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THE ROLE OF LABOR-RELATED ISSUES IN THE FOREIGN ASSISTANCE FRAMEWORK

CAMBODIA LABOR ASSESSMENT

DRAFT

JANUARY 2008

This publication was produced for review by the United States Agency for International Development. It was prepared by ARD, Inc. and Nathan Associates., Inc.

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DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ACRONYMS

AAFLI	Asian-American Free Labor Institute
ACILS	American Center for International Labor Solidarity
ADR	Alternative Dispute Resolution
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
BFC	Better Factories Cambodia
CAMFEBA	Cambodian Federation of Employers and Business Associations
CBA	Collective Bargaining Agreement
CBTA	U.S.-Cambodia Bilateral Textile Agreement
CCAWDU	Coalition of Cambodian Apparel Workers Democratic Union
CCHR	Cambodian Center for Human Rights
CCTU	Cambodia Confederation of Trade Unions
CCU	Cambodia Confederation of Unions
CCWR	Cambodian Confederation for Worker Rights
CDRI	Cambodia Development Resource Institute
CIC	Coalition of Cambodian Inheritance Confederation
CICA	Cambodian Independent Civil Servant Association
CITA	Cambodian Independent Teachers Association
CLC	Cambodia Labor Confederation
CLEC	Community Legal Education Center
CLS	Core Labor Standards
CNC	Coalition of National Construction Federations
CNMWD	Cambodian Network of Men and Women Development
CPP	Cambodian People’s Party
CSES	Cambodia Socio-Economic Survey
CTSWF	Cambodian Tourism and Service Workers Federation
CWMO	Cambodian Women’s Movement Organization
DCHA	Democracy, Conflict, and Humanitarian Assistance Bureau of USAID
DRL	U.S. Department of State, Bureau for Democracy, Human Rights, and Labor
EG	Economic growth
EGAT	Economic Growth, Agriculture, and Trade Bureau of USAID
FAF	Foreign Assistance Framework
FOA	Freedom of Association
FTUWKC	Free Trade Union of Workers of Kingdom of Cambodia
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (in French, <i>Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique, Et Coopératif</i>)
GIPC	USAID-supported Garment Industry Productivity Center
GMAC	Garment Manufacturers Association in Cambodia
G-PSF	Government-Private Sector Forum

IDEA	Informal Development Economic Association
ILO	International Labor Organization
KTA	Khmer Teachers Association
KYFTU	Khmer Youth Free Trade Union
LAC	Labor Advisory Committee
LDRP	ILO Labor Dispute Resolution Project
MCC	Millennium Challenge Corporation
MoLVT	Ministry of Labor and Vocational Training
MoSALVA	Ministry of Social Affairs, Labor, and Veteran Affairs
MoSALVY	Ministry for Social Affairs, Labor, Vocational Training, and Youth Rehabilitation
MPDF	Mekong Private Sector Development Facility
MRS	Most Representative Status
NACC	National Union Alliance Chamber of Cambodia
NGO	Nongovernmental Organization
NSDP	National Strategic Development Plan
NTB	National Training Board
PRAJ	Project on Rights and Justice (USAID)
RGC	Royal Government of Cambodia
ROL	Rule of Law
SRP	Sam Rainsy Party
TIFA	Trade and Investment Framework Agreement
TVET	Technical and Vocational Education and Training
UNTAC	United Nations Transitional Authority in Cambodia
USAID	United States Agency for International Development
USDOL	United States Department of Labor
USG	United States Government
WTO	World Trade Organization

EXECUTIVE SUMMARY

1.0 WHY LABOR?

The U.S. government's (USG) foreign affairs goal is *transformational diplomacy*, which seeks to “help build and sustain democratic, well-governed states that respond to the needs of their people, reduce widespread poverty, and conduct themselves responsibly in the international system” (State and USAID 2006: 58).

Full consideration of labor-related issues is crucial to responding to people's needs. “Labor-related issues” address the aspirations of, and constraints faced by, children, youth, and adult men and women, as they prepare for and participate in the world of work. We understand the world of work in its broadest context, encompassing people engaged in agriculture, industry, and service sectors, whether formally employed or informally engaged in making a living. We recognize that workers may be organized and unionized. People work on- and off-farm, in rural and urban areas, in their own countries or abroad. They may toil in legal or illegal activities. They may be working voluntarily or, in the case of trafficked persons, against their will.

Failure to address labor-related issues increases a country's vulnerability. A country that cannot offer the prospect of employment to its labor force leaves itself open to the destabilizing pressures that may arise from unemployed and disaffected youth. A country that cannot assure working conditions compliant with international standards or cannot provide stable labor relations makes itself less attractive to foreign investment. And a country that does not provide appropriate knowledge and skills to its workforce through education and training risks its competitiveness on the global market. These factors in turn discourage investment, which exacerbates a downward spiral.

A focus on labor rights, labor's interests, employment, wages, and workforce development by developing country policymakers and the development organizations that work with them is therefore essential to address people's needs to earn a decent living in support of themselves and their families. It is also important to the development of both accountable political systems which respond to citizens' concerns and interests, and to democratic multi-party systems which are interest-based, rather than based on personalities and patronage. Addressing these issues also builds human capacity in crucial areas such as negotiation and leadership accountability, which in turn contributes to the peaceful resolution of differences and more transparent governance.

The promotion of freedom of association, as a fundamental human right, also serves an instrumental role in promoting democracy, good governance and broad-based, sustainable economic development. The ability of free and democratic unions to constructively interact with free employer organizations and NGOs, as well as with government, helps support the expansion of democratic practices and expectations more broadly in society. Building and improving institutions and processes in labor relations can both serve as a foundation for promoting good governance and sound economic development that meets the needs of employers and workers. To these ends, worker organizations and, to some extent, employer organizations require the capacity to operate democratically and effectively in a transparent rules-based environment. Helping to empower Cambodians to take a control over their own lives serves two other very important goals: ensuring that development efforts are 1) more accurately tailored to needs and circumstances of Cambodians and 2) more effectively implemented because they result in more sustainable and internalized solutions.

This paper argues that viewing development challenges through a labor lens is integral to the long-term achievement of development goals. Moreover, as will be discussed below, using that lens to focus on

programming options may be a *more effective strategy* for achieving those goals, in some cases. For example, labor unions in developing countries are closer to “the poor,” about whom the Millennium Development Goals is most concerned. They are thus some of the most far-reaching and representative of civil society organizations. Because unions interact with workers on the job who in turn are connected to their families, unions provide a more effective channel for communication and mobilization of a broad swath of civil society. If development is truly to be participatory and if macro and meso development goals are to succeed, the understanding, cooperation, support, and active participation of workers is essential. The ultimate measure of success of trade liberalization and globalization, for instance, is not whether tariffs are reduced or eliminated or whether foreign investment is encouraged, but rather when men and women can truly benefit from new opportunities that offer better working conditions and remuneration by which to improve their standards of living.

1.1 USG & LABOR-RELATED ISSUES

The U.S. Agency for International Development (USAID) and the Department of State’s Bureau for Democracy, Human Rights, and Labor (DRL) have for decades supported international labor-related programs and their contributions to development and diplomacy objectives. The introduction of the U.S. Government’s (USG) Foreign Assistance Framework presents an optimal time to take stock of the role of these programs and their contribution to USAID’s development and diplomacy objectives, and offers an opportunity to seek improved coherence in the different goals and approaches of labor-related programs funded by USAID and the Department of State.

To date, labor-related programs have generally addressed objectives in three main areas: labor rights, labor markets, and labor organizations’ role in promoting foreign assistance goals. Illustrative activities include the promotion of efforts to eliminate the worst forms of child and forced labor and labor trafficking; advice on labor market reforms and the improved collection and analysis of labor statistics for policy making; the incorporation of labor standards in trade agreements and international lending instruments; and the strengthening of democratic trade unions and their role in democratic and economic development. In the absence of a coherent strategy that underscores the tensions between these areas and activities and identifies areas of potential synergy, however, their technical relevance to development and diplomacy goals might not be fully realized.

To this end, USAID’s Democracy, Conflict, and Humanitarian Assistance (DCHA) and Economic Growth, Agriculture, and Trade (EGAT) Bureaus are collaborating to provide a cross-sectoral perspective on labor-related issues. A Technical Paper outlining this cross-sectoral perspective was drafted in October 2007 and presented for comment to USAID, State Department, and labor community representatives. An Assessment Guide is also being prepared that will assist USAID and State Department field officers in the conduct of labor assessments.

1.2 CAMBODIA’S UNIQUE LABOR PROGRAM

The USG’s historical commitment to labor-related issues in Cambodia makes the country a unique case in which to undertake this first country labor assessment. Despite a U.S. Congressional restriction on foreign assistance to Cambodia in 1997,¹ U.S. economic relations with Cambodia deepened in the late 1990s,

¹ After decades of isolation due to genocide, occupation, and internal strife, Cambodia began to re-emerge with the signing of a peace accord in Paris in 1991 and oversight of general elections and other transition issues by the United Nations Transitional Authority in Cambodia (UNTAC) from 1992 to 1993. Relative calm prevailed until 1997, when factional fighting resumed, resulting in Prime Minister Hun Sen’s wresting of the sole reins of power (previously, he had been a co-Prime Minister). In response to the 1997 coup, U.S. bilateral foreign assistance at the national government level was suspended for ten years. USG restrictions on foreign assistance to the government of Cambodia were lifted in early 2007.

especially with respect to textiles trade and labor-related provisions. Two successive U.S.-Cambodia Bilateral Textile Agreements² (CBTA), made Cambodian garment exports' access to the U.S. market contingent on manufacturers' compliance with labor standards. The CBTA thus laid the groundwork for extensive and high-level USG involvement in labor areas. It is hard to overstate the significance of the USG labor program through 2004, which figured prominently in U.S.-Cambodian bilateral relations with high-profile oversight of the factory compliance monitoring program managed by the U.S. Embassy in Cambodia and USG representatives from Washington.

The USG-supported labor program in Cambodia originally included 1) assistance in the drafting of Cambodia's labor law, 2) support for labor rights through union strengthening, and 3) funding for two innovative programs implemented by the International Labor Organization (ILO). These include an independent program to monitor factory compliance with labor standards and an independent system to handle the resolution of collective labor disputes. The labor program's success was rooted in market-based incentives. In semi-annual government consultations, in exchange for measurable progress on labor conditions, the USG adjusted Cambodia's textile and apparel export quota into the U.S. market. Both the factory monitoring program and the collective dispute resolution system have become widely touted examples of international best practice of stakeholder cooperation with respect to labor-related issues.

Although the CBTA expired with the end of the World Trade Organization's (WTO) Agreement on Textiles and Clothing, the Royal Government of Cambodia continues to esteem its labor programs. The Ministry of Commerce credits them with success in helping to carve an international market niche vis-à-vis international buyers for Cambodia's garments exports. In an era of dwindling exports for many garments producers around the world in the wake of elimination of textile and clothing market quotas, Cambodia's share of the U.S. market, far and away its largest export destination for clothing exports, continues to grow. August 2007 data from the U.S. Department of Commerce data indicate that while Cambodia has fallen to 8th largest apparel supplier into the U.S., its cumulative market share for the year has nonetheless risen to 3.3 percent, compared with 3 percent in 2006. The future viability of these flagship programs is uncertain, however, with future sustainability models and funding streams currently being reconfigured.³

The relationship of the United States with Cambodia is evolving rapidly. U.S. bilateral assistance, limited by the U.S. Congress between 1997 and 2007 to working with partners outside of the national government, is once again unrestricted as of early 2007. U.S. interests in Cambodia are substantial, covering diplomatic, development, human rights, international health, trade and investment, and security areas. With this important change in the tenor of U.S.-Cambodia dialogue come new opportunities to review strategic programming options, including in labor-related areas.

1.3 REPORT OUTLINE

In order to test the conceptual framework and Assessment Guide, a team led by Dr. Kimberly Ludwig (USAID/DCHA) and including Jeffrey S. Wheeler, a labor lawyer, and Lynn Salinger, a labor economist, visited Cambodia from October 15-28, 2007. Michael Lerner, a Cambodia-based legal advisor, joined the team in country. Meetings, interviews, and focus group discussions were held by the labor assessment

² The CBTAs ran from 1999-2001 and from 2002-2004.

³ USAID and the International Finance Corporation's Mekong Private Sector Development Facility (MPDF) are helping the BFC to develop a sustainability plan. The Arbitration Council has applied for continued funding from the World Bank. Also, MPDF has prepared a garment industry training strategy that would align garment manufacturers' needs with the education and training services of local postsecondary institutions, USAID's Garment Industry Productivity Center, and other training providers.

team with representatives from labor, employers, governmental and other organizations, USG and partners, and international organizations in Phnom Penh and Siem Reap.

This report summarizes the Cambodia labor assessment team's findings and analysis. Section 2 discusses the four elements of a well-functioning labor sector, which served as the team's conceptual framework for its fieldwork. To understand labor issues in context, Section 3 analyzes Cambodia's unique circumstances, including its development challenges, the history of its labor movement, donor support for its labor programs, and USG priorities in Cambodia. Section 4 analyzes Cambodia's labor sector in terms of its legal foundation, labor-related institutions and organizations, and labor markets. Section 5 analyzes four overarching development themes that emerge from USAID's program in Cambodia, drawn primarily from the FAF's priority areas on *Governing Justly and Democratically* and *Promoting Economic Growth*. They include corruption, civil society, the rule of law, and competitiveness. That section also analyzes potential tensions and synergies between objectives in these areas. Section 6 concludes with recommendations, highlighting opportunities for labor-related programming identified by the labor assessment team. Lists of contacts made by the assessment team and references consulted in the writing of this assessment are included at the end of this report.

2.0 FOUR COMPONENTS OF A WELL-FUNCTIONING LABOR SECTOR

This country labor assessment is grounded in *The Role of Labor-Related Issues in the Foreign Assistance Framework*, (Wheeler and Salinger, 2007), a cross-sectoral conceptual framework which is outlined below.

As a country's history and culture influence its political and economic development, so too do they influence its labor-related development.⁴ For instance, countries differ with respect to the extent to which: they promote labor rights;⁵ their workforces are unionized; workers' voices are heard on issues both work-related and related to broader social and political debates; their economies' rely on markets versus government mandates to allocate access to employment; wages are set by government or negotiated; wages are dispersed across wage-earners; and so forth.

