiver

Name: _____
Position in the establishment: _____

Phnom Penh,

_____
Signature of Inspectorates

1. _____
2. _____
3. _____
4. _____
5. _____

APPENDIX 2: Warning Notice

Kingdom of Cambodia
Nation Religion King

Ministry of Social Affairs, Labour,
Vocational Training and Youth
Rehabilitation
No. _____

Phnom Penh, _____, 200_

WARNING NOTICE

Inform to:

Mr./Mrs. _____

Objective: Warning on the implementation of the enterprise formalities.

Reference: Report of the Labour Inspector of _____.

Pursuant to the above reference, I hereby request you to complete the formalities on the enterprise before _____, 200_ as mentioned below.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

If, after the expiry of the above period, the said formalities are still not completed your enterprise shall be considered as in violation to the Labour Law which will subject you to fine or imprisonment as provided in Chapter XVI of the Labour Law and other measures which shall be taken against you by the Ministry.

I am counting on your cooperation in complying with this Notice on a timely basis.

Please accept, director, the assurance of my high consideration.

On behalf of
Director of Labour Inspectorate
Department

APPENDIX 3: Record of Special Labour Inspections

Kingdom of Cambodia
Nation Religion King

Ministry of Social Affairs, Labour,
Vocational Training and Youth
Rehabilitation

RECORD OF THE
SPECIAL LABOUR INSPECTIONS

At _____, Name of the Establishment: _____ on _____, from (time)_____ the Labour Inspectorates are named below:

1. Mr. _____, Title _____, Team Leader

2. Mr. _____, Title _____, Member

3. Mr. _____, Title _____, Member

4. Mr. _____, Title _____, Member

have conducted a special labour inspection at _____, Name of Establishment _____,
Address No. ____, Street _____, Sangkat _____,
Khan _____, City/Province _____
Telephone No. _____, Fax No. _____
Business License No. _____, Dated _____
Owners' Name: _____, Nationality _____
Directors' Name: _____, Nationality _____
Permanent address: _____
An Establishment of: _____
Address No. ____, Street _____, Sangkat _____,
Khan _____, City/Province _____
Telephone No. _____, Fax No. _____
Managed by Director: _____, Nationality _____
Permanent address: _____

During this inspection we had found that _____ there are _____ total workers, in which _____ are Female, _____ are Male, _____ of Cambodian Nationality, _____ Foreign nationals have started its business operation from _____.

With reference to letter no. _____, dated _____, the Department of Labour Inspectorate has requested the compliance with the formalities for the enterprise and working conditions provided in the Labour Law on the following _____ items to be complied by Name of the Enterprise _____ before _____.

Until this date of _____ the Enterprise _____ has successfully completed _____ points and failed to complete _____ points, namely:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

This inspection was completed at _____ of the same day.

Has seen and agreed	
Phnom Penh, _____, 2000	Phnom Penh, _____, 2000
Sign and Seal by	Sign and Seal by
Owner or Director of the Enterprise	Inspectors

* * * * * * *

APPENDIX 4: Penalties and Obligations

A. Obligations on Employers: Publicity, Notification, Documentation

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Publicity of Enterprise	14	361	10-30	
Enterprise Register	20	361	10-30	
Internal Regulations	22, 24, 29, 30	361	10-30	
Employer Card	34, 37	361	10-30	
Company Store	42, 43	361	10-30	
Personnel Register	21	363	31-60	
Declaration of enterprise	17, 18	369	61-90	or 6-1
Payroll Ledger	39	369	61-90	or 6-1

B. Obligations on Employers: Fines, Guarantees, Contractors

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Fines for Misconduct	28	363	31-60	
Guarantee for employment	44	363	31-60	

Contractors:

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Contract with	45	363	31-60	
Obligations of Contractor	49	363	31-60	
Notice by Employer	50	363	31-60	
Exploitation or underestimation	46	369	61-90	or 6-1

