Second Synthesis Report on the Working Conditions Situation in Cambodia's Garment Sector

April 2002

1 Introduction

1.1 Project background

On 20 January 1999, the Governments of the Kingdom of Cambodia and the United States of America entered into a three-year Trade Agreement on Textile and Apparel. The agreement was extended and amended on 31 December 2001 for another three-year period. The Agreement sets an export quota for garments from Cambodia to the United States, while seeking to improve working conditions and respect for basic workers' rights in Cambodia's garment sector by promoting compliance with - and effective enforcement of - Cambodia's Labour Code as well as internationally recognised core labour standards. The amended agreement offers a possible 18% annual increase in Cambodia's export entitlements to the United States provided the Government of Cambodia supports:

"The implementation of a programme to improve working conditions in the textile and apparel sector, including internationally recognised core labour standards, through the application of Cambodian labour law" (Article 10B, US-Cambodia Textile Agreement)

Under the Agreement, "The Government of the United States will make a determination by December 1 of each Agreement period, beginning on December 1, 1999, whether working conditions in the Cambodian textile and apparel sector substantially comply with such labour law and standards".

Following the signing of the Agreement, the Governments of Cambodia and the United States requested ILO technical assistance to prepare a project proposal to support the implementation of the article of the Trade Agreement concerned with the improvement of working conditions. The ILO consulted extensively with the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY), The Garment Manufacturers Association in Cambodia (GMAC), the Cambodian trade union movement and the United States and in May 2000 a technical cooperation project with a budget of US$ 1.4 million (USA 1 million, GMAC and MOSALVY 200,000 each) over a period of three years was agreed upon. The project commenced in January 2001 under the direction

of a Chief Technical Advisor (CTA) appointed by the ILO to manage the project in accordance with the agreed project document.

1.2 Project objectives

The basic objective of the project is to improve working conditions in Cambodia's textile and apparel sector. This will be done by:

- Establishing and operating an independent system to monitor working conditions in garment factories,
- Providing assistance in drafting new laws and regulations where necessary as a basis for improving working conditions and giving effect to the labour law,
- Increasing the awareness of employers and workers of core international labour standards and workers' and employers' rights under Cambodian labour law,
- Increasing the capacity of employers and workers and their respective organizations to improve working conditions in the garment sector through their own efforts,
- Building the capacity of government officials to ensure greater compliance with core labour standards and Cambodian labour laws.

The execution and implementation of the project is guided by a Project Advisory Committee (PAC), which comprises three representatives each from the Government of Cambodia, the GMAC and the Cambodian trade union movement. The PAC meets quarterly, or as otherwise necessary, to discuss progress in project implementation and advise on envisaged activities. The PAC has no direct responsibility for project execution or day-to-day implementation of the project, but is expected to provide guidance and advise on such matters as work plans, implementation of activities, communication with the parties involved, and coordination of project activities with relevant work undertaken by other entities. It is also expected to advise on the operation of the monitoring and reporting system and contribute to the periodic evaluation of that system.

1.3 The monitoring system

The monitoring system consists of the following three main components:

- Registration of participating factories
- Procedures for undertaking monitoring visits and reporting on these visits
- Procedures for reporting on the overall findings of the monitoring

1.3.1 Registration of participating factories

To be able to set up the monitoring system, enterprises in the textile and apparel sector have registered with the project. This registration is voluntary but has been encouraged by a Prakas issued by the Ministry of Commerce which indicates that only registered factories would be eligible to use allocated export quotas and/or buy export quotas through official bidding for the export of textiles to the USA. As of 25 March 2002, 198

enterprises had registered. Registration consists of the signing of a Memorandum of Understanding (MOU) between the ILO and the participating factory. The MOU outlines the duties and responsibilities of both parties. Under the MOU the factory undertakes, inter alia, to provide full access to ILO monitors to factory premises, allow ILO monitors to freely interact with shop stewards, union representatives and factory workers, both inside and outside factory premises, and provide such access in case of both announced and unannounced monitoring visits. On its part, the ILO undertakes to ensure, inter alia, that monitoring visits are undertaken in a fair and objective manner, that monitoring visits will be undertaken in such a manner as to cause least disruption to factory operations, that basic information is kept confidential and that any allegation of misconduct by any ILO monitor in the execution of his/her duties will be considered in good faith.

1.3.2 Monitoring procedures

The Project, with the advise of the Project Advisory Committee, has recruited 8 monitors to undertake factory visits. These have been provided with intensive training, covering subjects such as Cambodian labour law and international labour standards, interviewing techniques, report writing, and also included a large segment of training visits by monitors to different types of enterprise. In undertaking factory visits, monitors are guided by an extensive checklist prepared by the CTA and approved by the Project Advisory Committee. This checklist consists of 156 questions (excluding sub-questions) most of which relate to articles in the labour code and its implementing regulations and/or provisions in the relevant ILO Conventions.

Monitors normally undertake enterprise visits in pairs, whereby each visit follows a similar procedure, which includes an initial meeting with management, a tour of the enterprise, observation of the working place, interviews with workers and their representatives both inside and outside the factory, collection of relevant documents (payroll, sample contracts, leave records, etc.) and an exit interview with management. After each monitoring visit, monitors will prepare a report for the CTA containing their findings and suggestions for areas of improvement. The CTA will check the report to see that it has been completed in accordance with project procedures. Once approved by the CTA, the CTA and/or the Programme Assistant will discuss the draft report with management in order to secure the agreement of management with the findings and suggestions in the report and gather additional information if necessary. This also includes a short visit of the factory to verify further information received. The final report prepared after this meeting is sent to management with a request to sign and return it. At this point, management can indicate with which points they do not agree. Upon request from management, the project may offer assistance to factories in implementing the suggestions identified in the report.