Yet despite the myriad of labor sector market and institutional arrangements observed around the world, the basic structure of a labor sector in any country can be explained with a simple diagram. A well-functioning labor system rests on four pillars—a legal foundation, labor-related institutions and organizations, and markets—as seen in Figure 1. These four elements comprise the “labor enabling environment” that undergirds stable democracies and prosperous market economies. A sound labor enabling environment requires:

- An established legal framework that promotes the rule of law, including respect for human rights, including labor rights;
- Support from government through its executive, legislative and judicial functions for a progressively improving set of labor laws and policies, their implementation and continuous improvement, and effective systems of dispute resolution;

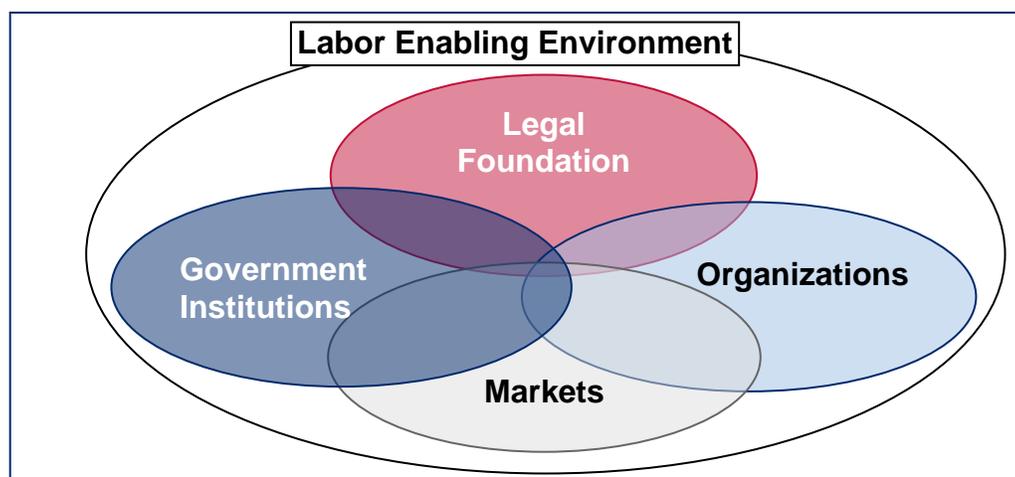
⁴ For global perspectives on labor markets and institutions, see Aidt and Tzannatos 2002; Kaufman 2004; Chor and Freeman 2005; Tzannatos and Aidt (2006), and Freeman 2007. Reliable data to compare countries, especially developing countries, on many of these issues is virtually nonexistent. Freeman cautions, “determining how institutions affect [economic] outcomes across countries is difficult. Findings must be put through several sieves—cross-section analysis, before/after analyses, within-country analyses, and over different time periods—before one can hazard a generalization” (2007: 19). For a critique of Aidt and Tzannatos, see Bakvis, 2003. See also, *Can Labor Standards Improve Under Globalization?* (Elliott and Freeman, 2003).

⁵ With funding from the U.S. Department of Labor (USDOL), the U.S. National Academies produced a report and a database structure aimed at providing an empirical foundation to monitor compliance with core labor standards in all countries. See The National Academies (2004). The criteria developed may be found at USDOL's website in its database on WEBMILS (Monitoring International Labor Standards) at <http://www.dol.gov/ilab/webmils/>. For a discussion of universal labor standards and national cultures, see Servais 2004.

- Freedom of association (FOA) to form worker and employer organizations, and non-governmental organizations, that advocate on behalf of parties’ interests in labor matters and more broadly in civil society; and
- A competitive and well-regulated market system that allows for the smooth allocation of appropriately educated and skilled labor in response to the private sector’s needs in agriculture, industry, and services sectors of an economy.

Each is further discussed below and detailed in Wheeler and Salinger (2007).

FIGURE 1. FOUR COMPONENTS OF A WELL-FUNCTIONING LABOR SECTOR



Although each of these elements is discussed here separately, these four elements must be viewed as a mutually reinforcing system, depicted by the overlapping nature of the components in Figure 1 above. Each requires the other three in order for the labor enabling environment to remain balanced and effective. For example, the effective functioning of the legal foundation requires strong and transparent government institutions. An understanding of how labor markets work strengthens the capacity of labor organizations to represent their members’ interests. Labor markets operate more efficiently to allocate resources when laws and regulations, government-sponsored institutions, and labor organizations are available to help manage the risks faced in the market. Government labor institutions that respect the rule of law and market forces will develop policies that best suit the needs of employers and workers. In other words, this “labor enabling environment” is a holistic system whose proper function requires that the components are engaged collectively.

2.1 LEGAL FOUNDATION

A well-functioning labor sector operates within an established legal framework that promotes the rule of law. The law must protect fundamental *rights* and provide for meaningful *remedies*. Constitutions generally establish principles that determine the powers and duties of the government and guarantee certain rights, commonly including some or all core labor rights.⁶ Legislation commonly adds depth and

⁶ These rights include freedom of association and organizing (which includes the right to strike), the right to engage in collective bargaining and the prohibitions of forced labor and bonded servitude, child labor (including the worst forms of child labor) and discrimination, as provided in the ILO Declaration on Fundamental Rights and Principles and in the Core Conventions (see ILO 2005 and discussion below). Under U.S. trade law, they also include “acceptable conditions of work” regarding wages, hours and health & safety. Human trafficking is often related to forced and child labor.

breadth to these rights and establishes a range of labor standards addressing both *collective rights* by protecting freedom of association and regulating collective bargaining and *individual rights* by setting minimum standards for wages, overtime, termination notice and pay, leave, health & safety, and retirement benefits, among others. The law may draw inspiration from or formally “domesticate” international instruments, such as the ILO Conventions. The law should also provide for the enforceability of contracts and permit only limited court review of collective bargaining agreements (CBAs) with mandatory dispute resolution clauses, such as arbitration clauses.

2.2 LABOR-RELATED GOVERNMENT INSTITUTIONS

In an optimal arrangement, the *legislature* adopts in a timely manner a progressively improving body of labor law that is well-informed by good data and policy analysis. A well-functioning *executive* provides policy direction, implements the law and collects and evaluates data to ensure that the policies and enforcement are effectively focused. The executive ensures that the government’s processes are efficient, effective, and transparent and that officials have the proper direction and incentives to carry out their duties, limiting their discretionary authority to prevent abuses. Most commonly through a labor ministry or department, it educates on the labor and employment law, regulates, investigates, conciliates and prosecutes either directly or through another government body, such as a ministry of justice. To improve the law and its enforcement, it receives feedback from a widely representative group of employers and unions and expert guidance from academia. It promotes continuous improvements in labor relations through tripartite dialogue and the promotion of best practices.

A well-functioning legal framework also requires a well-functioning *judicial* system. Legal systems usually have a role for the judiciary either for hearing labor disputes or reviewing administrative decisions on appeal. The judiciary may process labor cases through common courts or through specialized industrial or labor courts. Many systems resolve certain labor disputes through quasi-judicial bodies such as administrative tribunals, boards and councils. Either way, a well-functioning institution has the following characteristics: its decision-makers are appointed on the basis of merit; the processes are fair, transparent and efficient; decisions are published with fact-finding and legal reasoning; and the decisions are binding and enforceable. In a common law system, the decisions build a body of law for persuasive guidance and/or binding precedent (*stare decisis*) for future decisions. In a civil law system, the decisions help inform the development of a sound body of jurisprudence even where they do not formally serve as binding precedent. In many systems, these judicial processes are supplemented by alternative dispute resolution (ADR), which includes mediation and conciliation as well as arbitration, which in many systems, such as those in the U.S. and Canada, involves a private arbitrator assessing facts using informal rules of evidence, interpreting contractual provisions, and issuing binding decisions that are subject to only very limited or no judicial review.⁷ Private sector buyers may also support methods of policing labor rights in their suppliers’ factories as a form of reputation risk insurance.

2.3 LABOR-RELATED ORGANIZATIONS

Workers in the public and private sectors and employers (except the police and military) have the right to form their own organizations and engage in collective bargaining. In promoting FOA, the law should provide for some balance between promoting worker choice in forming different unions and worker unity

⁷ Government-sponsored “arbitration” has been developed in some countries including, for example, South Africa and Australia.

in requiring that they join in coherent unified organizations for the purpose of collective bargaining.⁸ Workers have the right to strike (subject to reasonable restrictions), except for a narrow grouping of those engaged in “essential services,” which, according to the ILO are defined as those the interruption of which would endanger the life, personal safety or health of the whole or part of the population commonly including, for example, police and emergency personnel.⁹ NGOs that promote labor rights may not be directly covered by these rights but are generally protected by broader principles of freedom of association and the rights of civil society in a functioning democracy. Unions must generally adhere to certain practices often established in law, e.g., their leaders must be elected, to be deemed “free and independent.”¹⁰ Mass movements, NGOs, and other civil society organizations do not have the same requirements but may be regulated under other laws.

2.4 LABOR MARKETS

The myriad of issues regarding labor—where people work, how they work, what knowledge and skills do they bring to work, for what wages do they work, whether they work in jobs whose terms of employment are formally protected or jobs whose terms of employment fall outside the labor law, and so forth—are resolved through “labor markets.” Labor laws, institutions, and organizations function in the context of, and in turn help to shape, these markets.

Whether in the context of perfectly competitive, regulated, or centrally planned economies, labor markets allocate the work of men, women, and children according to the forces of supply and demand. Just as we understand that in a market for goods (from daily bread to airplanes), supply and demand meet to determine the quantities and prices at which goods are bought and sold, so, too, a market for labor determines the level of employment (the “quantity” of jobs) and wages (the “price” of labor) in the world of work.¹¹

Markets for labor exist in all sectors of the economy. Wages and other terms of employment vary among sectors of the economy. Workers consider these alternative opportunities, which affects the sectors in which they seek and find jobs, how they work, where they live, what migration forces may pull or push them, and even what kinds of education and training investments they undertake. Labor markets encompass workers who are formally employed, including those who are organized in unions and those

⁸ FOA does not require that states allow an unlimited profusion of unions with collective bargaining rights; rather, the law may provide reasonable and fair rules for establishing which union may exclusively represent a group of employees for the purposes of bargaining; see ILO (2004).

⁹ The ILO’s supervisory bodies have taken the position that where the right to strike is subject to restrictions or a prohibition, the workers concerned should be afforded compensatory guarantees, such as conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery perceived to be reliable by the concerned parties (ILO 2004).

¹⁰ A “free and independent” union is one that operates without a government or employer controlling them or exercising undue influence over them. A union may be free and independent from outside parties yet vary considerably regarding whether it is internally democratic. The ILO strongly encourages and national laws frequently require unions to meet certain internal democracy requirements in order to be certified as the workers’ representatives or bargaining agents, which must be set forth in constitutions and bylaws; see ILO (2004). The hallmarks of these requirements are that the unions regularly hold free and fair elections, members may run for office and vote, and, usually, members may vote whether to accept or reject negotiated collective agreements and whether to go on strike. In terms of process, union leaders should provide information to the membership, consult with them, facilitate debates among members, help forge consensus when needed and give them a collective voice.

¹¹ Even when minimum wages or overtime wages are set by legislation or negotiated agreements, wage levels in the rest of the labor market for a given skill level are usually a benchmark in the setting of those wages.

who are not, and those who are informally employed.¹² They even encompass those who work for themselves or their families. For example, in the rural areas a man might work on rice cultivation on his family's farm during the rainy season, yet migrate elsewhere in the dry season in search of wage employment in construction, transportation, fishing, or other areas.

In order to better understand the labor market, it helps to break down participation in the world of work into more detailed labor force groups. For example, the total available labor force in an economy—or what economists call “labor supply”—can be disaggregated by age, gender, knowledge and skill level, and other variables. The total workforce needs of the broad economy—or what is referred to as “labor demand”—can be distinguished by the economic sector in which employers are found, the knowledge and skill requirements sought for specific occupations within those sectors, the duration or seasonality of employment, and other dimensions. Labor markets represent the intersection of demand and supply that result in employment and wage levels across the economy.

Note that not every job is one that will help those in poverty to break its vicious cycle. This is why development specialists should be concerned not just with the creation of jobs, but the creation of “decent work.” The ILO defines “decent work” as the sum of people’s aspirations in their working lives: their aspirations for opportunity and income; rights, voice and recognition; family stability and personal development; and fairness and gender equality. Ultimately these various dimensions of decent work underpin peace in communities and society.”¹³

In addition to legal, institutional, and organizational supports described above, labor markets function best when

- Information about employment opportunities is widely available to all labor force participants and to the educational and training institutions that prepare them,
- Workers can move easily in search of legitimate work, protected from exploitation, and
- Systems of social protection exist to enable workers to cope with risks they face.

The first refers to workforce development systems, i.e. systems that communicate employers’ needs with education and training programs and information about employment opportunities and career paths to students and job seekers. Mechanisms to ensure this interaction may include national or sectoral training boards, skills councils, curriculum review committees, educational and training frameworks to achieve competency standards, recognition of skills certification, and the like. In addition, public and private employment offices, youth centers, print media announcements, career forums, physical and electronic job boards, and personal connections help to connect job seekers with employers.

The second condition refers to migration, when labor moves to seek employment in town, in a different region of the country, or even internationally. Such movements in search of work may involve legal migration, illegal movement across borders, or even involuntary or exploitative trafficking of persons. Governments should seek to facilitate such movements, while protecting migrants from exploitative practices and helping victims of those practices to be re-integrated into legitimate labor markets.

Some countries offer social protection schemes, such as health insurance and pension programs, to help workers protect themselves against predictable risks of illness and old age. Other social protection schemes may also exist to help workers to cope with sudden, external shocks. For example, a worker’s livelihood may suffer in the event of an employer’s lay-off of some or all of its workforce or a factory

¹² The distinction depends on the extent to which the terms of employment and obligations between employer and employee are formalized in a contract.

¹³ See ILO, http://www.ilo.org/global/About_the_ILO/Mainpillars/WhatisDecentWork/lang--en/index.htm.

closure, a sudden catastrophic event, or even from trade-related adjustments as an economy liberalizes its border policies. To help workers and their families cope with these shocks, countries employ a variety of mechanisms, including *inter alia* public works or food-for-work programs, unemployment insurance, portable health insurance, and employment and retraining assistance.

3.0 CAMBODIA: A UNIQUE CASE STUDY

This section uses the conceptual framework presented in Section 2 as a “lens” through which to view Cambodia’s labor sector. In this section, we explore several dimensions of the context in which the labor assessment is situated: development challenges facing Cambodia today, the history of Cambodia’s labor movement, donor engagement in the labor sector, and USG programmatic priorities.