C. Obligations on Employers: Nature of Employment

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Non-Discrimination	12	369	61-90	or 6-1
Forced Labour	15	369	61-90	or 6-1
Equal Pay	106	363	31-60	
Hiring to Pay Off Debts	16	370	61-90	

D. Obligations on Employers: Child Workers, Female Workers, Apprentices

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Hazardous work and derogations	173	368	31-60	
Underground work and derogations	174	368	31-60	
Night work and derogations	175	368	31-60	
Night break	176	368	31-60	
Minimum age and derogations	177	368	31-60	
Medical examination for children	178	368	31-60	
Register of child workers	179	363	31-60	
Register by orphanages and charities	180	363	31-60	
Maternal leave	182	363	31-60	
Breast-feeding break	184	363	31-60	
Supervision and standards of nurseries	187	361	10-30	
Apprentice regulations	51	363	31-60	
Obligations to train apprentices	59	363	31-60	
Numbers of apprentices	57	363	31-60	

E. Obligations on Employers

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
During suspension of wage contract	72	361	10-30	

F. Obligations on Employers: Wages, Wage Deductions, Hours of Work

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Minimum wage	104	369	61-90	or 6-1
Details of pay	112	361	10-30	
Distribution of gratuities	134	361	10-30	
Wage payments (form and regularity)	114, 115, 116	365	31-60	
Deductions for job placement	126	369	61-90	or 6-1
Allowable wage deductions	127	366	3-60	
Deductions and attachments	128	366	31-60	
Overtime rates	139	363	31-60	
Night work	144	363	31-60	
Daily and weekly maximum hours	137	367	31-60	
Shift work	138	367	31-60	
Extensions of normal hours	140	367	31-60	
Saturday break and special exemptions on hours	141	367	31-60	
Weekly break: six day week and exceptions	146, 147, 148, 150, 152, 153, 154, 158, 159, 160	362 362 362 362	10-30 10-30 10-30 10-30	

Paid Holidays

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Pay for public holidays	162	363	31-60	
Indemnity by employer for loss of earnings	163	363	31-60	
Indemnity for obligatory work	164	363	31-60	

G. Obligations on Employers: Paid Annual Leave

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Duration of annual leave	166	363	31-60	
Indemnity in lien	167	363	31-60	
Amount of payment	168	363	31-60	
Leave entitlement	169	363	31-60	
New Year arrangement	170	363	31-60	

H. Obligations on Plantation Owners

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Hours of work	194	363	31-60	
Wages in kind	198	363	31-60	
Family benefits	200	363	31-60	
Housing	204, 205, 206	363	31-60	
Water	210	363	31-60	
Latrines	214	361	10-30	
School	222	361	10-30	

I. Obligations on Employers: Work-Related Accidents

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Liability	249	363	31-60	
Compensation for fatal accidents and disability	253	361	10-30	

J. Obligations on Employers: Foreign Labour

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Maximum number of workers	260	369	61-90	or 6-1
Permit and employment card	261	372	61-90	or 6-1

K. Obligations on Employers: Unions and Shop Stewards

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Behaviour towards Union activities	279	393	61-90	A/O 6-1
Interference in Union activities	280	373	61-90	A/O 6-1
Deductions of Union dues	281	369	61-90	A/O 6-1
Election of Shop Stewards	292	369	61-90	or 6-1
Report on election of Shop Stewards	296	363	31-60	

L. Obligations on Employers: Strikes, Lockouts, Lay offs

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Hiring of workers during strike	334	369	61-90	or 6-1
Illegal lockout	335	369	61-90	or 6-1
Procedures during mass lay off	95	371	61-90	or 6-1

M. Obligations on Employers: Union Freedom

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Freedom to form union	266	373	61-90	A/O 6-1
Free functioning and elections of unions	267	373	61-90	/O 6-1

N. Obligations on Employers: Child Workers

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Minimum age	173-178	374	30-120	

O. Obligations on Employers: Health and Safety

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Standards of safety	229	375	30-120	
Safety of machinery and conditions	230	375	30-120	
Special safety measures	231	375	30-120	