1.3.3 Reporting procedures

Based on the reports prepared by the monitoring teams, the CTA will prepare a synthesis report every three months that will provide an overview of the overall operation of the monitoring system for the period under review. The synthesis report will be presented to

the Project Advisory Committee. The Project Advisory Committee will discuss each synthesis report and the Committee's comments will be recorded and attached to the ILO report. The ILO report and the comments of the Project Advisory Committee will be made available in both English and Khmer and distributed to implementing and cooperating agencies under the project, and to the parties to the US-Cambodia Textile and Trade Agreement. The report and related comments will also be posted on the ILO website. The first report was published in November 2001.

1.4 This synthesis report

The monitoring of factories started on 27 June 2001. This second synthesis report contains an overview of findings for 34 factories. At the time of registration, these factories employed 30,207 workers of which 26,044 were female and 4,163 male. The 34 factories covered by this report do not include any of the 30 factories covered by the first report.

While the report contains the full details of the monitoring, the key findings for the 34 factories covered by this report indicate the following:

- There is no evidence of forced labour;
- There is no evidence of discrimination, although 3 incidents of sexual harassment occured;
- There is no evidence of child labour with the exception of one minor incident;
- Non-correct payment of wages occurs frequently;
- Over-time work is not, or not always, undertaken voluntarily in a substantial number of factories;
- Over-time hours extend, either occasionally or frequently, beyond the legal limits in a substantial number of factories;
- Freedom of association, including anti-union discrimination, is a problem in some factories;
- Strikes are not organised in conformity with the legally required procedures.

It is important to underline that the monitoring of factories is not an objective in itself, but part of a process aimed at improving working conditions in Cambodia's garment sector as a whole. Thus, factories are not named the first time information on them is included in a report but they are named in a subsequent follow-up report, after they have been given a three-month grace period to make improvements based on the suggestions made by the Project. It is believed that this two-stage process is the best way to realise the objective of the project, i.e. improving working conditions. Information on progress made by the 30 factories covered in the first synthesis report (November 2001) in implementing the Project's suggestions will be published in May/June 2002.

Cooperation of all factories with the Project, and especially the monitors, was satisfactory, except for one factory. While monitors were able to conduct a visit, subsequent verbal and written requests to set up a meeting to discuss the draft report with

management were not responded to. The information for this factory has been incorporated into this report in as far as available.

2 Working Conditions Situation in 34 Factories

The information in this chapter follows the structure of the checklist used by monitors when undertaking factory visits. Each sub-chapter contains a description of applicable law followed by a description of practice as found by the monitors. The description of the law is limited to the most relevant articles for each subject. For some subjects there are no specific legal provisions that regulate its application (sick leave, certain safety and health issues). This is indicated for each relevant subject. In those cases it should be borne in mind that this information does not represent a specific short coming vis-à-vis a specific article of the law, but rather an indication of the existence of situations that are not conducive to the application of the relevant general provisions.

2.1 Working conditions

2.1.1 Internal regulations

Law (Art. 23 – 25, Notice 9/97):

Enterprises must have internal regulations specifying terms and conditions of employment. These must be developed in consultation with workers' representatives. Provisions in internal regulations that do not comply with the law are null and void. Internal regulations must be in Khmer, placed in a proper and accessible place and be legible.

Practice:

Nineteen factories have internal regulations that comply with the law. Six factories have clauses in the internal regulations that are outdated, in that the minimum wage is indicated as 40 US$ rather than 45 US$, or that are contrary to the law in that the duration of time-off for breast feeding is not specified (1 factory), or that a 7-day notice is not provided in case of termination (1 factory), or that termination for serious misconduct goes against standard MOSALVY practice (2 factories). There were 2 factories that had submitted (amended) internal regulations to MOSALVY but these had not yet been returned. In one such case the amended internal regulations did not comply with the law in that the minimum wage was indicated as 40 US$ rather than 45 US$. One factory was in the process of developing internal regulations. In 2 factories that claimed to have internal regulations, these were disciplinary/factory rules only.

Out of the 29 factories that had internal regulations, 14 factories had posted them in the workplace, while 13 factories had not. In one factory, workers indicated that the internal regulations had previously been posted but this was no longer the case. In one factory they had been posted but were not easily legible.

Following a post-visit discussion, we observed that 2 factories had posted the internal regulations in the workplace, while 1 factory had posted a new legible copy of the internal regulations. Also, 1 factory, which previously presented factory rules as internal regulations, presented genuine internal regulations that complied with the law, while another factory presented internal regulations that complied with the law where they had been previously under development.

2.1.2 Employment contract

Law (Art. 9, 10, 65, 66, 68, Notice 06/97):

A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties. It can be written or verbal. A verbal contract is considered to be a tacit agreement between the employer and the worker under the conditions laid down by labour regulations, even if it is not expressly defined. Everyone can be hired for a specific work on the basis of time, either for a fixed duration or for an undetermined duration.