Cambodia is a unique case in which to undertake this first country labor assessment for USAID. The labor program on which the USG embarked in the late 1990s represents “an innovative policy experiment” (Polaski 2006) that linked Cambodia’s record on labor rights with U.S. market access under the earlier quota-regulated system of international trade for textiles and clothing. In the process, the group of stakeholders supporting the institutions that were created with funding from the USG has grown to include not only the tripartite partnership, i.e. government, employers, and workers, but also other international actors, e.g., international garment buyers and other donors.

Though the original impetus to this labor program—Cambodia’s Bilateral Textile Agreement with the U.S.—has since faded away with the elimination of the multilateral textile and garment quota system, regular reporting on labor conditions, regular mechanisms to feed back factory monitoring information to buyers, regular hearings to resolve factory disputes, and regular meetings in stakeholder forums¹⁴ contribute to the institutionalization of best labor practices in Cambodia.

3.1 DEVELOPMENT CHALLENGES FACING CAMBODIA

The Royal Government of Cambodia’s (RGC) National Strategic Development Plan (NSDP) for 2006-2010 outlines its vision for achieving human development goals in Cambodia (RGC 2005). The NSDP depicts a “rectangular strategy” for pursuing 1) enhancement of the agricultural sector, 2) rehabilitation and construction of physical infrastructure, 3) private sector development and employment generation, and 4) capacity building and human resource development, all in the service of good governance (fighting corruption, legal and judicial reform, public administration reform, and armed forces reform and demobilization), peace and stability, global integration, private sector partnership, and macroeconomic growth and financial stability.

As viewed by USAID/Cambodia the development challenges in Cambodia encompass the following areas:¹⁵ rebuilding after years of civil strife, high population growth rate, depleted human resource base, rapid growth of the labor force, high percentage of female-headed households, growing pressures on common property resources, underemployment, migration & trafficking, persistent corruption & culture of impunity, and low domestic savings and declining foreign direct investment.

¹⁴ Organized by Business for Social Responsibility, the Buyers’ Forums are held in Phnom Penh and abroad, and bring together representatives of government, manufacturers, labor-related institutions and organizations, and international buyers. This is similar to the work being done by the MFA Forum (<http://www.mfa-forum.net/>), especially in Bangladesh, Lesotho, and Morocco.

¹⁵ See USAID Mission Web site, http://www.usaid.gov/kh/development_challenge.htm (accessed October 27, 2007).

These challenges, and their implications for Cambodia's labor market, can be better understood through examination of three sets of indicators that compare Cambodia's performance with that of its two immediate neighbors, Thailand and Vietnam. Table 1 presents key data that highlight Cambodia's recent strong economic performance, contrasted against a backdrop of continued demographic pressures and persistent human development challenges.¹⁶

For a country to be able to put its people to work, economies must be growing, stable, and attracting investment (both domestic and foreign). On the one hand, we see that Cambodia's economy has been growing rapidly, at an average of 10 percent per year over the last five years. Low inflation and a balanced budget contribute to a stable economic environment, which is further propitious to growth. Foreign direct investment, which had been on the decline in Cambodia, is resurging. This snapshot of Cambodia's economic performance suggests that conditions should be favorable to an expansion of employment.

TABLE 1. COMPARATIVE DEVELOPMENT INDICATORS

	Cambodia	Thailand	Vietnam
Structural Characteristics			
Population (millions)	14.1	66.4	83.1
GDP per capita (current \$)	503	3136	723
Economic Performance			
Real GDP growth (%) ⁽¹⁾	10.8	5.0	8.2
Inflation (%) ⁽¹⁾	4.8	4.6	7.5
Budget balance, % GDP ⁽²⁾	0.0	-3.1	
Foreign direct investment, % GDP ^{(2), (4)}	6.1	2.6	3.7
Demographics & Employment			
Population growth (%) ⁽²⁾	2.0	0.8	1.2
Labor force growth (%) ⁽²⁾	3.1	1.3	2.1
Labor force participation (%) ⁽²⁾			
• Male	82.0	88.2	84.2
• Female	80.9	73.0	78.8
Human Development			
Adult illiteracy (%) ⁽²⁾	26.4	7.4	9.7
Persistence to grade 5 (% boys & girls) ⁽²⁾	63.1		86.8
Gross tertiary enrollment rate (% boys & girls) ⁽²⁾	3.3	43.0	16.0
Life expectancy at birth ⁽²⁾ (years)	57	71	71
Maternal mortality (# per 100,000 live births) ⁽³⁾	450	44	130

Sources: (1) WEO (IMF World Economic Outlook), (2) WDI (World Bank World Development Indicators), (3) UNMI (United Nations Millennium Indicators), and (4) International Monetary Fund Article IV consultation reports. Presented for most recent years available (usually 2005 or 2006), though maternal mortality figures are from 2000.

¹⁶ These and other issues are addressed in the Cambodia Economic Performance Assessment (Salinger, Lachenmayr, and Abdulin, 2007).

On the other hand, Cambodia's population growth rate is still quite high, and its labor force growth rate even higher as youth stream into the labor force. Women are also quite active participants in the labor force. These indicators suggest that the market for labor will be tight as the supply of job market entrants is strong.

For the labor force to be able to respond to new employment opportunities, Cambodian workers must be well-educated and healthy. Yet the high rate of adult illiteracy, low life expectancy, and extremely high rate of maternal mortality all suggest that Cambodia's human capacity remains weak. Other indicators underscore the depth of the educational challenge: persistence to grade 5 (an indicator of basic education levels) in Cambodia is 67.8 percent, compared with 86.8 percent in Vietnam, and gross tertiary enrollment (an indicator of educational capacity at the highest levels of learning) is 3.3 percent in Cambodia compared with 16 percent in Vietnam and 43 percent in Thailand. These indicators suggest the problems that Cambodia still faces in preparing its workforce for the challenges posed by a modern, open economy.

3.2 HISTORY OF THE LABOR MOVEMENT IN CAMBODIA

There is no evidence of any significant organized labor movement in Cambodia prior to 1979. After the invasion of Vietnam to unseat the Khmer Rouge from power, Cambodia's first national trade union was established by the Vietnamese-installed and backed communist government. The Cambodian Federation of Trade Unions was a politically controlled, vertically integrated structure, with sub-federations and member unions in different sectors of the economy.

After the 1991 Paris peace talks, Cambodia began to emerge from civil war and regain stability. It also experienced economic growth as the country moved away from a centrally planned communist economy, and its industrial base expanded. Around 1994, Asian investors started operating the first export-oriented garment factories in Cambodia to avoid quota restrictions on exports from other countries and to take advantage of Cambodia's low wage costs (Bargawi 2005). Some unions began to emerge around this time, though they appear to have generally been affiliated with the Cambodian People's Party (CPP), which shared power in a coalition government. A labor-focused NGO, the Cambodian Labor Organization (CLO) was established in 1995. In 1996, the Free Trade Union of the Workers of the Kingdom of Cambodia (FTUWKC) was formed as the first independent union backed by the opposition Sam Rainsy Party (SRP) (Arnold 2005). The Cambodian Union Federation, which is closely linked to the CPP, was also formed at this time.

Cambodia's present Labor Law (discussed below) was promulgated in 1997. By the end of that year there were 20 registered labor unions (ILAB 2003). In 1998 the government liberalized procedures for trade union registration with the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation (MoSALVY); the next few years saw a great increase in the numbers of officially registered unions, including the FTUWKC which formally registered in 1998. According to the ILO, of the 15 union federations in 2004, only four of them existed in 1998, when they had a total of around 39,000 members (Bolwell 2004).

In 1999, the formerly communist national trade union became formally independent as the Cambodian Federation of Independent Trade Unions (CFITU). That year also saw the registration of the independent National Independent Federation of Textile Unions in Cambodia (NIFTUC), created with assistance from CLO, and the pro-CPP Cambodian Labor Union Federation (CLUF) (ILAB 2003).

MoSALVY issued regulations (*prakas*) on trade union registration in 2000,¹⁷ and in 2001, following consultations with the ILO (Blackett 2007), MoSALVY issued a *prakas* on union representation for the purpose of collective bargaining; the *prakas* also provided greater protections for founding members or candidates for leadership positions in unions.¹⁸ That year also saw a further increase in the number of unions and federations registering with MoSALVY. Many of these were the result of splits following internal conflicts at the established unions. Notably, the Khmer Youth Federation of Trade Unions (KYFTU) broke away from CFITU, and the Coalition of Cambodia Apparel Workers Democratic Unions (CCAWDU) broke away from NIFTUC, following a dispute between that union and CLO (ILAB 2003). The Cambodian Independent Teachers' Association (CITA) registered with the Ministry of Interior in 2001 as an NGO, following its failed attempts to register with MoSALVY.¹⁹ By January 2002, there were 245 registered unions (ILAB 2003).

Massive proliferation and growth has been observed in Cambodia's trade union movement during the last decade. In 2004, an ILO survey (Bolwell 2004) found that the union movement in Cambodia had a total of 658 local trade unions among 15 federations, with an estimated membership of 337,000 workers; 83 percent of these were women. By 2007, the Ministry of Labor and Vocational Training (MoLVT) reported that there were 1,203 enterprise level unions among 33 federations and confederations. The Cambodia office of the American Center for International Labor Solidarity (ACILS) has identified 28 union federations and 7 confederations (most federations are grouped into confederations), as well as an additional five associations that bring together individuals working in sectors (public education, civil service and the informal economy) not covered by the Labor Law (Yim 2007). Multiple unions exist in many textile companies, often representing different employees in the same job classifications and in some cases claiming representation of the same individual employees. The proliferation and growth can be seen in Table 2.

TABLE 2. PROLIFERATION AND GROWTH OF CAMBODIAN UNIONS, 1997-2007

	1997/1998	2002	2004	2007
Enterprise-level unions*	20	245	658	1,203
Federations	4		15	28
Members – Total	39,000		337,000	
Members – Women	34,710		279,710	

Sources: Bolwell 2004; ILAB 2003; Yim 2007; interview with MoLVT officials.

* Numbers of enterprise-level unions registered with the Ministry in charge of Labor.

Another important trend has been “splitting,” in which disagreements within a union leads dissenters to form a new union rather than accepting the existing leadership or remaining within the first union to contest the officers' positions. As discussed below, the reasons for this trend include a rational calculation by workers and disenchanted officials that this approach will best serve their interests. It also appears to be rooted in cultural practices, including strong preferences for avoiding conflict and “saving face.”

One aspect that has not changed, however, has been the high level of participation by women in the trade union movement, with women consistently reported as making up between 80 and 90 percent of union members. While this may not be surprising—it is a reflection of the workforce in the garment industry, which is the most unionized sector of the economy—neither is it matched by the much smaller numbers

¹⁷ Prakas #277 of 2000.

¹⁸ Prakas #305 of 2001.

¹⁹ MoSALVY refused to register CITA because teachers are civil servants, and thus are not covered by the Labor Law.

of women in union leadership positions. As discussed below, it appears that at times, because of the circumstances, women workers engage in wildcat strikes to express their grievances and resolve them. The ILO estimates that in 2004, women made up 83 percent of the union membership, but only 24 percent of full-time federation officials/staff were women—and only one woman was a federation leader (Bolwell 2004). Notwithstanding that fact, the evidence so far, anecdotal though it may be (Snyder 2007), suggests that participation in the labor movement, as well as in the garment industry as a whole, is greatly empowering for the ever-increasing numbers of women workers.

3.3 DONOR SUPPORT FOR LABOR PROGRAMS IN CAMBODIA

Since the 1990s, when Cambodia began the process of rebuilding its economy and becoming a democratic state, there has been considerable foreign donor involvement in the field of labor.

The main actor in this regard has been the U.S. government. The U.S. funded some of the earliest labor-related efforts in the 1990s, in particular the support provided by the AFL-CIO (American Federation of Labor and Congress of Industrial Organizations) -affiliated Asian-American Free Labor Institute (AAFLI) to assist the Cambodian government in drafting a new Labor Law. AAFLI withdrew along with a number of other USG-funded entities following the 1997 factional fighting between the Cambodian People's Party (CPP) and the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC). In 2001, the American Center for International Labor Solidarity (ACILS), AAFLI's successor, returned to Cambodia with USG funding, focusing initially on organizing workers in the garment sector and branching out later to tourism and other sectors.

The USG's biggest impact on labor in Cambodia is linked with the signing of the first bilateral U.S.-Cambodia Bilateral Textile Agreement (CBTA) in 1999. The CBTA provided for regular garment import quota adjustments as an incentive for the garment sector's compliance with international labor standards. The U.S. and Cambodia agreed that the ILO would play a central role in monitoring this compliance. Between June 1999 and May 2000, a total of six proposals and counter-proposals were circulated, primarily between the U.S. and the ILO. The Cambodian government and the Garment Manufacturers Association in Cambodia (GMAC) were represented via the ILO, but no Cambodian NGOs or trade unions were consulted during the drafting process. The ILO's initial proposal included plans to strengthen the Cambodian Ministry in charge of Labor and the Labor Inspectorate in particular; however, the U.S. preferred an independent monitoring body staffed by the ILO (Kolben 2004).

Once agreed, the USG, through the U.S. Department of Labor (USDOL), funded the new ILO Garment Sector Working Conditions Improvement Project and its sister entity, the ILO Labor Dispute Resolution Project (ILO-LDRP). By 2004, funding was also provided via USAID to the monitoring project, later renamed Better Factories Cambodia (BFC), and ILO-LDRP, which had by then established the Arbitration Council. The ILO projects (especially BFC) provided key input into the twice-yearly labor consultations between the USG and the government of Cambodia, which continued until the CBTA expired at the end of 2004. Through ILO and others, U.S. funds have also been channeled to local NGOs, including the Community Legal Education Center (CLEC).

Following expiry of the CBTA, the U.S. and Cambodia signed a Trade and Investment Framework Agreement (TIFA) in July 2006. The TIFA does not contain any provisions for explicitly supporting labor standards, though the preamble of the TIFA recognizes the importance of providing adequate and effective protection of worker rights, per the law and international core labor standards (CLS). For the first time in any of the TIFAs, labor is now included on the agenda of the annual US-Cambodia dialogues.

Aside from the U.S., relatively few donors have been active in the labor field. The *Agence Française de Développement* also contributes to the BFC project. The International Finance Corporation, through its Mekong Private Sector Development Facility (MPDF), is contributing to the development of a

sustainability plan for BFC. The Oxfams have, at different times, supported specific unions and/or NGOs, such as CCAWDU and CLO. Oxfam Great Britain offered funds from 2002 to 2006, Oxfam Novib (Netherlands) from 2004 to the present, Oxfam *Solidarité Belgique* from 1997 to the present, and Oxfam Hong Kong from 1999 to the present. Likewise, European foundations and organizations (e.g., Friedrich Ebert Stiftung, Forum Syd) have provided some funding for new union and human rights activities (Arnold 2006).