P. Obligations on Employers: Labour Health Service

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Establishing Labour Health Service	240	377	120-360	A/O 1-5 years
Infirmary	242	377	120-360	A/O 1-5 years
Medical facilities	243	377	120-360	A/O 1-5 years
Hospital	244	377	120-360	A/O 1-5 years
Additional health obligations	245	377	120-360	A/O 1-5 years
Operation of health service	246	377	120-360	A/O 1-5 years
Details of health service	247	377	120-360	A/O 1-5 years

Q. Obligations on Employers: Union Members, Shop Stewards

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Right to Union membership	279	373	61-90	A/O 6-1
Interference with unions	280	373	61-90	A/O 6-1
Deduction of union dues	281	369	61-90	A/O 6-1
Rights of shop stewards after position terminates	282	380	61-90	A/O 6-1
Election of shop steward	283	381	61-90	A/O 6-1
Voters for shop stewards	286	381	61-90	A/O 6-1
Election procedures for shop stewards	287	381	61-90	A/O 6-1

R. Obligations on Employers: Facilitating Labour Inspectorate

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Hindering labour inspectors	382			

S. Joint Obligations on Unions and Employers: Associations, Officers of the Organisations

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Qualifications of officers	269			
Qualifications of officers who are foreign	270			

T. Obligations Not Clear

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Duration for union membership	129	366	31-60	
Right not to join a union	273	373	61-90	and/or 6-1
Appointment of shop steward	278	373	61-90	and/or 6-1

U. No Breach Apparent

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Work-related accidents	255	361	10-30	
Replacement of official shop steward	291	381	61-90	or 6-1
Obligations on Ministry in charge of Labour and Ministry of Health	241	377	120-360	A/O 1-5 years

V. Obligation on Placement Office Personnel

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Acceptance of payment	260	369	61-90	or 6-1

W. Joint Obligations, Employers and Employees

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Absence from conciliation meetings	306	363	31-60	

X. Joint Obligations: Unions and Workers

Subject	Articles	Penalty Clause	Penalty	
			Fine (days x basic wage)	Imprisonment Day Month Year
Freedom for non-strikers	333	369	61-90	or 6-1

APPENDIX 5: Examples of Penalty Clause Omissions

Examples

Here we will consider a few examples of omissions from the Penalty Clauses. It would also be useful for law enforcers to consider the sorts of penalties that might be appropriate for breaches of these 'silent articles' when compared to those breaches for which there are penalties.

Example 1 – Apprenticeship Regulations

- No specific penalty is given for breaches of the nature and form of the apprenticeship contract (Articles 51, 52 and 53).
- No specific penalty is given for breaches of Articles 54, 55, and 56, which deal with the terms of the Apprenticeship Contract.
- No specific penalty is given for Articles 58, 60, and 61, which deal with the duties of instructors (employers) and apprentices.

Article 55

Article 55 stipulates that:

> No employer, instructor in charge of an apprenticeship can live in the same house with female minor apprentices. The capacity as an apprentice instructor or a person in charge of apprenticeship is disqualified for:
>
> 1. Individuals who have been convicted of a crime.
> 2. Individuals who have been guilty of behaving against the local traditional customs.
> 3. Individuals who have been imprisoned for stealing, fraud, misappropriation and corruption.

There are several ways in which the above Article can be breached. Clearly, an employer might take female minor apprentices to live in the same house. Or the employer convicted of a crime might take on apprentices. Thus, a breach of the Law is possible and an offence can be committed. But there is no penalty clause attached. Would breaches be serious? What level of fine, or imprisonment, should the offence carry?

Article 60

Article 60 states:

> The apprentice shall obey and respect his instructor with in the context of apprenticeship. He must assist the instructor in his work to the vest of his ability. He shall keep the professional confidentiality.