In accordance with the stability of employment, it is distinguished between regular workers and casual workers. Regular workers are those who regularly perform a job on a permanent basis. Casual workers are those who are contracted to: perform a specific work that shall normally be completed within a short period of time, perform a work temporarily, intermittently and seasonally. Casual workers are subject to the same rules and obligations and enjoy the same rights as regular workers, except for the clauses stipulated separately. A contract for a probationary period cannot last longer than three months for regular employees. The maximum contract period for an apprentice is two months.

Practice:

Most factories have documents that workers have to sign in order to get a job. This can be an application form or a contract of some type. Since there are four different categories of workers (apprentice, probation, regular, and casual) within factories, there are different arrangements in the factories. For example, workers enter into a verbal agreement for the apprentice and probation period but sign a contract when they become regular workers (1 factory). Elsewhere, workers sign a separate contract for the different categories (5 factories), or workers sign a contract/application form, which covers their apprentice period and/or their probationary period as well as the following period when they become regular workers (18 factories). In 1 factory, workers signed a contract under previous management but did not do so under current management. In 1 factory, only casual workers signed a contract while regular workers did not. In 1 factory, workers sign a contract that does not fall in any of the categories mentioned above. In 7 factories, only verbal contracts were concluded as is allowed under the law.

Out of the 27 factories, which use written contracts, 15 factories used contracts that contain stipulations that do not comply with the law. These stipulations included a

duration of contracts for apprentices beyond the legal limit of two months (4 factories), a duration of contracts for probationary workers beyond the legal limit of three months (2 factories), non-payment of indemnity for dismissal (3 factories), hours of work, mostly over-time, beyond the legal limit or at the discretion of management (3 factories), unclear indications of wages for the different categories of workers (1 factory), a prohibition of organising/participating in a strike (1 factory), and arrangements with regard to termination that are not in line with MOSALVY practice (1 factory). Also, in 1 factory, a contract was used that included an outdated reference to the minimum wage and arrangements with regard to termination that are not in line with MOSALVY practice. In 9 factories, contracts used do not stipulate, or not stipulate in full, the terms and conditions of employment.

In 11 factories, workers indicated they understood their terms of employment, while in 23 factories, workers indicated that they did not understand, or did not understand entirely, the terms of their employment.

In 7 factories, some workers indicated they had to pay someone a certain amount of money in order to get a job. In one of these factories, management had posted warning signs informing workers they were under no obligations to pay anyone a fee in order to get a job. Also, in 1 factory, workers had to make a cash deposit upon employment which was to be reimbursed with interest at the termination of employment.

During the discussion of the draft report, 1 factory presented a new contract that brought the length of the probationary period within the legal limit of three months where it had previously been not. Another factory presented a revised contract that brought stipulations with regard to indemnity for dismissal within the requirements of the law.

2.1.3 Collective agreement

Law (art. 96-98, Prakas 197/98, 287/01, 305/01)

The collective agreement is a written agreement to determine the working and employment conditions of workers and to regulate relations between employers and workers as well as their respective organisations. It is signed between an employer, a group of employers or one or more organisations representative of employers and one or more representative trade union organisations. When there is no trade union, a collective agreement can be made between the employer and duly elected shop stewards. Collective agreements cannot be contrary to the provisions of the law. Rules and procedures applicable to the conclusion of a collective agreement include that it must be in Khmer, properly registered with MOSALVY and posted throughout the establishment. The representativeness of a union for collective bargaining purposes is determined by, in the first instance, membership of a particular union by an absolute majority of workers in an enterprise, and, in the absence of such a situation, which union obtains the majority of votes, counting validly cast votes following a secret-ballot vote by workers. The most representative union shall be recognised as such for a minimum of two years.

Practice:

Twenty-nine factories indicated that they did not have a collective agreement. One factory indicated a collective agreement had been concluded, but this amounted to a collective dispute settlement agreement.

Four factories had a collective agreement concluded in accordance with the relevant rules and regulations. One such agreement mostly restates the provisions of the law but contains two clauses that are contrary to the law, while the contents of another implied that overtime could be worked beyond the legal limit of two hours, and yet another restates provisions of the law. One factory had submitted a collective agreement for registration with MOSALVY, which mostly restates provisions of the law but contains some clauses that provide for better conditions and two clauses that are contrary to the law.

2.1.4 Wages

Law (Art. 102-119, Notice 017/00 and 006/97):

The term 'wage' means the remuneration for the employment or service that is convertible in cash or set by agreement or by national legislation, and that shall be given to a worker by an employer, by virtue of a written or verbal contract of employment or service, either for work already done or to be done. Wages include, inter alia, actual wage or remuneration, overtime payments, bonuses, holiday pay, and maternity leave pay. Any written or verbal agreement that would remunerate the worker at a rate less than the guaranteed minimum wage shall be null and void. For piecework, the wage must be calculated in a manner that permits a worker of mediocre ability to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage. Minimum wages established by virtue if this law must be permanently posted in the workplace and in payment and recruitment offices. The wage must be paid directly to the worker concerned and shall be paid in coin or bank note.

The minimum wage set for the garment sector is 45 US$ for regular workers, 40 US$ for workers on probation and 30 US$ for apprentices. If a piece rate worker's output falls below 45 US$, the employer is obliged to make up the difference. Workers are entitled to a 5 US$ bonus for regular attendance. Workers that have worked in the same factory for more than I year should receive a 2 US$ seniority bonus per month. Normal overtime is paid at 1.5 times the normal rate. Work on Sunday and public holiday is paid at 2 times the normal rate. Nighttime, set by MOSALVY practice to be the period between 2200 and 0500 hours, is paid at 2 times the normal rate. Workers are entitled to a 1,000 Riel meal allowance, or a meal, per day when working overtime.