3.4 USG PRIORITIES IN CAMBODIA

In Cambodia USG agencies focus on health and education, political and economic governance, trade and investment, reducing the threat of terrorism, and reducing international health threats. These priorities are pursued through activities engaged by the U.S. Agency for International Development (USAID), the U.S. Department of the Treasury, the Office of the U.S. Trade Representative, the U.S. Centers for Disease Control and the U.S. Department of Health and Human Services, and the State Department.²⁰ Between 1997 and 2007, the U.S. Congress limited U.S. bilateral assistance in Cambodia to partners outside of the national government (e.g., local governments, non-governmental organizations, private sector). Over time, restrictions were slowly lifted, with exceptions added to allow USAID to work in the health and education sectors. Since the lifting of that restriction in February 2007, the U.S. government is pursuing fuller engagement with all partners, including the Royal Government of Cambodia (RGC).

Over the last four years, USAID programs in Cambodia have been funded at about \$50 million per year, as seen in Table 3 below.

TABLE 3. USAID/CAMBODIA PROGRAM BUDGET

Program Area	FY 2004	FY 2005	FY 2006	FY 2007
	(\$'000)			
HIV/AIDS & Family Health	30,360	29,800	28,556	27,378
Democracy & Human Rights	16,650	19,814	0	0
Strengthening Education	2,000	6,000	1,980	2,000
Improved Political & Economic Governance		0	18,357	18,097
PL 480 Title II	703			
Total	49,713	55,614	48,893	47,475

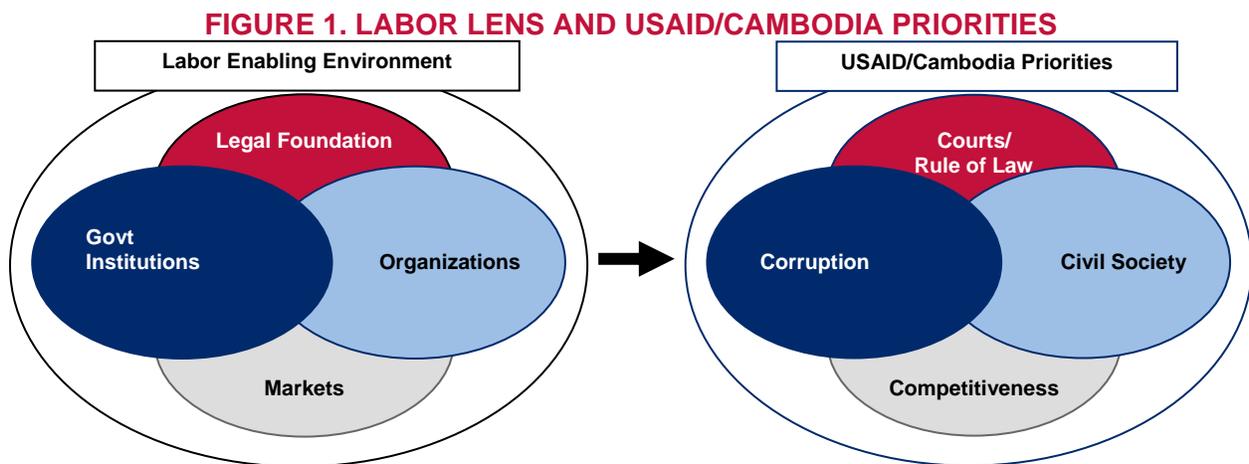
Source: <http://www.usaid.gov/policy/budget/cbj2007/ane/kh.html>

USAID/Cambodia's strategy highlights challenges in good health, good education, and good political and economic governance, with anticorruption a significant crosscutting theme. In the area of improved political and economic governance, USAID/Cambodia's 2005-2010 strategy highlights four components—corruption, courts (rule of law), competitiveness, and civil society (i.e. the “four C’s”)—that affect “the web of [] relationships that involve not only government but also the private sector and civil society” (USAID 2005: 8). These “four C’s” of the Mission's strategy correspond directly to the four components of the labor lens outlined in Section 2 (see Figure 1 below):

²⁰ See Lum (2007) for an overall summary of U.S. relations in Cambodia. See also USAID (2005, 2007), http://www.ustr.gov/World_Regions/Southeast_Asia_Pacific/Cambodia/Section_Index.html, and <http://phnompenh.usembassy.gov>.

- The **legal foundation** for labor-related issues rests on a sound body of legislation that is consistent with core labor standards and international conventions regarding labor rights as well as well-functioning *courts and other judicial structures* empowered to implement labor-related legislation.
- Governmental, labor-related **institutions** must be impartial, transparent, and effective, i.e. free of the influences of *corruption*, if they are to be able to administer fairly and efficiently.
- Labor-related **organizations**, where they are membership-based, cover a wider swath of the general population than many other *civil society* organizations;
- Labor **markets** must function well in order to assure the *competitiveness* of the broader economy.

Just as each component of the labor enabling environment is integral to its whole, so, too, the USAID/Cambodia program was designed to work synergistically across program objective areas.



This framework guides the cross-sectoral description of Cambodia’s labor sector in Section 4.

4.0 CAMBODIA'S LABOR SECTOR

Using the conceptual framework developed in Section 2.0 above, this section describes various dimensions of Cambodia's labor sector observed during the team's assessment.

4.1 LEGAL FOUNDATION

4.1.1 ILO Conventions, International Instruments, & Trade-Related Agreements

Cambodia has accepted all core labor standards (CLS) in principle through its ratification of all of the ILO Core Conventions, its accession to other key international instruments, and its entry into trade-related agreements with labor provisions. In 1969, a prior government ratified the Forced Labor Convention (C. 29) and, in 1971, its ILO membership. In 1999, under the current government, it ratified the Conventions on Freedom of Association and Protection of the Right to Organize (C. 87), the Right to Organize and Collective Bargaining (C. 98), Equal Remuneration (C. 100), the Abolition of Forced Labor (C. 105), Discrimination (C. 111) and Minimum Age (child labor) (C. 138). In 2006, it ratified the Worst Forms of Child Labor Convention (C. 182).

In 1999, it also ratified the Labor Administration Convention (C. 150), which commits the government to establishing an effective and professional “system of labor administration, consultation, co-operation and negotiation” between public authorities and employers and workers’ organizations.²¹ Thus, the government made a formal commitment to promoting a well-functioning labor sector in a manner consistent with rule of law principles. Despite its record of ratifications, for the past 11 years the Cambodian government has failed to submit its annual reports on the application of ratified conventions to the ILO Committee on the Application of Standards, though it has responded to some individual complaints filed with the ILO.²²

Cambodia has also accepted other international instruments that address certain labor rights, including the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (ratified July 2007), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (both accessions in 1992). Given ambiguous language in the Cambodia Constitution (Art. 31), it is unclear whether ratified conventions and other international instruments are automatically domesticated into Cambodian law. However, even if it is held they have not been domesticated, Cambodia has formally committed itself to upholding the rights contained in these

²¹ More specifically, it commits the government to ensuring that the staff of the “labor administration system shall be composed of persons who are suitably qualified for the activities to which they are assigned, who have access to training necessary for such activities and who are independent of improper external influences” and that the “staff shall have the status, the material means and the financial resources for the effective performance of their duties” (Art. 10).

²² Nine complaints have been filed with the ILO alleging Cambodia's violation of the freedom of association principles, some involving the assassination of trade union leaders; see <http://www.ilo.org/ilolex/english/newcountryframeE.htm>

instruments, which may also serve as persuasive authority for Cambodian courts in interpreting Cambodian law.

As stated earlier, Cambodia also reiterated its commitment to labor rights through trade agreements. Cambodia agreed to promote and protect CLS through the path-breaking (and now expired) U.S.-Cambodia Bilateral Textile Agreement (CBTA), which allowed for quota increases for the import of garments into the U.S. where Cambodia's garment factories "substantially complied" with CLS. More recently, the U.S.-Cambodia TIFA recognizes the importance of "providing adequate and effective protection of workers' rights in accordance with each nation's labor laws and each party's commitment to the observance of internationally recognized core labor standards."

4.1.2 The Legal System and History of Labor Laws

Throughout its modern history, Cambodia's legal system was incompletely developed and frequently broken. During the protectorate period (1863-1953), in which the economy focused primarily on agriculture with little industrial production, the French sporadically advanced some labor regulations and protections. For example, an 1898 decree abolished slavery (which was widespread at the time); a 1920 Civil Code required a labor contract for the employment of workers; decrees in 1927 established a 10-hour workday and the Labor Inspectorate; and, in the 1930s, the "Reconciliation Committee" was formed to resolve individual and collective labor disputes (MoSALVA (no date)). However, during this period, the "legal system was often irrational, cruel and unjust" (Tully 2006: 87). After independence in 1951, the Cambodian government established the Ministry of Labor & Social Affairs and adopted some new labor regulations, with little apparent improvement in their application. The Khmer Rouge regime (1975-1979) abolished all laws, destroyed legal archives, and persecuted lawyers and jurists. The People's Republic of Kampuchea (1979-1989) and the State of Cambodia (1989-1993) followed communist models of centralized planning and control.

In 1992, just prior to the 1993 elections sponsored by the United Nations Transitional Authority in Cambodia (UNTAC), the Cambodian legislature adopted the first comprehensive labor law and regulations, which prohibited forced labor and established rules for starting and ending employment. Yet it failed to address some fundamental matters; for example, it did not provide clear penalties for violations or procedures for administering the law or resolving disputes.

4.1.3 Current Labor Rights and Laws

Cambodia protects a number of labor rights and regulates labor matters in its Constitution, the 1997 Labor Law, and *prakas*, which are issued by the heads of the ministries where empowered by legislation, and sub-decrees (*anu kret*), approved by the Council of Ministers.

The 1993 Constitution provides some important labor protections. For example, it:

- Prohibits discrimination on the basis of race, color, gender, language, religion, political beliefs, birth, social status, wealth or other status (Art. 31);
- Provides for the equal treatment of men and women in employment, including equal pay for equal work (Arts. 35 and 36);
- Prohibits discrimination against women (Art. 45 and 46);
- Prohibits human trafficking (Art. 46);
- Protects the right of citizens to form and be members of trade unions (Art. 36); and
- Provides that the "right to strike and to non-violent demonstration shall be implemented in the framework of the law" (Art. 37).

In 1994, with the assistance of AAFLI (the Solidarity Center’s predecessor), the ILO and the French government, the Cambodian Ministry of Labor and Social Affairs drafted a new labor law, which the National Assembly adopted in 1997.

The Labor Law explicitly covers a larger range of employers than employees. It applies to “every enterprise or establishment” engaged in a wide range of activities, such as commerce and agriculture whether “public, semi-public, private, non-religious or religious,” yet it excludes civil servants covered by the Civil Servant Statute (under the executive branch), other permanent government employees, and domestic and household servants (Art. 1).²³ The Labor Law addresses individual rights and responsibilities by:

- Prohibiting discrimination consistent with the Constitution and on the basis of age (Arts. 12 & 106);
- Prohibiting child labor, providing that children under 18 may not engage in “hazardous” work, children under 15 may not be engaged in salaried positions, and children aged 12-15 may engage in “light work” provided that it is not hazardous to their health and does not interfere with their education (Arts. 172-181) (with a 2004 *prakas* defining “hazardous” work);
- Establishing internal rules for enterprises (Arts. 22-31) and establishing rules for general working conditions regarding wages, hours of work, overtime and night pay, holidays and leave (Arts. 102-171);
- Establishing requirements regarding health & safety (Arts. 228-247) (including inspections and workplace infirmaries), work related accidents (Arts. 248-257) and conditions for agricultural workers (Arts. 191-227); and
- Providing rules regarding oral and written contracts and distinguishing fixed term contracts from indefinite contracts, the former requiring “serious misconduct” by a party to lawfully cancel a contract unilaterally and the latter entitling the employee to greater benefits (Arts. 65-95).

The Labor Law also addresses collective rights and responsibilities by:

- Protecting the rights of workers and employers to form their own organizations, establishing basic rules for the registration of their organizations and eligibility of individuals to hold positions in them and setting forth the process for establishing the “representativeness” of a union or professional organization for the purpose, among others, of representing its members in collective bargaining (Arts. 266-278);
- Prohibiting anti-union discrimination and employer interference and protecting union leaders from discharge (unless they engage in “serious” misconduct) (Arts. 279-282, 293-295);
- Establishing a procedure for workers to elect a “shop steward” (workers’ delegate) separate from union representation and prohibiting employers from discharging shop stewards unless approved by a labor inspector (Art. 283-299);
- Establishing rules regarding CBAs (Arts. 96-101) and providing that a union has an exclusive right to represent employees in collective bargaining where it has established its “most representative status” (Art. 277 and detailed in *Prakas* No. 305 (2001));
- Protecting the right of workers to strike and employers to lockout for “lawful” purposes (e.g., where they are peaceful, 7 notice is provided, etc.,) extending the strike notice period to 15 days for workers

²³ It also excludes air and sea transport crews and personnel in the police, army and military police.

in “essential services,” and authorizing the Minister to identify workers in the “minimum essential services,” who may not strike (Art. 318-329); and

- Establishing the tripartite Labor Advisory Committee (LAC) to address labor-related issues and make appropriate recommendations (Arts. 338) and protecting the right of workers and employer organizations to consult each other to promote their “moral and material interests” (Art. 275).

The law and *prakas* establish procedures for the resolution of collective disputes through MoLVT conciliation and mandatory arbitration proceedings (discussed below) and individual disputes, which are addressed by the MoLVT and courts, if not voluntarily resolved by the parties in ADR. In late October 2007, the Labor Advisory Council (LAC) approved new *prakas* that prohibit children under 15 from working in fishing works and children aged 15-18 prohibited from working in and under water or in processing and chemical metamorphosis factories.

It should also be noted that the Ministry of Commerce is empowered to impose export sanctions on employers that do not adhere to labor rights standards.

4.1.4 Labor Law Strengths & Weaknesses

The law sets forth important protections of key labor rights. At the same time, it contains provisions that appear to impose an unnecessary burden on employers and in a manner that may invite corrupt behavior by government officials. For example, employers are required to declare their hiring and dismissal of each and every employee to a labor inspector (Art. 21). They are also required to have a labor inspector number and initial all pages of their payroll registers (Art. 39).

One of the most striking gaps in Cambodia law is its failure to protect the right of workers in the public sector to form unions and engage in collective bargaining with their employers. A reasonable interpretation of the Constitution, which provides that citizens have the right to form and join trade unions (without distinction between private and public sectors), is appropriately understood in the context of the ratified ILO conventions, which protect the rights of public sector workers as well. However, the civil servants’ associations hang in a legal limbo, registering as “associations” with the Ministry of Interior. As discussed below, their uncertain status limits their ability to promote improvements in government services, fight corruption, and improve the treatment of civil servants, not to mention prohibiting the formation of confederations.