The Article lays an obligation, not on the employer, but on the worker. Clearly there are several possible ways in which Article 60 can be breached. The apprentice might behave in an inappropriate way, work badly, perhaps damage equipment, or in other ways give unsatisfactory performance. Also, having learned skills or secrets, he may pass them to others (or leave and take work elsewhere, using this learning) while under

the apprenticeship contract. Although breaches of the Law are possible, no penalty is laid down. It is worth noting in this instance, because it occurs frequently, that nearly all penalty clauses involve obligations of employers. Why should this be so? Would breaches of the Apprenticeship Contract by the apprentice be serious? What might be an appropriate penalty, or should there be no penalty?

Example 2

The Labour Law includes an important Section (Chapter 4, Section 3) on Termination of the Labour Contract. The relevant Articles are 73-94. No breach of those Articles include specific penalty attached. Some of the articles include specific obligations on the part of both employer and worker regarding due notice.

Articles 74 and 75

Article 74 stipulates:

> The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.
>
> However, no layoff can be taken without a valid reason relating to the workers' aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment, or group.

Article 75 sets out the minimum period of prior notice for dismissal of service. The period ranges from: ‘Seven days, if the worker's length of continuous service is less than six months’, to ‘Three months, if the worker's length of service is longer than ten years’.

Clearly there are a number of ways in which the parties to the labour contract, both employers and workers, can be in breach of the provisions of these articles. For example, the notice may not be given in writing. A worker might simply walk off the job without giving any notice. An employer might, similarly, dismiss a worker without notice. Adequate reasons for dismissal might not be given. The due notice period set out in Article 75 might be breached.

There are, then, clear ways in which the articles can be breached, and offences against the Labour Law committed. Yet there are no specific penalties relating to these Articles. It would be useful to discuss why penalty clauses were not included. Would breaches of these Articles be serious? What level of penalty in comparison with penalties for other offences, might be appropriate?

Law enforcers should note that a possible breach by the workers is not given a specific penalty. It would be useful to consider the cases where the Penalty Clauses are silent on the obligations of employees. Are breaches of regulations by employees less serious than those by employers?

APPENDIX 6: An Example of two Penalties for the Same Breach of Law

Example: Article 176

Article 176 states 'the night-time break for children of either sex must be a minimum of eleven consecutive hours.

We should note that this Article does not define a child. Under the various Articles, children as young as 12 are permitted to do 'light work', while for other occupations and conditions the minimum age is variously 15, 16, or 18 (Articles 173-179). Clearly, if a child of 13, undertaking 'light work', is given a night-time break of less than 11 consecutive hours, this will be in breach of Article 176.

Let us suppose a child worker of 13 in a restaurant finishes work at 10 p.m. and is required to work again at 6 a.m. the next morning. This is in breach of Article 176, and an offence has been committed. Under Penalty Clause 374 the penalty can be double that allowed under Penalty Clause 368. What is the appropriate penalty? Is the offence (an eight hour night break) a serious one?

Law enforcers should consider the following points:

(a) Do they have discretion to choose between the two penalty clauses for breaches of article 176?
(b) How serious are breaches of the other articles (173, 174, 175, 177, and 178)?
(c) If an employer employs children as young as 10, are the penalties appropriate?
(d) How would you explain to an employer why there are two sets of penalties for breaches of the same articles?

APPENDIX 7: An Example of a Wide Range of Penalties

Example: Article 245

Article 245 states:

> The employer is required to cover these expenses:
> 1. The service of chemical prophylaxis on their sites;
> 2. Vaccination against epidemics".

An ‘employer’ for this Article is specifically understood (under Article 238) to be any employer under the terms of the Law; that is, even an employer who employs only one worker. We note that specific types of vaccination, particular epidemic diseases, of even a definition of an epidemic are not given.

Let us suppose an employer of ten workers has no preventive medicines (chemical prophylaxis) on his site. This is a clear breach of Article 245. Under the Penalty Clause, the minimum fine for the offence is 120 times the basic wage, and the maximum is, of course, 360 times the basic wage and a five years imprisonment term. What is the appropriate penalty? Is the offence serious? If the employer employed 100 workers would the seriousness of the offence be the same? Would the penalty be the same? Law enforcers should consider how they would answer on employer who asked: Why are the minimum and maximum penalties for not supplying medicines more than double those for employing forced labour (Article 15, Penalty Clause 369)? Also, why are such apparently high penalties imposed for breaches of these particular regulations?