Practice:

In 1 factory, the minimum wage notice was posted in the factory, while in 33 factories it was not. Following a post-visit discussion, we observed that 1 factory had posted the minimum wage.

In 27 factories, wage calculations were not, or not entirely, clear to workers. Specific reasons indicated in this respect include that they did not receive a wage slip (10 factories), the payment sheet does not indicate the calculation but only the total amount (2 factories), the payment slip or other relevant document was in a language other than Khmer (6 factories), not all categories (over time, public holiday) were indicated (2 factories), it showed only the total amount for each category (basic wage, overtime, etc.) without indicating the calculation for each category (5 factories), workers did not know the appropriate wage rate for night work (2 factories), workers did not know the rate for work on Sunday and Public Holidays (2 factories), workers were not given enough time to check the payroll ledger they signed after receipt of their wages (1 factory), and the payment sheets were not explained to them (1 factory).

During a post-visit discussion, 1 factory presented pay slips in Khmer that had been introduced where they had previously been provided in another language, while another factory presented a recently developed pay slip, which it had recently introduced and documents showing that it had started paying the attendance bonus. The pay slip however was in English only. In 1 factory, pay slips had been developed and would be introduced shortly where they had previously not been provided at all.

In 30 factories, there were indications that workers did not receive the wages they were entitled to. Situations in this respect included that workers continued receiving a apprentice/probation salary when working for longer than two/three months (8 factories), workers only receive their piece-rate including over-time when this falls below the minimum wage (1 factory), non-correct payment of over-time wage, including meal allowance (16 factories), non or incorrect payment of the attendance bonus (11 factories), non-payment of the attendance bonus or wage deductions when workers refused to work over time or work on a Sunday or Public Holiday (4 factories), payment of a daily/monthly wage below the minimum wage to casual workers (13 factories), undue wage deductions for absences (3 factories), undue wage deductions for production mistakes made or violating company rules (2 factories), non-correct payment for work undertaken on Sunday or Public Holidays workers (10 factories), non or incorrect payment of night time wages (14 factories), and non or incorrect payment of seniority bonus (8 factories). In 4 factories, indications were that the piece rate was not set at a level that permits a worker of mediocre ability working normally to earn, for the same amount of time worked, the minimum wage.

In 1 factory, payment of wages was deferred to several days later when workers refused to work over time on payday, and in another factory wages were regularly not paid on time.

During a post-visit discussion, 1 factory provided documents showing it had started paying the seniority bonus.

In 2 factories, workers indicated they received the wages they were entitled to and understood their wage calculations.

2.1.5 Return fare

Law (Art. 188):

All workers who were recruited far from the workplace and whose trip to the workplace was paid for by the employer are, at the expiration of the contract or during leave period, entitled to a return trip to the place of recruitment at the expense of the employer.

Practice:

In 33 factories workers were recruited locally and were therefore not entitled to a return fare. One factory had relocated from one city to another and it remained unclear whether workers who had transferred to the new location were entitled to a return fare.

2.1.6 Hours of work

Law (Art. 137, 139, 144, 147, Prakas 90/98, 80/99, Notice 014/99):

The number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week. Overtime can only be undertaken for exceptional and urgent jobs. Overtime must be undertaken voluntarily and workers should not be punished for refusing to work overtime. Overtime hours cannot exceed 2 hours per day. Night work has been set by MOSALVY practice as to be work undertaken between 2200 and 0500. Weekly time off shall last for a minimum of twenty-four consecutive hours. All workers shall be given in principle a day off on Sunday.

Practice:

In 29 factories, normal working hours amount to 8 hours. In 3 factories, a system is applied whereby they provide lunch to workers in return for a 9th hour of work. The Ministry of Labour allows this practice, as long as workers agree with this arrangement, the value of the lunch approximates the equivalent of one hour of over-time work, and the total number of hours worked per week does not exceed 48 hours. In 1 factory, normal working hours were indicated as 8,5 hours but time cards examined showed they were 9 hours. In another factory, official working hours were 7,5 hours per day.

In 29 factories, over-time hours (occasionally) extend beyond the 2 hours allowed under the law. In 6 factories, over time appears to be exceptional, while for 26 factories it appears to be undertaken frequent/for several weeks or months in a row. In 9 factories, over-time hours occasionally extend beyond midnight.

Workers in 11 factories indicated that working over-time is undertaken voluntarily, while in 22 factories workers indicated over time was not, or not always voluntarily undertaken.

All 34 factories covered by this report have Sunday as their designated 24 hours off. In 29 factories, work was undertaken on Sunday, either occasionally (19 factories) or frequently/for several weeks/months in a row (10 factories). In 11 factories, workers indicated that working on a Sunday was undertaken voluntarily, while in 16 factories, workers indicated this was not or not always voluntarily undertaken. In 2 factories, workers indicated that working on Sunday was undertaken voluntarily by regular workers but not by casual workers.