Other limitations identified in the application of the law and *prakas* concern the growing profusion of unions in the garment sector, including in particular the profusion of unions within each garment factory, their difficulty in establishing most representative status (MRS), the treatment of strikes, the promotion and enforcement of CBAs, and the resolution of individual as well as collective disputes (discussed in more detail below). The Cambodia stakeholders have identified a number of other weaknesses in the law, including, for example, misuse by some employers of repeated short-term contracts to evade the provision of some benefits (the parties have agreed that this issue should be resolved by an amendment to the law).

4.2 INSTITUTIONS IMPORTANT TO LABOR

4.2.1 The Legislature & Tripartite Dialogue for Reform

The Constitution authorizes the National Assembly to pass legislation (*Chbab*) (Art. 90) that, after the Senate’s review and approval (Art. 113), are promulgated by the King (Art. 28). The legislation commonly authorizes ministries to develop detailed regulations by *prakas* or proclamation. For example, the Labor Law authorizes the Labor Ministry to establish minimum wages (Art. 107(2)), set safety standards (Arts. 229 & 231), and determine which occupations are hazardous for children (Arts. 173-177).

The Labor Advisory Committee (LAC) approves draft *prakas*.²⁴ Of course, it requires considerably more time and effort to draft and adopt legislation than to draft and approve *prakas*.

Cambodia's Government-Private Sector Forum (G-PSF) is a public-private consultation group constituted as a Cabinet-level to address gaps in the laws and regulations. Originally organized with seven multiple public-private sector working groups (law, tax, and governance; export processing and trade facilitation; services, including banking and finance; tourism; manufacturing and SMEs; agriculture and agro-industry; and energy and infrastructure), the G-PSF established the "Eighth Working Group" on industrial relations "to consider and settle the demands by workers/employees and employers." It is co-chaired by the Minister of Social Affairs, Veteran's Affairs, and Youth Rehabilitation and the head of the Phnom Penh Chamber of Commerce.²⁵ It has been reported that union officials in Group meetings are often not well-prepared for the meetings, in contrast to the employers, who are better able to articulate and achieve their goals. In summer 2007, Group consultations resulted in a new interpretation of the law that reduced nightshift pay from 200 percent of base pay to 130 percent. Other issues that have been brought before the group include illegal strikes, minimum requirements to establish a trade union, and the "most representative status" of unions.

4.2.2 Better Factories Cambodia (BFC) and Buyers' Inspections

The BFC, formerly known as the ILO Garment Sector Working Conditions Improvement Project, was inspired by the CBTA's linkage of quota increases in the garment sector to demonstrable promotion of CLS. Started in 2001, BFC has focused on monitoring and reporting on working conditions in Cambodian garment factories to determine whether they adhere to CLS, as established in national law and international standards. It has also provided training in Khmer, Chinese and English to workers, employers and government officials on workplace co-operation and dispute resolution, occupational health and safety, working conditions, and globalization and change processes. In conjunction with CLS training, it has also provided training on improving production and product quality. BFC has developed a computerized management information system that compiles detailed information from the inspections that reflects that the extent of compliance and progress on a factory-specific and industry-wide basis. BFC has served as the most effective monitoring system in Cambodia, exhibiting a high-degree of professionalism and use of transparent processes. It should be noted that the Community Legal Education Center (CLEC) has also conducted quality audits for Nike and Reebok.

Since the quota system expired on January 1, 2005, buyers and garment factory owners have begun to question whether they should continue to support independent monitoring. Employers have pointed out limitations in the current system: factories aim at marginally passing because they receive no extra credit for excelling or for improving treatment of labor rights. The buyers and factory owners have raised the concern that consumers are not aware of these standards and therefore cannot make purchasing decisions that take the treatment of workers into consideration. Some owners assert that they are at a competitive disadvantage because factories in other countries are not held to the same standards.

²⁴ According to the Labor Law's Chapter XV, Article 351, the LAC consists of 1) the Minister in charge of Labor, or his representative, who is the Chairperson; a number of representatives of relevant ministries; equal number of representatives from the workers' unions that are the most representative at the national level, and representative from the employers' organizations that are the most representative at the national level.

²⁵ The Cambodia G-PSF is funded by the International Finance Corporation and the Government of Australia's aid agency; see <http://www.cambodia-gpsf.org/workinggroup.aspx?x=1&c=1&y=8>, accessed November 20, 2007.

4.2.3 Ministry of Labor and Vocational Training

Cambodia has a short history of its government's institutional role in addressing labor affairs. Where it has, it has been confronted by similar problems as found throughout government: lack of capacity, lack of resources and most critically a past inability to achieve the legally established objectives.

In 1992, the RGC established the Ministry for Social Affairs, Labor, Vocational Training and Youth Rehabilitation (MoSALVY). In 2005, MoSALVY was split into two ministries, the Ministry of Social Affairs, Veterans and Youth Rehabilitation, which was the larger of the two, and the Ministry of Labor and Vocational Training (MoLVT). Within the MoLVT, the General Directorate of Labor has six departments: 1) Labor Inspections; 2) Labor Disputes (or Conciliation); 3) Employment & Manpower; 4) Child Labor; 5) Occupational Health; and 6) Social Security (which is to become an autonomous institution with a MoLVT representative serving as the chair over a tripartite board). The departments of Labor Inspections and Disputes are discussed in more detail below.

The MoLVT has about 300 employees throughout the country, with most of them in Phnom Penh. The MoLVT Inspection has seven district offices with about 3 to 7 labor inspectors per office. The MoLVT operates separate departments for Labor Inspections and Labor Disputes in Phnom Penh, with about 20 conciliators in 3 districts and 40 inspectors. Each district develops its own inspection plan, with the director of each office reporting directly to the Labor Minister. The Labor Law makes a distinction between individual and collective disputes, and by *prakas*, the government institutions treat them differently, as discussed below. In 1993, the MoLVT conducted a survey of employers by sector, finding about 500 factories and 3,500 enterprises in Phnom Penh.

The MoLVT also includes the General-Directorate for Vocational Training. The Department of Technical and Vocational Education and Training (TVET), originally part of the Ministry of Education, Youth, and Sport, was merged into the new MoLVT in 2004. The RGC has received \$30 million in loans from the Asian Development Bank to develop TVET. A national system of Provincial Training Centers is managed by TVET, though it operates at well below its potential capacity.²⁶ The National Training Board (NTB), which has employer representation, determines TVET policy. The NTB seeks to develop stronger connections between employers and education and training institutions.

Labor Inspections & Labor Disputes/Conciliation

The inspectors report that they perform both random and complaint-based inspections concerning employer conduct. They perform initial inspections to educate employers on the law and "special" inspections to address alleged violations. They report seeking remedial action only where they find clear evidence and a pattern of violations. They complete inspection forms with spaces for handwritten narratives but no data fields for easy collection and assessment of the information. If they find violations of individual rights and are unable to resolve them, then they are to refer them for prosecution in court. The MoLVT Inspections reports holding weekly meetings to discuss and resolve the inspectors' issues. The labor inspectors have received little training on inspection skills or the labor law.

Labor conciliators focus on addressing and resolving collective disputes and related industrial relations problems; apparently, they are also empowered to take complaints about union misconduct. The Arbitration Council reports that the conciliators resolve about 60 percent of disputes and write reports identifying issues that they send to the Arbitration Council when they cannot resolve the disputes. The Department of Labor Disputes serves as the LAC Secretariat, registers unions and CBAs, and establishes a union's MRS. In contrast to the inspectors, the conciliators have received, with ILO assistance, some

²⁶ Butler et al. report that the system accommodated 4,000 students in 2005 with the budget at its disposal, compared with a capacity of 24,000 students (2006: 35).

training on conciliation skills. It has been reported the turnover in conciliators is high and that the MoLVT has not well internalized the retention and training of skills.

The Labor Ministry in Practice: Strengths & Weaknesses

There remains a substantial gap between the formal responsibilities of the MoLVT and its evolving operations. On the positive side, conciliators resolve a large percentage of disputes and the quality of their reports to the Arbitration Council is said to be reasonably good. Because the MoLVT is a relatively new institution, its practices and procedures may be more amenable to positive change than long-established and ossified institutions.

At the same time, some problem areas have been reported that would benefit from institutional development. Regarding labor inspections, it has been commonly reported that labor inspectors conduct few inspections, the quality of the inspections are low, the process opaque, the results unclear and not fully documented, and a systematic process is not yet in place whereby inspectors follow up to determine whether violations found are remedied. Regarding labor conciliators, it has been reported that there are far too few conciliators, they lack sufficient skills, they are isolated, and at times they face inappropriate pressures. Thus, the labor inspectors and conciliators have critical needs, which may be summarized as follows:

1. **Lack of training.** It is commonly reported that the conciliators and particularly the inspectors lack the professional skills and knowledge of labor law to properly perform their work. Training is therefore necessary, but first a review of the incentive structure should take place to ensure that the training will have the desired impact.
2. **Lack of incentives.** Given the lack of incentives in Cambodia, it is a surprise that inspectors and conciliators do as much official work as has been reported. The salaries are low (in the \$30-50 per month range), they receive little or no support to do their work (e.g., transport, materials, computers, etc.), and they reportedly are neither rewarded nor disciplined based on the quality of their work. .
3. **Lack of appropriate data collection and management systems.** The MoLVT does not have adequate management systems to measure and evaluate performance. Such data could give greater guidance for improving the MoLVT's performance and policy focus. The MoLVT's processes are also not transparent or yet as efficient as they could be, as exemplified by the provincial offices reporting directly to the Minister.
4. **Corruption distorts the system.** It is widely believed that some labor inspectors have engaged in "rent-seeking behavior" by using their discretionary powers to seek to augment their formal incomes, primarily from employers. This behavior may stem partly from the fact that the MoLVT does not provide the inspectors with sufficient resources (e.g., gas money) to conduct the inspections. The culture of corruption is such that often fees must be paid to obtain official positions, and efforts are consequently made to recoup this investment.
5. **Active interference.** Even where inspectors and conciliators attempt to properly perform their jobs, powerful local political and economic actors may interfere to prevent them from doing so. For example, it appears that the MoLVT offices in several provinces have not forwarded collective disputes to the Arbitration Council despite repeated requests from trade unionists; in at least some cases, on account of inappropriate external pressures.

4.2.4 Courts

The courts have exclusive jurisdiction to hear and resolve disputes regarding individual rights in the labor law. However, few cases are referred to and filed in courts and even fewer are resolved by them, often because plaintiffs have so little faith in the judiciary that they drop or settle cases in advance of any

judicial hearing. The courts appear to be the institutions most resistant to meaningful change. As one interviewee noted, “there’s no justice in these courts.” They are widely reported to be highly corrupt with judges who are not appointed on the basis of merit and do not publish written decisions with legal reasoning and fact-finding. Establishing the ROL in the judiciary is likely to be a long-term project and more difficult than building capacity in line ministries. Some projects, including the USAID-funded Project on Rights and Justice (PRAJ) have slowly begun to show some headway in promoting positive change.

4.2.5 The Arbitration Council

The MoSALVY created the Arbitration Council through *Prakas* No. 338 (December 2002), opened it in May 2003, and initially appointed 21 arbitrators. The impetus for the Council was the rapid expansion of the formal employment sector through the growth of the textile industry; increasing unionization; and the textile employers’ interest in complying with labor standards to obtain quota increases per the U.S.-Cambodia Bilateral Trade Agreement (CBTA). Prior to the establishment of the Council, there was no effective enforcement mechanism regarding collective rights in the labor law. When strikes occurred, the police intervened simply to stop them and separate the parties to prevent conflict. It has also been reported that employers often initiate police crackdowns on strikers.

With 15 staff members, the not-for profit Arbitration Council Foundation provides administrative and technical support for the Council, which conducts both conciliations and arbitrations, with these two processes often overlapping. The Council is currently composed of 30 arbitrators with an equal number from unions, employers and the neutral perspective. A panel of three sits on each case and each arbitrator has an equal vote. Over 90 percent of the cases involve garment employers, though they also involve employers in hotels, construction, food processing, and gas.

The Council has two unusual characteristics. First, while the cases are referred to the Council on a mandatory basis, its decisions or “awards” are not binding unless both parties agree that they will be binding. They may do so through an agreement made in advance of any proceeding, for example through an arbitration clause in a CBA, through an ad-hoc agreement made at the start of proceedings, or, in a manner that is highly unusual, after the proceedings have concluded and the Council has issued its award.²⁷ Where the parties wait until after the decision to determine whether to adhere to it, the Council’s decision is more akin to what is commonly referred to as an advisory opinion in other systems. Second, the Council hears and addresses both disputes of collective *rights*, which are established in law or contract, and disputes of collective *interests*, which concern benefits or rights a party would like to obtain, e.g., workers would like to negotiate a wage increase.

The Council reports that two-thirds of its cases are resolved successfully: 37 percent of cases are settled at the Council, 23 percent of cases result in awards that are fully or substantially implemented, and 7 percent of cases are settled on the basis of award after its issuance. The Council’s caseload has grown from 31 in 2003 to 120 in 2006 and 113 in the first ten months of 2007. If workers are striking while cases are pending, it issues return-to-work orders, which have a 93.5 percent compliance rate.

The Council was established and has been supported with the funding of USAID and USDOL, among others, channeled through the ILO-LDRP. Transitional funding will continue to be provided to the Foundation through 2008. The Foundation has had financial support from the ICCO (a Netherlands-based

²⁷ The parties have eight calendar days in which to reject in the award. If they fail to do so, then the award becomes legally binding. In some cases, a party objects and then agrees to a settlement on the basis of the award.

NGO) and Levi Strauss & Co. Foundation.²⁸ Discussions are pending regarding future World Bank funding for the Council.

The Arbitration Council in Practice: Strengths & Weaknesses

The Arbitration Council has been widely hailed as Cambodia's only successful example of a functioning judicial process that adheres to rule of law principles. It works well for the following reasons:

1. It publishes *written* awards in Khmer with clear reasoning based in the law.
2. It issues the awards *quickly*, within 15 days.
3. It conducts proceedings in a manner that *educates* parties on the law and *facilitates* understanding and agreement. The proceedings are *informal* in the sense that the parties may speak with relative ease about their concerns and are *formal* in the sense that the Council speaks with authority on matters of law and procedure in a manner that is often convincing to the parties.
4. It uses a *flexible* approach to resolve a wide range of overlapping and disparate issues. Paradoxically, the non-binding nature of the decision may have enhanced this flexibility by encouraging parties to engage the process and avoiding judicial review that could taint the process.
5. The Council has helped resolve *disputes of interests*, which may facilitate more collective agreements.
6. The vast majority of its awards (over 95 percent) are *unanimous*.
7. The panels' *tripartite* composition supports the production of high quality awards that are better accepted by the parties.
8. The arbitrators have *expertise* in labor issues.
9. The process is widely perceived to be *honest, fair and transparent*.
10. It should not be understated that it is evident that the *parties have a strong interest in resolving the disputes* brought before the Council.