APPENDIX 8: Examples of Penalties that Seem Inappropriate

Example 1: Article 15 (forced labour)

Forced labour is recognised as one of the worst and most exploitative forms of labour. It is banned under international conventions, under the Cambodian Constitution, and under the Labour Law.

Article 15 states:

> Forced or compulsory labour is absolutely forbidden in conformity with the International Convention No. 29 on the Forced or compulsory Labour, adopted on June 28, 1930 by the International Labour Organisation and ratified by the Kingdom of Cambodia on February 24, 1969.
>
> This article applies to everyone, including domestics or household servants and all workers in agricultural enterprises or businesses.

We can not here detail the conventions, but they cover all forms of forced labour, including slave labour, bonded labour, debt labour, and others. The penalty clause for breaches of the forced labour Article (Article 15) is dealt with under Article 369. The penalty for a breach (i.e., the employment of forced labour) is a fine of 61-90 times the basic wage or imprisonment of six days to one month. We have already seen that penalties in breach of the Labour Health Service regulations are more than double those for employing forced labour are one month, while for a breach of the Health Service Regulations it is 5 years. We can note that the penalties for employing forced labour are exactly the same as those for failing to pay workers the minimum wage (Article 104, Penalty Clause 369).

Law enforcers should consider:

(a) Whether the penalty for forced labour is appropriate.
(b) Whether failure to pay the minimum wage is of equivalent seriousness to using forced labour.
(c) What avenues are open to imposing higher penalties for breaches of Article 15.

Example 2: Article 253

Article 253 concerns the payment by employers for work-related fatal and serious accidents. It states:

> Compensation for fatal accident or his beneficiaries as an annuity. Supplementary compensation is granted to a victim who requires constant care from another person. In the event of incapacitation, compensation should be paid no later than the fifth day after the accident.

Clearly these provisions apply to very serious accidents, perhaps where the victim is disabled, or, in the case of a fatality, a family loses the breadwinner. Evidently there are a number of ways where an employer can be in breach of Article 253. Compensation might not be paid, it might be inadequate, or it might be paid late. There can, then, be an offence by an employer in breach of Article 253. Penalties for a breach of Article 253 are

dealt with under Penalty Clause 361. The Penalty for a breach is at the lowest rate, a fine of 10 to 30 days times the basic rate.

Enforcement officers should consider:

(a) Is a breach of Article 253 a serious offence?
(b) Is the range of the penalty appropriate?
(c) Should the extent of a penalty reflect both punishment for an offence and an incentive to comply.
(d) Does the extent of the penalty in this case provide any incentive to the employer to comply?
(e) Is the extent of the penalty in line with the seriousness of other breaches which carry the same, lowest, penalty?

Example 3: Article 255

Article 255 states:

> Notwithstanding the preceding provisions, victims of work-related accidents can benefit from more favourable conditions if there is such an agreement between the parties.

The Article is dealt with under Penalty 361, and lays down a penalty of 10-30 times the daily wage. Presumably, since this is the minimum rate of penalty, the offence is considered to be relatively light. It is not completely clear in what a breach of Article 255 consists. Normally, an agreement for a work-related accident would take the form of accident insurance, and one might expect one of the interested parties to be the insurance company. The only possible breach would seem to be a written agreement between employer and employee (perhaps part of the labour contract) not honoured by the employer.

If the employer does not honour an agreement for accident compensation (perhaps a serious accident) would this be a serious offence? Is the penalty laid down under Clause 361 appropriate?

Law enforcers should ask themselves what the term "more favourable" in Article 255 means. They should note that no provisions are included in Articles 248-255 for the amounts of compensation, and no implementing Prakas has been issued (Art. 257). So how can any agreement outside the Labour Law be "more favourable"? Can such an agreement be "less favourable"?