2.1.7 Leave

Law (Art. 161, 166, 171, Prakas 76/98, 77/98, 267/01, 300/01):

Each year, MOSALVY issues a Prakas determining the paid public holidays for workers of all enterprises. For the year 2002, 24 days have been designated as such. Payment for work on these days shall be 2 times the normal rate. All workers are entitled to paid annual leave at the rate of one and a half work days per month of continuous service, i.e. 18 days per year. The right to use paid leave is acquired after one year of service. The employer has the right to grant workers up to 7 days special leave during the event directly affecting a worker's immediate family, such as the worker's wedding, the worker's wife giving birth, the wedding of the worker's son/daughter, sickness or death of the worker's spouse/children/parents. If the worker has not yet taken all annual leave, the employer can deduct the special leave from the worker's annual leave. Workers are entitled to paid sick leave.[1]

Practice:

In 30 factories, workers indicated they were aware which days were public holidays, while in 4 factories, not all workers were aware of the public holidays. In 30 factories work was undertaken on public holidays. While for 26 factories this appears to be occasional, for 4 factories it appears to be frequent. In 17 factories, workers indicated that working on a public holiday was undertaken voluntarily, while in 13 factories they indicated this was not undertaken, or not always voluntarily undertaken.

Thirty-two factories officially provide 18 days of annual leave. In one factory annual leave was not provided because it had re-opened less than 1 year ago while in fact a number of workers had been transferred from a different branch and these did not receive annual leave in spite of having worked longer than 1 year, while in one factory the situation was unclear because it had reopened less than 1 year ago. In 12 factories, annual leave is converted into a cash payment. MOSALVY has noted in this respect that cash conversion of annual leave has been the practice in some establishments with the agreement of workers and the support of unions. MOSALVY does not object to this practice. In 11 factories, workers can choose between taking annual leave and receiving cash compensation but in one such factory, workers said that they could not take annual leave and in another factory indications were payments made were incorrect. In 1 factory, workers can take annual leave but this led to a partial wage deduction. In 1 factory, annual leave was calculated to include sick leave. In 1 factory, annual leave was not paid

and in 2 factories cash compensation had not been provided. In 3 factories, indications were that paid annual leave was not provided. For 1 factory, not enough information was available.

All factories covered by this report officially provide a total of 7 days special leave, except one, which provides 10 days special leave. In 4 factories, workers indicated it was not clear to them how many days special leave they are entitled to. In 12 factories, special leave taken was, as is allowed under the law, deducted from the annual leave. In 2 factories, special leave was paid and not deducted from the annual leave. In 17 factories, special leave was not paid. In 1 factory, special leave was deducted when a worker had worked in the factory for less than one year. In 1 factory, management could not provide information on special leave while workers claimed special leave was deducted from the wage and the annual leave. For 1 factory, not enough information was available.

In 8 factories, paid sick leave was provided when a medical certificate could be provided by the worker, though in some these had to be from designated clinics or had to be verified by factory medical staff. In 1 factory no paid sick leave was provided when this was for less than 1 day and when sick leave was for longer than one day, management required a medical certificate and would pay half wages. In 2 factories sick leave was provided when a medical certificate could be provided indicating a serious injury but no paid sick leave was provided for minor illnesses regardless of whether a medical certificate was provided. In 2 factories, paid sick leave is provided with a medical certificate but only for a limited number of days. In 1 factory, paid sick leave is provided with a medical certificate but days taken are deducted from annual leave. In 2 factories, 50% of wages was paid when a medical certificate was provided. In 1 factory, 50% of wages was paid when a medical certificate was provided, but sometimes 100% in recognition of good performance and behaviour of a worker.

In 1 factory, wages are partly not paid when workers take sick leave regardless of whether or not they have a medical certificate. In 12 factories, wages are not paid regardless of whether workers have a medical certificate or not. In one of these factories an additional day of pay was deducted when workers did not have a medical certificate. In 2 factories management claimed that sick leave was provided for a maximum of three and five days respectively but workers claimed sick leave was unpaid. For 2 factories not enough information was available.

2.1.8 Maternity leave

Law (Art. 182 and 183):

Women are entitled to a maternity leave of 90 days. Women having a minimum of one year uninterrupted service, are entitled to 90 days maternity leave with half their wage, including their perquisites. The employer is prohibited from dismissing women during their maternity leave or at a date when the end of the notice period would fall during the maternity leave.

Practice:

In 16 factories maternity leave is provided in accordance with the law. In 2 factories, paid maternity leave is provided but the payment is made after the worker has returned to work. In 2 factories paid maternity leave is provided for 90 days but with less than half pay and payment is made after the worker had returned to work. In 2 factories, 90 days leave were provided but with less than half pay. In 1 of these factories workers indicated that some women had been fired for becoming pregnant. In 4 factories management claimed maternity leave had never been requested, and in two of these factories workers were not aware that they have this right. In 1 factory it remained unclear whether workers having worked less than one year were provided 90 days maternity leave without pay. In 1 factory, which had re-opened less than one year ago, workers were not aware they have the right to maternity leave. In 2 factories maternity leave was not paid and workers were reinstated at a probationary level. In 1 factory paid maternity leave was not provided. In 1 factory management claimed to provide maternity leave but no documents were available to verify these claims while workers said that there were irregularities with regard to the provision and payment of maternity leave. In 1 factory management said maternity leave had never been requested and workers said that pregnant women resigned out of their own free will. For 1 factory not enough information was available.

2.1.9 Breast-feeding

Law (Art. 184):

From one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children. This hour may be divided into two periods of thirty minutes each, one during the morning shift and the other during the afternoon shift.

Practice:

In 1 factory time-off for breast-feeding is provided, while in 33 factories such time-off is not provided.