The weaknesses in Cambodia's ROL and the Council include the following:

1. The courts rarely resolve individual disputes in labor law in a manner consistent with the ROL principles and the Council is not authorized to issue awards on them.
2. The Council's awards on collective disputes are not binding unless both parties agree that they are binding, which is also contrary to ROL principles. In practice, this reality affects the choices made by unions and employers regarding whether and how they respect and use the processes. For example, unions at times calculate that striking is a more effective approach to protecting violations of their rights than using a process that leads to a non-binding "award," particularly, for example, where workers view the discharge of their union leaders as a time-sensitive threat to their collective interests.

²⁸ The Council and Foundation have also received assistance from the New Zealand and Australian governments, and the Asia Foundation. The main donors to date have been USDOL, USAID, and NZAID. All have channeled their support via the ILO-LDRP. ICCO also provides a significant level of support (\$75,000 per year for 3 years, plus the cost of an expatriate legal advisor for 3 years).

3. In an optimal arrangement, the parties would address their differing interests at an earlier stage, preferably in collective bargaining and resolve them before they become more formal and/or narrow “disputes” of interests addressed at a later stage through the Council’s proceedings.
4. The process is reliant on donor funding and is not self-sustaining.
5. Enhancing the Council’s role and capacity and developing BFC has had the unintended result, in effect, of de-capacitating the Labor Ministry’s conciliator process because the conciliators have begun to simply refer many cases to the Council without attempting to resolve them.

4.3 LABOR-RELATED ORGANIZATIONS

4.3.1 Worker Organizations/Trade Unions

In modern Cambodian history, workers have sporadically risen up to protest or engage in strikes, for example, when conditions in plantations became exceedingly brutal and in response to profound political and social crises. However, workers did not join or form unions in any significant numbers until the 1990s when the growth of the textile industry quickly increased the number of workers in formal employment. The legal and political environment also made it feasible for workers to join unions, starting in the 1990s and particularly after adoption of the 1997 Labor Law. In Cambodia, *worker organizations* include both *trade unions*, which are protected under the 1997 Labor Law and thus are authorized to engage in collective bargaining; and worker *associations*, which are not covered by this law, including those in the civil service and the informal sector.²⁹

The establishment of the principle of Freedom of Association has led to a profusion of trade unions. The MoLVT reports that Cambodia currently has 1,203 certified unions and an additional 33 union federations and confederations, and one alliance of confederations, the National Union Alliance Chamber of Cambodia (NACC), which it asserts is the overall union confederation (though this assertion is contested by unions not aligned with the CPP). Worker organizations, including both trade unions and associations, have commonly been divided on the following basis:

1. **Unions, their federations, confederations and an alliance of confederations aligned with the ruling CPP:** these include the NACC, with its three member confederations (the Cambodian Confederation for Worker Rights (CCWR), the Coalition of National Construction Federations (CNC), and the Coalition of Cambodian Inheritance Confederation (CIC)) and their 10 member federations; the Cambodian Confederation of Trade Unions (CCTU), and its 12 member federations; and a few other unions which are not affiliated with the confederations but which are reportedly aligned with the CPP.
2. **Unions and federations affiliated with the opposition Sam Rainsy Party (SRP):** these include the Cambodia Confederation of Unions (CCU) and its members, CITA (Cambodia Independent Teachers’ Association) and FTUWKC (Free Trade Union of Workers of Kingdom of Cambodia, the large garment union).
3. **Independent worker associations, unions, and federations not affiliated with a party,** including the Cambodia Labor Confederation (CLC), with its four member unions in garments (Coalition of Cambodian Apparel Workers Democratic Union, or CCAWDU), tourism (Cambodian Tourism and Service Workers Federation, or CTSWF), the informal sector (Informal

²⁹ Civil servants are covered by the Common Statute of Civil Servants (1994), which does not provide them with the right to form “unions” or engage in collective bargaining.

Development Economic Association [IDEA]) and the civil service (Cambodian Independent Civil Servant Association [CICA]) and a few other independent unions.

4. **Opportunistic unions** that reputedly have the primary aim of extracting payments from employers for their union leaders. These unions have strong political connections to the CPP that enhances their power.

Cambodia's profusion of worker organizations/unions, the wide variance in the ways they align or do not align with political parties, and the varying ways in which they engage or conflict with existing processes and powers presents an interesting case study of the role of unions regarding democracy, governance, and economic development. Understanding these nuances is key to understanding which worker organizations should be engaged and how they should be engaged to promote development objectives. It appears that, consistent with extensive industrial relations literature, the Cambodian worker organizations and their leaders commonly choose a course of action based on the availability of resources, the instrumentality of an action, and the channels permitted by the state (Fireman & Gamson 1979; H. Wheeler 1985).

For example, CPP-aligned unions appear to be more likely to engage in established processes to resolve disputes and raise their concerns because the authorities encourage them to do so. They dominate the LAC and are active in the Eighth Working Group. At the same time, the CPP expects them to mobilize workers for political purposes and act within certain boundaries and, at times, to certain ends. The government appears to exert more control over civil servants. For example, all teachers are required to be members of the CPP-aligned Khmer Teachers Association (KTA) with dues automatically deducted from their pay.

In contrast, in practice the SRP-aligned unions are not treated equally under the laws in a significant number of cases in either subtle or very public ways. For example, union leaders from both CPP- and SRP-aligned unions may be arrested for leading illegal strikes, but it is reportedly much easier for the CPP-aligned leaders to get bail. At other times, the leaders of SRP-aligned unions have been harassed, arrested and killed, particularly while leading strikes and mass actions. For instance, CITA led a nationwide teachers' strike in 2001 in which a number of union activists were jailed for more than 3 months. To support their strike, CITA made contact with the SRP. CITA has also focused on fighting corruption by first educating members and then mobilizing to reduce it.³⁰ Thus, they join with the opposition party, engage in mass mobilization, agitate for broad democratic reform and are more likely to seek confrontational strategies to achieve their goals. They apparently are also more likely to go on strike earlier in their disputes with employers.

Independent unions, where they are able to stay out of the political fray, have a stronger focus on "bread & butter" issues, such as worker job opportunities and skills improvement, as well as pay, benefits and conditions of work. And yet another association, the Cambodian Network of Men and Women Development (CNMWD) seeks to protect the basic human rights of some of the most-maligned and mistreated workers, including the "beer girls" who promote and sell beer in bars.

The profusion of unions in the garment industry has both negative and positive effects. The negative effects are more obvious: it dilutes worker voice and power, distracts employers and workers from focusing on improving productivity and quality, and makes it difficult for employers to bargain with the unions, particularly if they reach an agreement with one union that is not recognized by other unions even at the same work place. The positive effect is that workers may form new unions when their leaders are not successful in addressing or responsive to their needs, either for benign or corrupt reasons. At times,

³⁰ At times, they and others have submitted letters to the government protesting the corruption behavior of some officials and teachers. Reportedly, this has led to the discharge of the offending persons, though it has not led to systemic improvements. The corruption in education appears to inculcate children in a culture of corruption.

union leadership itself is hampered by corruption or by inappropriate political interference, but whatever the reason for a lack of responsiveness by union leaders, the ability of workers to form new unions has served an incentive for union leaders to advance the workers' interest in situations where they are not overwhelmed by competing pressures.

In sometimes peculiar ways, union activism and free choice can be more resistant to corrupt practices and bribery. For example, textile workers reported a case in which they initiated a strike to force the employer to terminate an abusive supervisor. The employer refused and paid \$700 to the union leader to stop the strike, but he ended his position and used the money to start up his own shop. The workers then elected a new union leader, who refused the employer's \$1,000 bribe and, as a result, the employer was ultimately persuaded to terminate the supervisor. It has been reported that at times corruption also flows the other direction; some union officials, particularly those with affiliations to strong government officials and the CPP, raise grievances, whether real or imaginary, in order to extract personal payments from employers.

Cambodian unions are not known to have good democratic practices, but there are exceptions. For example, members in the independent Cambodian Tourism & Service Workers Federation (CTSWF) vote on CBAs and strikes by majority vote, union leaders must hold monthly meetings where they report on finances, and each member has the right to inspect the union's financial checks and books. Leaders of independent worker organizations at times struggle to resist intense pressure to align their organizations with the CPP or powerful individual government officials.

Strikes & Collective Bargaining Agreements

Strikes have played a central role in Cambodian labor relations and there is substantial evidence that strikes are often called for pragmatic reasons. The decision to strike is commonly made both from the top down and from the bottom up. Union and federation leadership are more likely to call for a strike when the matter involves sector-wide issues, such as pay scales. Workers in the factories are likely to initiate strikes when the employer refuses to provide an established benefit, for example providing paid sick leave, or they encounter a hostile and abusive manager. It is said that sometimes union leaders will use the threat of strikes to extort bribes from factory owners to maintain labor peace.

Trade unionists assert that they strike because it is often the quickest and the most effective way of addressing employer violations of their rights. They view certain issues as highly important and time sensitive. For example, employers may test union strength by firing union leaders soon after learning about an organizing campaign. Workers often view such actions as threats to their collective interests and act immediately while they still have momentum. Workers view such FOA cases as being less susceptible to resolution through Arbitration Council proceedings. Some union leaders note that the non-binding nature of the Council's awards is a factor they consider before deciding whether to strike or seek to bring the matter before the Council.

In a number of cases, it appears that wildcat strikes in garment factories have been initiated by women workers when their employers and male union leaders have failed to address and resolve their concerns. While culturally timid individually, it indeed appears that women workers acting collectively are emboldened to vigorously defend their interests. These practices are worthy of further study to determine the extent to which they are occurring and how they may serve as a basis for more broadly empowering women. Efforts could be made to help ensure that women take on more union leadership positions.

The large number of strikes is notable in comparison to the small number of CBAs in Cambodia. It was reported that about 7-10 CBAs have been reached, primarily in the garment sector, but also more recently in the hotel and tourism sector. An employer representative reported that garment employers and unions have reached agreement in about 50 other cases, but these agreements have been limited to one or a few specific issues.

4.3.2 Employer Organizations

Cambodia has a number of employer organizations with two playing predominate roles in representing employers on labor-related matters. The most important organizations addressing labor relations in Cambodia are the Garment Manufacturers Association in Cambodia (GMAC), which started in 1996 as an ad hoc group of Asian garment investors, and the Cambodian Federation of Employers and Business Associations (CAMFEBA), with about 800 companies under its member associations (including the garment industry).

Regarding labor issues, particularly in the garment sector, employers state that strikes have increased costs and reduced timely deliveries and that the profusion of unions has made labor relations at times exceeding complex and unpredictable. Many employers view CBAs as undesirable because they do not trust the system to enforce their provisions, particularly no-strike clauses; they believe that the Labor Law establishes a ceiling rather than a floor and therefore there is no need to bargain; and that they prefer not to make long-term commitments.

Labor costs and productivity are only one of many sets of factors that investors consider. Non-labor impediments to investments have commonly included high import taxes on materials, expensive and inefficient ports, difficulties in obtaining clear title in land purchases, and domestic producers being forced to compete with cheaper smuggled goods. In short, addressing these concerns and reducing associated costs would lead to gains directly for investors and employers and perhaps more indirectly for workers.

Of course, many employers have no intention of staying in Cambodia for the long term. This impacts the manner in which they deal with labor. Research has shown that many managers are not willing to invest in training as a result. Such managers are only focused on short term fixes, not long term solutions. Most will stay in Cambodia only as long as they are making profits.

Employers pay bribes when it is instrumental to do so. They tend to bribe where they have no faith that the legal system will treat them fairly and when it is a cheaper, quicker and more predictable method of achieving their goals, whether lawful or not.

4.3.3 Labor Rights Organizations and NGOs

Labor rights organizations such as the Cambodian Labor Organization (CLO) (now defunct) and CLEC have played an important role in promoting labor rights. Prior to 2005, there was relatively little interaction between NGOs and labor rights organizations/unions. Ironically, the government's arrest of labor rights and NGO leaders in late 2005, including Rong Chhun of CITA, Kem Sokha of the Cambodian Center for Human Rights (CCHR), and Yeng Virak of CLEC, brought them together and led to subsequent discussions between them. Some labor rights organizations address specialized needs. For example, the Cambodian Women's Movement Organization (CWMO) focuses on promoting women's leadership in trade unions.

4.3.4 The Cultural Context for Labor Relations

Some countries have labor relations systems based on the "adversarial" approach, like the U.S., but many others are based on a "social partnership" approach (Bamber and Lansbury, 1998: 6-9). Cambodia appears to have a cultural inclination towards a partnership approach when management approaches them in a spirit of cooperation. For example, the union representing temple restoration workers at the EFEO (*École Française d'Extrême Orient*) site at Angkor Wat polices and corrects employee misconduct in a manner that the project director views as more effective than his own. Similar practices have been reported in some hotels in Siem Reap. In contrast, in the garment industry, employers have assumed a more adversarial posture and, accordingly, have encountered more disputes. As one interviewee

commented, “Cambodians will be very diligent if properly engaged, but if pushed into a corner, they will be very violent.” However, incidents of workers initiating labor violence are quite rare. A more common practice is that workers allow grievances to accumulate until one grievance pushes the dispute to a crisis point and then they throw all their grievances into the mix of issues to be resolved often punctuated with a strike. The reason in part may be pragmatic: a single issue may not be worth engaging in a dispute resolution effort; however, if a big issue triggers it, then one might as well add in other outstanding issues and grievances.

At the same time, these issues warrant a deeper consideration of Cambodian culture, which is marked by strong senses of both community and hierarchy. The Khmer sense of community is rooted in family and in religion, with the Buddhist ideal aimed at achieving “a society in which each individual respects the other’s personality...each helping each other upwards in the scale of being” (Tully 2006: 65). In many cases, the acts of workers in forming and joining unions appear to be a manifestation of this sense of community. Also, a sense of community likely explains why Khmer workers in textile factories do not seek promotion to better-paying supervisory positions. An observer might conclude that this is not a “rational” economic choice; yet it may in fact be a very rational cultural choice if they do not wish to be alienated from their fellow Khmers by being placed in an adversarial relationship with them.