APPENDIX 9: Examples of No Clear Obligation

Example 1: Deduction for Union Membership, Article 129

Article 129 states:

> However, the worker can authorise deductions of his wage for dues to the trade union to which he belongs. This authorisation must be in writing and can be revoked at any time".

Penalty Clause 366 lays down a fine of 31-60 times the basic wage for breaches of this Article. However, it is not clear who can be in breach of the regulation. The employer, who might not deduct the due to the union? The union, which might not accept the due/the worker, who fails to authorise the deduction correctly?

Example 2: Right Not to Join a Union

Article 273 states:

> The trade union freedom of individuals also implies freedom of not joining a worker's union or employer's association and freedom of withdrawing at any time from the Organisations in which they join.

The relevant Penalty Clause, 373, lays down a relatively heavy penalty for breaches of Article 273, a fine of 61-90 times the basic wage and/or imprisonment of from 6 days to 1 month. However, it is not clear how the Article can be breached, or who can be in breach. Is it considered that the obligation falls on the employer, who might force a worker to join a union? Or on the union which might not allow a worker to withdraw from the union? How, in practice, can this refusal be carried out?

Law enforcers should be clear as to where obligations under the Labour Law fall. If the law is not clear, then perhaps they should consider the intentions of those who drew up the Law. It is possible that the nature of the penalty (in this case heavy) indicates the intentions of the lawmakers.

APPENDIX 10: Obligation on Inappropriate Party

Example: Article 241

Breaches of Article 241 are dealt with under Penalty Clause 377. The penalty is a fine of 120-360 times the basic wage, and/or imprisonment of from 1-5 years. This is the maximum penalty laid down under the Penalty Clauses, and clearly, therefore, breaches of Article 241 are considered serious offences.

Article 241 states:

> As of the date set by a joint *Prakas* of the ministry in charge of labour and the ministry of Health, there shall be physicians specialised in labour health necessarily taking up the positions of Labour Physicians.

Can there be a breach of this Article? Until now there has been no joint *Prakas*, so presumably there can be no offence. However, when, and if a joint *Prakas*, is issued and a date set, the Article can be breached if physicians are not appointed. However, who has the obligation to appoint physicians: the Ministry in charge of Labour, the Ministry of Health, or both? Suppose physicians are not appointed, or other terms of the future *Prakas* violated, upon whom does the obligation fall? The obligation is clearly upon the Ministry which must appoint. However, is it appropriate to put a legal obligation upon a Ministry? Who can enforce the provision, considering that the Labour Inspectorate is a department of the Ministry of Health? Can a Ministry be fined, or imprisoned? Law officers should ask themselves the intention of the Article 241 in the light of the heavy penalty laid down. Is it, in fact, supposed to be an obligation on employers to accept the role of the labour physicians?

APPENDIX 11: No breach Possible, but Penalty

Example: Article 291

Article 291 states that:

> The official shop stewards and assistant shop stewards are elected for two years term and can be re-elected. Their function are terminated by death, resignation and termination of the labour contract. When an official shop steward leaves office or is temporarily absent, he is replaced by an assistant shop steward from the same electoral body, and the priority for replacement is given to the assistant shop steward who has been nominated by the same union Organisation and who received the largest number of votes.

This Article concerns the procedure of replacing the shop steward. The Article is dealt with under Penalty Clause 361. A breach carries a fine of 10 to 30 times the basic wage, the lowest level of penalty under the Penalty Clauses. Presumably, a breach of Article 291 is considered a relatively minor offence.

However, how is a breach of Article 291 possible? The only possible breaches would seem to refer to the second sentence, but it is not clear as to the nature of the breach. We might consider that an employer tries to appoint a shop steward in violation of the terms of this sentence, but this would be a serious offence covered by other Articles and penalties (interference with a union).

Law enforcers should ask:

(a) What possible breaches can there be of Article 291?
(b) Would the breaches be serious?
(c) Is the penalty for breach appropriate?
(d) Is the nature of obligation clear?
(e) What was the intention of the lawmakers in preparing a penalty of 10 to 30 times the basic wage for violations of this law?
(f) If there are problems with the language of this law, how might the language be changed.