2.1.10 Nursing room/day-care centre

Law (Art. 186)

Enterprise employing a minimum of 100 women or girls shall set up, within their establishments or nearby, a nursing room and a day care centre. If the company is not able to set up a day care centre for children over 18 months of age, female workers can place their children in any day-care centre and the charges shall be paid by the employer.

Practice:

Thirty-three factories did not have a nursing room or day care centre, while 1 factory did not have a day-care centre but did have an unused and unmarked nursing room. Of those factories that did not have a day care centre, none paid for the cost of private day-care centres.

Following a post-visit discussion, we observed that in 1 factory a nursing room had been set up but had limited capacity and an announcement had been made that the factory would pay the costs of placement of children in private day care centres, while another factory was in the process of setting up a nursing room.

2.1.11 Sexual harassment/indecent behaviour

Law (Art. 172):

All form of sexual violation (harassment) is strictly forbidden. All employers and managers of establishments in which child labourers or apprentices less than 18 years of age or women work, must watch over their good behaviour and maintain decency before the public.

Practice:

In 31 factories workers indicated they had not experienced sexual harassment, while in 2 factories 1 worker each indicated they had and in another factory 8 workers indicated they had.

In 14 factories, workers indicated they sometimes felt mistreated by supervisors. Examples given by workers include chiding (5 factories), cursing (7 factories), shouting (5 factories), throwing cloth at workers (3 factories), kicking workers (1 factory), twisting ears and cheeks (1 factory), and hitting workers (2 factories).

During a post-visit discussion, 1 factory showed that it had provided its foreign line supervisors with a Khmer language and culture course. Workers indicated that relations with line supervisors had improved afterwards.

2.1.12 Discrimination

Law (Art. 12):

No employer shall consider on account of race, colour, sex, creed, religion, political opinion, birth and social origin to be the invocation in order to make a decision on hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.[2]

Practice:

In all 34 factories covered by this report, workers indicated that there was no discrimination.

2.1.13 Forced labour

Law (Art. 15, ILO Convention No. 29):

Forced or compulsory labour is absolutely forbidden in conformity with the ILO Convention No. 29 (1930) on Forced Labour as ratified by the Kingdom of Cambodia on February 24, 1969. Convention No. 29 defines forced or compulsory labour as all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Practice:

No indications were found in any of the 34 factories that forced labour was imposed.

2.1.14 Child labour

Law (Art. 177):

The minimum age for wage employment is set at 15 years. The minimum age for any kind of employment or work, which, by its nature, could be hazardous to the health, the safety, or the morality of an adolescent, is 18 years. Children from 12 to 15 years of age can be hired to do light work provided that the work is not hazardous to their health or mental and physical development and the work will not affect their regular school attendance or their participation in guidance programs or vocational training approved by a competent authority.[3]

Practice:

In 33 factories, no indications were found that child labour was practiced. In 4 of these factories, the documents used to verify age were found to be unreliable but observation of workers appearance and indications from interviews with workers were that no child labour was practiced. In 1 factory, a number of workers looked very young. An analysis of relevant documents was undertaken. The most reliable document available in Cambodia for the purpose of age verification is the family book, which contains the names and dates of birth of a mother and father and all their children. Analysis of copies of the family books of eight workers as submitted to the factory revealed irregularities in six of them. Verification of the copies of the family books submitted by the workers to the factory against the originals kept in the commune offices where these workers were registered showed that four workers were younger than indicated in the altered family books. Three of these were 15 at the time of recruitment, while one worker was recruited two weeks before she turned 15. The original records for two workers were not available in the relevant commune offices. At the time the monitoring visit was undertaken, the

worker that was recruited two weeks before she had turned 15 was 15 years and 2 months old. Currently, the factory has suspended operations due to lack of orders.

2.2 Safety and Health

Note: The Labour Code of Cambodia contains a general chapter on health and safety. Thus, article 229 stipulates that all establishments must maintain the working conditions necessary for the health of the workers, while article 230 stipulates that all establishments must be set up to guarantee the safety of workers. Inclusion of specific safety and health issues in the checklist, which was approved by the Project Advisory Committee and is used by monitors when undertaking factory visits, is based on these articles of the Labour Code. Considering the general nature of the legal provisions with regard to safety and health, it is important to emphasize that, where no indication of a specific article of the law is provided with regard to one of the sub-sections below, the information under that sub-section does not represent a specific short-coming vis-à-vis a specific article of the law, but rather an indication of the existence of situations that are not conducive to guaranteeing the health and safety of workers.

2.2.1 General

2.2.1.1 Safety and health policy

Law:

There are no specific legal requirements with regard to the development and implementation of a safety and health policy.

Practice:

There were 2 factories that had a safety and health policy and 1 factory was in the process of developing a safety and health policy. There were 31 factories that did not have a safety and health policy.

During a post-visit discussion, 1 factory presented a finalised safety and health policy that had previously been under development.

2.2.1.2 Work related accidents

Law (Prakas 58/98):

Owners or managers of enterprises and establishments of industry shall notify in writing any work related accident to the Department of Social Security of MOSALVY, if the enterprise is located in Phnom Penh, or to the provincial or municipal Inspectorate.

Practice:

In 12 factories, the number of accidents/illnesses was recorded, while in 22 factories it was not. One of the factories that kept a record transmitted it to the relevant authorities.

During a post-visit discussion, we observed that 1 factory had commenced recording accidents.