Regarding hierarchy, Cambodians assess their position in relation to that of other actors with subordinates generally deferring to superiors and refraining from presenting differing or even impartial views from them. This sense of social hierarchy is closely related to the pervasiveness of patronage and vertical power relationships. In the patron-client networks, known in Khmer as *khsae* (“strings”), structures, jobs and favors are conferred by the patron, to whom the client then owes unwavering loyalty—and, in many cases, continued income streams. This approach has been seen “as interfering with development of democratic institutions that might better mediate social conflict”, while noting that patronage relationships are less stable as people seek multiple patrons and/or shift patrons due to perceived benefits (Hughes 2001; Morris 2000).

Given the nature of social hierarchy and the all-important role of power relationships, it is not surprising that Cambodian culture tends towards a *conflict avoidance* approach in which “the cause of conflict remains, and, perhaps, festers, but where one or both sides are unwilling to risk a confrontation” (Hughes 2001). This approach appears to be linked to the Buddhist value of forbearance (Morris 2000). The reluctance to address the causes of conflict—or even to admit that a conflict exists—can have different results, including “splitting off in a new direction or creating a new alliance” rather than attempting to resolve the conflict, which can contribute to increased factionalism (Hughes 2001). When individuals or groups quietly endure unsatisfying circumstances over time, a seemingly small grievance may trigger what appears to be a disproportionately aggressive outburst.

These cultural characteristics appear to have subtle and complex affects on labor relations, including the ways in which persons and institutions interact, how they advocate for their own interests, and how they resolve problems. In this cultural context, it is understandable that workers who disagree with their union leaders find it culturally easier to form new unions than to confront their leaders, and that, given the inclination towards conflict avoidance, parties find conciliation useful. The well-ingrained patronage practices appear to encourage the unions’ reliance for financial support on other persons and organizations, whether powerful political elites or political parties. Recognizing these patterns does not mean that they pose insurmountable problems; rather, it suggests that solutions should be appropriately tailored to the circumstances. It seems clear, for example, that unions serve both positive roles as new supportive communities for those with little power and as tools to advance the goals of powerful elites. Thus, a promising approach could be to foster this sense of community and promote independence to advance democracy in a manner well suited, and therefore more sustainable, for Cambodian society.

4.4 LABOR MARKETS IN CAMBODIA

Cambodia's labor market's greatest strength is its supply of diligent, hard-working laborers. With an agrarian tradition that stresses attention to the details of rice planting and transplanting, Cambodians work hard and long, whether in fields, factories, hotels, or construction sites around the country. Many Cambodians are also mobile, and will move to the city or abroad to seek new livelihood opportunities. The Cambodian workforce is also tied to its familial roots, wherever they are working. Though the recorded rate of Cambodians' remittances of earnings back home is low, measured as a percentage of export receipts, many Cambodians support their families through work away from home and remit—in many instances through informal channels—such payments.

The most glaring weaknesses of the Cambodian labor market are the low rate of formal employment, the heavy concentration of organized labor in just two industries (garment manufacturing and tourism), and the limited level of decent employment opportunities, especially in the rural sector where most Cambodians reside. Cambodian workers are also handicapped by low levels of education and a weak vocational training system, which leads to the importation of skilled workers in many sectors.

4.4.1 Labor Market Structure

Much of the world's attention on Cambodian labor issues has focused on formally employed and organized workers in the garment and tourism industries, where labor relations are guided by the Labor Law, and, at the other end of the spectrum, on trafficked women and children into the sex industry. However, these represent small segments of Cambodia's total labor market.

To understand the full scope of Cambodia's labor market, it is useful to begin by looking at a broad overview of the structure of the labor force, broken out by the economic sector which workers declare to be their primary sector of employment. Cambodians work in the agricultural sector, including farming, forestry, and fishing; in industry, including mining, manufacturing, construction, electricity, water, and gas; and in services, including banking and financial services, tourism, and even independent transport and domestic work.

With 60 percent of the labor force engaged in agriculture, Cambodia is still predominantly an agrarian country. A truism of economic development is the shrinking relative size of agriculture as the rest of the economy grows. Cambodia's economy is transforming structurally, witnessed by the significant increase between 2000 and 2004 in the relative importance of employment in Cambodia's industry (especially garments manufacture) and services (especially tourism) sectors (see Table 4 below), increases that are more rapid than those observed in either Thailand or Vietnam.

TABLE 4. LABOR FORCE STRUCTURE (% GDP)

Sector	2000			2004		
	Cambodia	Thailand	Viet Nam	Cambodia	Thailand	Viet Nam
Agriculture	74	48	65	60	42	58
Industry	8	18	12	12	20	17
Services	17	33	22	27	37	25

Source: World Bank, World Development Indicators

The Royal Government of Cambodia's employment goals, as articulated in its National Strategic Development Plan for 2006-2010, are:

...to create gainful employment opportunities in both formal and informal sectors; improve supply of qualified labor; and eliminate worst forms of child labor. The garment industry, growing at a very fast rate, has transformed the urban employment situation by creating and sustaining labor-intensive employment mainly for young women. In other sectors as well, a systematic policy is being followed to create more jobs especially for young people entering the labor market and indeed for all Cambodians through various measures:

- Increase agricultural productivity to generate more rural employment opportunities, which will have important cross-sectoral multiplier effects including through increased demand for goods and services.
- Encourage domestic and foreign direct investments in priority sectors, especially agriculture, agro-industry, labor-intensive industries and projects, and tourism.
- Establish Technical Vocational Education and training networks to serve both men and women equitably, especially those who are poor, disabled and vulnerable groups, to respond to labor market needs, both short-term and long-term.
- Develop a labor database and statistical system with disaggregated data by gender, disabilities and other relevant social factors.
- Assist Cambodian labor seeking employment in other countries.

(RGC 2005: 58)

The Cambodian market for labor is segmented by sector and skill level. Both formal and informal employment opportunities exist in Cambodia. Paid employees represent 20.4 percent, employers 0.1 percent, self-employed workers 34.9 percent, and unpaid family workers 43.8 percent of the workforce (Table 5). Cambodia's unemployment rate is said to be less than 1 percent of the workforce; however, this figure masks significant *under*-employment.

While workers in the garment and tourism sectors represent 18.6 percent of all paid employees, they are only 4.4 percent of the total workforce. New areas of formal employment growth are expected in mining in Cambodia's northeast (gold, bauxite, gems), agro-industry (e.g., rubber and palm oil plantations) in central provinces, and coastal tourism. The development of offshore oil and gas reserves may also increase the demand for labor, either in skilled occupations (which Cambodians are unlikely to be able to fill, at least not in the short run) or in supporting service sector occupations (e.g., food service, transportation, and lodging). Manufacturing for export is also beginning to diversify into such products as footwear, bicycles, and metal fasteners.

Table 5 identifies the most significant occupation categories in Cambodia for paid employees, own-account workers, and total employment. The distinction between employees and employers, on the one hand, and self-employed and unpaid family workers, on the other, may or may not accurately represent the distinction between "formal" and "informal" employment.³¹

³¹ The latter is defined by the ILO as comprising own-account workers, employers employed in their own informal sector enterprises, family workers (irrespective of whether they work in formal or informal sector enterprises), members of informal producers' cooperatives, and employees holding informal jobs. See ILO, "Guidelines concerning a statistical definition of informal employment," (no date).

TABLE 5. TOP TEN OCCUPATIONS BY EMPLOYMENT STATUS

Paid Employees		Own-account Worker		Total Employment	
Sector: Occupation	%	Sector: Occupation	%	Sector: Occupation	%
Manufacture: Garments	16.6	Agriculture: Cereals	38.4	Agriculture: Cereals	24.0
Services: Civil servants	11.9	Services: Retail trade	19.7	Services: Retail trade	12.9
Services: Private household workers	11.5	Agriculture: Vegetables	8.9	Agriculture: Vegetables	11.2
Agriculture: Cereals	11.2	Agriculture: Livestock	8.3	Agriculture: Livestock	5.9
Construction	11.0	Agriculture: Fishing	6.8	Manufacture: Garments	4.0
Services: Education	7.1	Services: Transportation	4.4	Manufacture: Wood, products	2.6
Agriculture: Vegetables	6.8	Manufacture: Wood, products	2.5	Construction	2.5
Services: Transportation	3.5	Manufacture: Food products	2.3	Services: Private household workers	2.5
Manufacture: Wood, products	2.3	Agriculture: Forestry	2.1	Construction	2.5
Services: Hotels, restaurants	1.9	Manufacture: Garments	1.1	Services: Civil servants	2.5

Source: Cambodia Socio-Economic Survey 2003/04

Employment in the rural economy—especially cereals, vegetables, and livestock production—dominates total employment in Cambodia (over 40 percent). However, weak agricultural productivity and risks owing to climate variability make it difficult for rural households to rely solely on agricultural livelihoods for survival, thus calling into question the extent to which agriculture is truly the “primary occupation” of rural households.³² Members of poor and landless households may seek employment as wage laborers in both rural and urban areas to stave off poverty. According to the Cambodia Development Resource Institute’s (CDRI) recent *Moving Out of Poverty* study of nine rural villages undertaken for the World Bank, “Income from off-farm employment is increasingly important in all villages, and most economically active adults have jobs in addition to farming” (FitzGerald and So 2007: 27). The report points out that local employment can be exploitative, and recommends that rural employment contracts be formalized in order to extend legal protections to rural workers.

Upward pressure is detected on wages at all skill levels in Cambodia. Rural wages for unskilled labor have been increasing in recent years in Cambodia, from less than \$1 per day to over \$2 per day.³³ In addition, weak vocational skills training in Cambodia creates gaps in the labor market for skilled workers at many different levels. In the building trades, Vietnamese construction workers are prized in Cambodia as being “more productive.” Where a casual day laborer’s wage in hotel construction for unskilled Cambodians is \$2-3 per day, Vietnamese construction workers are said to be able to earn \$5 per day for the same jobs. At the same time, however, Cambodians working across the border as unskilled labor in Thailand may earn as much as 180 Baht, or over \$5, per day in fishing, fish processing, construction, and agro-industries. Very significant upward pressure and competition for well-qualified Cambodian professionals is also reported in Phnom Penh.

Disconnects between labor demand and supply are noted. For instance in the garment industry, mid-level management positions—from line leaders and production floor supervisors, to more advanced

³² Average cereal yields in Cambodia are 2 tons per hectare, compared with 2.7 in Thailand and 4.8 in Vietnam, due in part to the fact that only 7 percent of cropland was irrigated in Cambodia in 2003, compared with same-year figures of 28.2 percent in Thailand and 33.7 percent in Vietnam. From World Bank, *World Development Indicators*, as discussed in Salinger, Lachenmayr, and Abdulin (2007). A lack of trained irrigation engineers and high costs of capital and energy mitigate against irrigation infrastructure investments in Cambodia (Dapice, Vallye, and Wilkinson 2007).

³³ Observations over time shared by CDRI researchers with the team.

management positions in industrial engineering and production planning—are typically filled by expatriate labor from the foreign investor’s home market, as the Cambodian workforce cannot supply the appropriate technical or specialized management skills (Salinger 2006). Better trained secondary and postsecondary students interviewed for USAID’s Garment Industry Productivity Center (GIPC) dismiss career opportunities in the garment industry. According to the commonly held perception of garment industry employment among interviewed youth, such work is abusive and reserved for unskilled, poor, rural women (Salinger 2006). Yet monthly wages for technical and management positions in manufacturing start at \$400 per month and go higher, comparable to wages in more highly prized, white-collar employment sectors such as non-governmental organizations. Such gaps between labor demand and supply represent opportunities for improved articulation of education and training with employers’ needs, possibly through workforce development councils or sector-specific training boards.

Minimum wages in the garment sector—\$50 per month for 26 days of work per month, or about \$2 per day—appear comparable to above-mentioned wages for unskilled, casual day labor. However, in addition to the minimum wage, garment workers can earn an attendance bonus (\$5 per month), a seniority bonus, incentive pay (i.e., piece rates per level of output), and overtime, which can add up to a monthly wage of \$60-80 and more. At this wage level, garment industry employers reportedly have no trouble attracting job applicants. With regard to night work, Article 139 of Cambodia’s Labor Code was originally interpreted that time worked on a night shift was to be paid at twice the basic rate of pay. In the summer of 2007 the premium for night work was reduced from 100 to 30 percent, to make Cambodia more internationally competitive.

In order to better understand to what extent wage pressures will affect Cambodia’s garment industry as alternative employment opportunities are developed in Cambodia in tourism and other manufacturing, it will be crucial to better understand who Cambodia’s garment industry workers are and how the supply profile may be changing. The traditional image is that garment workers are women who “usually migrate from rural areas for predominantly economic reasons... typically come from large families... to work in the factories because they see no other economic or even livelihood opportunities for them [in their home villages]” (Harrison 2004). Factory managers have noted that employees arrive with minimum knowledge of what it means to participate in the industrial labor force, from a social and personal management point of view, as well as from an industrial workforce perspective. There is no school-to-work or rural villages-to-urban work transition program to provide young women with training on rights and responsibilities in factory work, personal management (health, nutrition, financial management), or skills development.

Labor migration is a relatively new topic in Cambodia (Maltoni 2006). Most research on mobility has focused on human trafficking in the context of sexual exploitation (Derks, Henke, and Ly 2006; see below). More recently, awareness has grown of voluntary labor migration, both within Cambodia and across borders. Migration, both within Cambodia and into neighboring Thailand, is “an important source of income for better off and upwardly mobile households” (FitzGerald and So 2007: 27). Sending one or more, usually female, members of the rural household to Phnom Penh to seek employment in the garment industry and remit a proportion of earnings back home is a key livelihood strategy for rural households.³⁴ Rural men may also come to Phnom Penh or Siem Reap during the dry season in order to earn money as “motodop” (motorcycle taxi) drivers or construction workers.

A wide spectrum of work opportunities outside of Cambodia is available. At one end of the spectrum, the emigration of Cambodian workers is formally facilitated by the RGC. The MoLVT advertises overseas employment opportunities for Cambodians, though actual recruitment is managed by private licensed

³⁴ Only a handful of factories are located outside of Phnom Penh and surrounding Kandal province. In a survey of 116 garment workers from Prey Veng province the Cooperation Committee for Cambodia (2005) found that on average 27 percent of garment wages are sent back to families. Overtime pay is crucial if workers are to be able to afford to send back significant contributions to their families.

recruitment agencies (Maltoni 2006). Several dozen agencies recruit workers for employment in construction, domestic work, building trades, etc. in the Republic of Korea, Malaysia, Thailand, Japan, and the Middle East. Pre-departure training on cultural issues, workers' rights, and health is handled by the recruitment agencies, although MoLVT is nominally responsible for managing this with the private agencies. Some vocational training for job candidates is provided by the National Polytechnic Institute of Cambodia (for workers headed to Korea) and the Preah Kossamak Training Center (for the Japan-bound). MoLVT, working through the Cambodian Embassy, is required to inspect overseas working conditions when problems are reported, though Maltoni reports that this has not yet been done. MoLVT seeks to have labor attachés assigned to overseas embassies in key Asian capitals in order to cover this responsibility.