2.2.1.3 Compensation for work related accidents

Law (Article 248, 253, 254):

An accident is considered to be work related, regardless of the cause, if it happens to a worker working or during the working hours, whether or not the worker was at fault. Equally, accidents happening to the worker during the direct commute from his residence to the work place and home are also considered to be work related. Victims of work related accidents shall be entitled to medical assistance (benefits in kind, medical treatment and medicine as well as hospitalisation) and to all surgical assistance and prostheses deemed necessary after the accident. Compensation for fatal accidents or for accidents causing permanent disability is paid to the victim or his beneficiaries as an annuity.

Practice:

In 13 factories indications were that the employer did provide compensation. In 2 factories compensation was provided only when workers went to a designated hospital and in 1 of these there was a limit on the diagnosis fee to be reimbursed. In 1 factory compensation was limited to US$ 100 for each accident and in another factory compensation is limited to 50% of the actual cost. In 1 factory management claimed that full compensation was provided but some workers disputed this claim. In 3 factories compensation had been provided in some instances but it remained unclear whether this was general practice. In 3 factories, partial compensation was paid but subsequently deducted from wages. In 2 factories compensation was provided for costs incurred but no wages were paid. In 2 factories indications were that the employer did not provide any compensation. In 6 factories no, or not enough, documents were available to verify whether or not compensation was paid as claimed by management.

In 1 factory a worker had fallen ill in the factory and subsequently died at home. No compensation was provided. In 3 factories workers had died in car accidents on their way to/from work and in one such case full compensation was paid to the beneficiaries, while in two management claimed that a payment was made to the beneficiaries but no documents were available for verification of its correctness. In 2 factories, compensation is generally provided but not enough information was available to verify whether or not the factories were liable for compensation with regard to an accident outside the factory in which its workers had died.

2.2.1.4 Emergency arrangements

Law:

There are no specific legal requirements with regard to emergency arrangements.

Practice:

In 16 factories the emergency exits were unlocked, clearly marked and easily accessible. In 8 factories one or more emergency exits were locked, in 4 factories they were not clearly marked, and in 7 factories they were not easily accessible. In 20 factories, regular emergency drills were held and/or workers were aware what to do in case of an emergency, while in 14 factories this was not the case.

Following a discussion of the draft report, 3 factories had unlocked an emergency door/a number of emergency exit doors, which had previously been locked.

In 28 factories, an appropriate number of fire extinguishers was available that were within easy reach of workers, while in 6 factories these were not all within easy reach. In 15 factories workers and/or other personnel had been trained in the use of fire extinguishers.

2.2.1.5 First aid

Law:

There are no specific legal requirements with regard to the availability of first aid kits in the work place.

Practice:

An appropriate number of properly stocked and easily accessible first aid boxes were available in 5 factories. In 12 factories, first aid boxes were not available in an appropriate number, and/or in 10 factories all or some were not properly stocked, and/or in 4 factories they were locked without someone being present directly on the work floor that had the key. No first aid boxes were available directly on the work floor in 4 factories. No first aid boxes were available at all in 8 factories.

Following a post-visit discussion, 1 factory had installed additional first aid boxes, while 3 factories had properly stocked the first aid kits where they were previously not. Also, 1 factory had installed a sufficient number of properly stocked first aid boxes where there had previously not been. However, these were locked without anyone being present on the work floor that had the key.

2.2.1.6 Infirmary

Law (Art. 242, 244, Prakas 330/00):

All enterprises employing at least 50 workers shall have a permanent infirmary on the premises. This infirmary shall be run by a physician assisted by one or more nurses, based on the number of workers. During working hours, both day and night, there shall

always be at least one nurse present. The infirmary shall be supplied with adequate materials, bandages and medicines to provide emergency care in the event of accidents or occupational illness or sickness during work. Where there are more than 200 workers, the infirmary must include areas for hospitalising the injured and sick. These areas must be able to handle 2 percent of the personnel employed at the site.

Practice:

In 29 factories, infirmaries had been set up. In different instances these were either locked (1 factory), and/or did not have a nurse/doctor on duty during working hours, especially over-time (13 factories), and/or had not recruited a doctor or not recruited a doctor/nurse(s) for the required number of hours (19 factories), and/or did not have (enough) medical supplies and/or instruments (18 factories), and/or did not have an appropriate temperature level (5 factories). In 3 factories a permission process was in place that hampered easy access. In 1 factory consisting of different buildings, workers at one building were not aware they could use the infirmary facilities located at another building. None of the infirmaries had the required hospitalisation capacity. In 5 factories no infirmary had been set up, although in 2 of these a room had been designated for such purpose but was not operational.

Following a post-visit discussion, we observed that 3 factories had recruited a doctor, and 1 factory had abolished the permission procedure.

2.2.2 Hazardous substances

2.2.2.1 Storage

Law:

There are no specific legal requirements with regard to the storage and use of potentially hazardous substances.

Practice:

Note: Since verifying the chemical content and the potential hazard of handling a substance goes beyond the capacity of the project, the project only monitors the storage of substances in those factories that use a substantial amount of chemical substances. In practice this means that only factories with a washing or dying section are included.

In 8 factories, a substantial amount of washing/dying products are used. In 6 factories the storage of these substances was not appropriate in that they are not kept in a specifically arranged and separate storage area (1 factory), and/or labels are not in Khmer (5 factories), and/or empty containers are not properly disposed off (1 factory). In 3 factories workers indicated they had not been trained in the handling of these substances.