4.4.2 Exploitative Labor Markets

At the other end of the overseas work spectrum, workers may voluntarily migrate illegally across borders in search of work (smuggling) or may become victim to involuntary and exploitative labor situations (trafficking). Some men, women, and children enter the market desperate for work, food, or credit to overcome indebtedness. As migration becomes informal and undocumented, or involves illegal occupations, workers become increasingly vulnerable to exploitation. Maltoni notes, "there is a wide informal economy [in Thailand] which largely relies on undocumented migrant work as a cheap and easily available workforce and which considers the costs of the legal migration process (i.e. insurance, registration fees, taxes, etc.) too expensive, both by employers and migrant workers" (2006: 27). This labor market works through intermediaries with networks in poor, rural communities that typically provide the supply of available migrants. Unsafe or exploitative working conditions, threats of and actual abuse (sexual or otherwise), withheld remuneration, harassment by authorities, and limited or curtailed personal freedom and bondage are all possible dimensions of illegal migration and trafficking.³⁵

A review of a decade of research on trafficking in Cambodia prepared for USAID stresses that trafficking in persons, although often equated with women and children and the sex industry, covers a range of activities and perspectives, from "prostitution, to children, to the rising levels of migration, to labor supply and demand, to criminality, and/or to human rights" (Derks, Henke, and Ly 2006: 15). Trafficking takes place within Cambodia, from Cambodia into Thailand (and sometimes onward into Malaysia), and from Vietnam into Cambodia. Most commonly trafficked situations include prostitution, begging and vending, labor exploitation, the trafficking of infants and children for adoption, and marriage. Labor exploitation is a broad category, more frequently involving men, covering construction, fishing, logging, factory work, agriculture, and domestic work, according to Derks et al. (2006). Though poverty and poor educational status are frequently cited as characteristics that determine who will become trafficking victims, the review cites studies that probe the psychological factors that increase the likelihood that someone will make him- or herself more available to trafficking, including "problematic or disrupted family situations, lack of social support, and experiences, such as sexual abuse, that influence the self-esteem of a person" (Derks, Henke, and Ly 2006: 34).

³⁵ The distinction between the two hinges on the extent to which the employment relationship is voluntary (migration) or forced (trafficking). Article 3 of the 2000 United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons* defines trafficking to mean "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs." Derks et al. suggest that in some cases "the ambiguity of real life situations calls into question the dichotomies between 'voluntary' and 'forced,' and between 'choice' and 'coercion' [which are] not necessarily consistent with the diversity of views and experiences of the sex workers themselves" (2006: 17).

Similarly, low education levels, dysfunctional family backgrounds (such as divorce and domestic violence), family indebtedness, and rural backgrounds contribute to the likelihood of children working as domestic help (Brown 2007: 6). A high proportion of child domestic workers report they do not receive salaries directly, their pay being directed instead to their mothers. Most do not work under contract, but rather on an informal basis. Moreover, since the Labor Law does not apply to domestic workers, no legal protections regarding their employment relations are available to them.

4.4.3 Productivity, Competitiveness, Workforce Development

Employment and labor relations in Cambodia's garment industry have garnered much of the labor-related attention from USG and other foreign partners. Paid employees in this industry represent the largest single occupation category in Cambodia's labor market. Yet employment in the sector is conditioned by decisions made by foreign investors and buyers.

While 350,000 jobs have been created in Cambodia's garment sector, the continued presence of those jobs in Cambodia is subject to constant re-evaluation by foreign investors, who compare business conditions in Cambodia with those in other possible production platforms, such as China, Vietnam, Bangladesh, and elsewhere. Foreign buyers also constantly re-evaluate cost, factory compliance records, and reliability of delivery from the country into the destination market when deciding whether or not to place (or continue to place) business orders in a particular country. Because the global garment industry is one whose relatively minimal fixed capital investments in-country allow it to pack up and leave a production platform such as Cambodia fairly quickly should business conditions appear more favorable elsewhere, the industry has long been considered to be one that is fairly "footloose."³⁶

While Cambodia's Garment Manufacturers Association in Cambodia (GMAC) has long been engaged in active dialogue on economic policy issues with the RGC, Cambodia's organized labor groups have in the past been virtually absent from discussions about productivity, competitiveness, trade and investment policy, and the like. For instance, GMAC collaborates with the Cambodian Ministry of Commerce in a lobbying effort in Washington, DC to achieve duty-free status for Cambodian garment exports into the U.S. market.³⁷ While unions' more reduced profile in part reflects their considerable and understandable immediate focus on freedom of association and bread-and-butter (wages, working conditions) issues, it also reflects a sorely-needed area of capacity development. Only recently have a few unions begun to engage on these issues. For example, some unions have issued statements in support of new U.S. trade legislation for preferential access for Cambodian garment exports into the U.S. market.

Cambodian workers are also aware of workforce development weaknesses that constrain their abilities to find work or change jobs. Interviews with several different groups revealed concerns about the lack of available vocational training and skills certification, which in turn hampers workers' mobility in the narrow, formal labor market. Construction workers fret that their jobs lack security, but their skills will not be recognized when they seek new employment. Maintenance workers and artisans would rather learn English, computer skills, or attend hotel school in order to advance in their careers. Hotel workers are concerned that management discriminates against union leaders when promoting staff. Garment workers

³⁶ The MFA Forum, including representatives of garment buyers, workers, governments, exporters, NGOs, and international organizations, seeks to develop guidelines to manage responsible transitions in a post-MFA environment. See www.mfa-forum.net for more information about the organization.

³⁷ Following the Indian Ocean tsunami in December 2004, the Trade Act of 2005 was filed in the U.S. Congress to provide preferential tariff treatment for certain exports from a collection of countries affected by the tsunami, as well as other Asian allies and trade partners. More recently, the New Partnership for Development Act of 2007 was introduced in the U.S. House of Representatives to provide similar relief. With the expiry of Trade Promotion Authority on July 1, 2007, political support for new trade legislation seems unlikely until after next year's presidential election.

worry about having the skills or capital necessary to start their own businesses when they leave factory work and return home to their villages. These vignettes illustrate the enormous demand on the worker side for more and better vocational training and skills certification.

On the employer side, there are gaps as well. Hotel managers in Siem Reap have a number of options for advertising job vacancies (ranging from physical to electronic job boards) and recruiting trained “rank and file” workers. Garment factories use word-of-mouth and physical job boards to do the same. More skilled position candidates—managers, chefs, industrial engineers, factory production managers—are in high demand and are either poached among employers or recruited from abroad. Several specialized training programs in hotels and cuisine are available in Siem Reap. In Phnom Penh, however, postsecondary education programs do not offer any specialized courses, let alone degree programs, that would attract and prepare students for garment sector engineering or management, except for more general human resource management programs.

OVERARCHING DEVELOPMENT THEMES AND THE ROLE OF LABOR IN CAMBODIA

Deleted for class exercise

APPENDIX A. CONTACTS MADE

Family names are capitalized below. Cambodian names are normally written with family names preceding given names.

LABOR ORGANIZATIONS

Phnom Penh

ATH Thun, Cambodian Labor Confederation & Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU)

CHEA Mony, Free Trade Union of Workers of the Kingdom of Cambodia

CHHORN Sokkha, Cambodian Women's Movement Organization

HEAK Pring, Cambodia Independent Civil Servants Association

HENG Bunchhun, Cambodian Industrial Food Union Federation

KIM Chan Samnang, National Alliance Chamber of Confederations

LEAN Chenda, Labor lawyer

MORM Nhim, National Independent Federation of Textile Unions of Cambodia

RONG Chhun, Cambodian Confederation of Unions & Cambodian Independent Teachers' Association

SAM Srey Mom, Free Trade Union of Workers of the Kingdom of Cambodia

SOM Aun, National Alliance Chamber of Confederations & Cambodia Labor Union Federation

TEP Kim Vannary, Cambodian Federation of Independent Trade Unions

VONG Sovann, Cambodian Confederation of Trade Unions

VORN Pao, Independent Democracy of Informal Economy Association

Siem Reap

CHAN Sitha, Local president, Cambodian Network of Men and Women Development

KEN Cheng Lang, Vice-President, Cambodian Construction Workers Trade Union Federation

PAT Sambo, President, Cambodian Tourism and Service Workers Federation

SITHA Mrs., Cambodian Network Men & Women Development

SOU Setheary, Executive Director, Cambodian Network of Men and Women Development

VAN Rong Thol, President, Cambodian Construction Workers Trade Union Federation

VOR Vorn, President, Independent Democratic Informal Economy Association

EMPLOYERS

CHINNIAH Mehran, Human Resources Development Manager, Victoria Angkor Resort & Spa, Siem Reap

Sandra D'AMICO, Managing Director, HR Inc., & Vice-President, Cambodian Federation of Employers and Business Associations

Ken LOO, Secretary-General, Garment Manufacturers Association in Cambodia

Abhinav N. RANA, Resident Manager, Victoria Angkor Resort & Spa, Siem Reap

Matthew RENDALL, Sciaroni & Associates, Partner, & Cambodian Federation of Employers and Business Associations, Board

Pascal ROYERE, Ecole Française de l'Extrême Orient, Baphuon Temple, Siem Reap

ARBITRATION COUNCIL

AN Nan, Arbitrator & Worker Rights Consortium
Hans HWANG, Legal Advisor, Arbitration Council Foundation
KHONG Phallack, Arbitrator (neutral list) & Dean, Faculty of Law and Public Affairs, Pannasastra University of Cambodia
MAR Samborana, Arbitrator (employer list)
MEN Nimmith, Executive Director, Arbitration Council Foundation & Arbitrator (neutral list)
SOK Lor, Chief Legal Officer, Arbitration Council Foundation
TUON Siphann, Arbitrator (union list)

ROYAL GOVERNMENT OF CAMBODIA

HENG Koy, Director, Ministry of Labor and Vocational Training, Provincial Department, Siem Reap Province
IM Chamroeun, Deputy Director, Ministry of Labor and Vocational Training, Provincial Department, Siem Reap Province
IN Khemara, Director, Department of Labor Inspection, General Directorate for Labor
KOY Tepdaravuth, Director, Department of Labor Disputes, General Directorate for Labor
Dr. Jörg MENZEL, Senior Legal Advisor, Senate
H.E. PAN Sorasak, Secretary of State, Ministry of Commerce
H.E. SENG Sakda, Director General, General Directorate for Labor

INTERNATIONAL LABOR ORGANIZATION

Conor BOYLE, Assistant Program Manager, Better Factories Cambodia
KHLEANG Rim, National Project Coordinator, Mekong Subregional Project to Combat Trafficking
OUK Sisovann, Senior National Program Officer, International Program on the Elimination of Child Labor
John RITCHOTTE, Chief Technical Advisor, Labor Dispute Resolution Project

KONRAD ADENAUER STIFTUNG WORKSHOP ON CAMBODIAN EMPLOYMENT AND LABOR LAW

ANN Vireak, Head of Labor Program Unit, Community Legal Education Center
Roman AWICK, Legal Advisor, Community Legal Education Center
Michael GAY, Commissioner, Australian Industrial Relations Commission
KONG Phallack, Member, Arbitration Council
MEN Nimmith, Executive Director, Arbitration Council Foundation
Dr. Jörg MENZEL, Legal Advisor, Senate of the Kingdom of Cambodia
Wolfgang MEYER, Country Representative, Konrad Adenauer Foundation
H.E. OUM Mean, Undersecretary of State, Ministry of Labor and Vocational Training
John RITCHOTTE, Chief Technical Advisor, ILO Labor Dispute Resolution Project

INDEPENDENT EXPERTS

Michael GAY, Advisor & Commissioner, Australian Industrial Relations Commission
Cheryl URASHIMA, Gender Specialist
Hugo VAN NOORD, Consultant and former head, ILO Labor Dispute Resolution Project

U.S. GOVERNMENT

Erin SOTO, Mission Director, U.S. Agency for International Development
Reed AESCHLIMAN, General Development Officer, U.S. Agency for International Development
SEREY Chan, Democracy & Governance Assistant, U.S. Agency for International Development
Stephanie GARVEY, Democracy & Governance Officer, U.S. Agency for International Development
HOUR Phalla, Political & Economic Assistant, U.S. Department of State
Cullen HUGHES, Economic Growth Officer, U.S. Agency for International Development
Paul F. RANDOLPH, Democracy & Governance Officer, U.S. Agency for International Development
Jennifer SPANDE, Economic & Labor Officer, U.S. Department of State

USAID PARTNERS

ANN Vireak, Head, Labor Program Unit, Community Legal Education Center
Roman AWICK, Legal Advisor/Mediator, Community Legal Education Center

Curtis HUNDLEY, Chief of Party, Micro & Small Enterprises Project, Development Alternatives Inc.

Rajan SHAH, Access to Justice Advisor, East-West Management Institute Program on Rights and Justice
SIN Kim Sean, Grants Coordinator, East-West Management Institute Program on Rights and Justice & Arbitrator (union list), Arbitration Council

Jane O'DELL, Chief of Party, Garment Industry Productivity Center, Nathan Associates Inc.
TEP Mona, Project Director, Garment Industry Productivity Center, Nathan Associates Inc.

Aaron N. BORNSTEIN, Chief of Party, Mainstreaming Anti-Corruption for Equity Project, PACT
CHHOR Jan Sophal, Deputy Chief of Party, Local Administration & Reform Program, PACT
Kurt A. MACLEOD, Country Representative & Asia Regional Director, PACT
Steve TUCKER, Decentralization & Local Administration & Reform Program, PACT

Rudy PORTER, Program Director, Solidarity Center, Bangkok
SIV Sothea, Solidarity Center
Alonzo SUSON, Cambodia Field Representative, Solidarity Center
YIM Serey Vathanak, Solidarity Center

WORLD BANK & CDRI

CHAN Sophal, Senior Research Manager, Cambodia Development Resource Institute
Tim CONWAY, Senior Poverty Specialist
Ingrid FITZGERALD, Gender Advisor, Cambodia Development Resource Institute
Stephane GUIMBERT, Senior Country Economist
PATH Heang, Justice Specialist
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APPENDIX B. REFERENCES

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