2.2.2.2 Protective measures

Law:

There are no specific legal requirements with regard to the provision of protective equipment.

Practice:

In the 4 factories where protective equipment was regularly provided to workers who need it, not all workers used it. In all of these factories workers indicated they did not want to wear the protective equipment provided because of the physical discomfort. In 5 factories, not all sections where it was needed were provided with protective equipment. In 25 factories, no suitable protective equipment was (regularly) provided to (all) workers who need it.

Following a post-visit discussion, we observed that in 4 factories, workers had been provided with protective equipment where they had previously been not, but in 1 of these the cost of the equipment was shared between management and workers on a 50-50 basis.

In 11 factories, workers in certain sections, mostly sewing, were not allowed to wear their own footwear nor were they provided with suitable alternative footwear.

2.2.3 Lighting

Law:

There are no specific legal requirements with regard to lighting.

Practice:

In 30 factories, lighting was of an appropriate level. In 1 factory lighting was not appropriate in one particular section, in 2 factories several lights were broken and in 1 of these certain limited areas were not appropriately lighted, and in 1 factory a corner area was not appropriately lighted.

Following a post-visit-discussion, we observed that 1 factory had improved lighting in a particular corner area to an appropriate level.

2.2.4 Noise

Law (Sub-decree 42/00):

The noise control standard for factories is set at 75 dB for 32 hours, 80 dB for 16 hours, 85 dB for 8 hours, 90 dB for 4 hours, 95dB for 2 hours, 95 dB for 2 hours, 100dB for 1 hour, 105dB for 0.5 hour, 110dB for 0.25 hour, and 115 dB for 0.125 hour of exposure. It is recommended that workers be provided with protective equipment when they are exposed to more than 80 dB.

Practice:

In 25 factories, the noise level was within appropriate levels, while in 9 factories this was not the case. In 7 factories this was due to noise generated by machines operated directly by workers, and in 2 factories due to the placement of the generator.

Following a post-visit discussion, we observed that 1 factory had taken measures that had reduced the noise generated by a particular machine to within acceptable levels and 1 factory had taken measures that had reduced noise levels from the generator to within acceptable levels.

2.2.5 Machine safety

Law:

There are no specific legal requirements with regard to machine safety.

Practice:

In 17 factories, the condition and maintenance of machines and wiring systems were of an appropriate standard, while in 17 factories it was not.

2.2.6 Ventilation and heat

Law:

There are no specific legal requirements with regard to ventilation and heat.

Practice:

In 6 factories, the temperature and measures taken to ensure ventilation and air circulation were appropriate. In 28 factories this was not the case, either for the entire factory (12 factories) or for certain sections (16 factories).

After the discussion of the draft report, we observed that 1 factory had improved ventilation and air-circulation in some sections but not all and 1 factory has started spraying the roof with water in order to reduce the temperature level. Also, 3 factories had installed additional ceiling and exhaust fans to reduce temperature in one or more particular sections and 2 of these had started spraying the roof with water to reduce the temperature. In 1 factory one additional exhaust fan had been installed in a particular section.

2.2.7 Housekeeping

Law:

There are no specific legal requirements with regard to housekeeping.

Practice:

In 15 factories general cleanliness was of an appropriate level, while in 19 factories, this was not the case.

In 18 factories the storage of, or waste from, products in process was not appropriate in terms of blocking the free flow of people and production materials.

In 4 factories equipment to transport heavy and/or bulky material was not available, in 4 factories this equipment was not available in appropriate numbers, in 2 factories the equipment available was not appropriate for having to transport materials between floors, and in 1 factory workers did not use the equipment available.

Following a post-visit discussion, we observed that the cleanliness and/or workplace organisation and/or storage of products in process had improved to an appropriate standard in 3 factories.

2.2.8 Welfare

2.2.8.1 Drinking water

Law (Prakas 054/00):

Employers shall provide sufficient and hygienic beverage to their workers. To maintain hygiene and sanitation, the beverage must be kept in a container with a cover and a faucet. The container must be placed near the workplace. The employer shall arrange, in a hygienic and sanitary manner, to make available cups and glasses or other sanitary means to the workers.

Practice:

In all 34 factories drinking water was provided to workers In 3 factories the water was placed, in general terms, in a non-hygienic environment, while in 1 factory it was placed too close to the toilets, and in 1 factory near oil containers. In 4 factories, workers said there was sometimes not enough water. In 1 factory, water was not available on all floors. In 1 factory, workers claimed that the water provided was not safe to drink and sometimes made them ill. In 1 factory the frequency and length of drinking breaks was monitored/regulated. In 19 factories, no or not enough cups were provided.

2.2.8.2 Sanitation facilities

Law (Prakas 052/00):

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

Practice:

In 15 factories the number of fully functioning toilets was in line with, or above, the legal requirements, while in 11 factories it was not. In 8 factories the number of toilets was as required but in 4 of those factories some toilets were not functioning or not functioning properly, in 2 some were locked, and in 2 a disproportionate number of toilets were unsuitable for use by females. In 14 factories the cleanliness of the toilets was of an appropriate level, while in 20 factories this was not the case. In 8 factories the timing, frequency or length of toilet breaks was monitored/regulated and in 1 of these factories this could lead to the imposition of fines.

Following a post-visit discussion, we observed that 1 factory had abolished the regulation system for toilet use, 2 factories showed that it had built additional toilets bringing the total number of toilets in line with the required number, 1 factory had started building additional toilets, and 1 factory had improved cleanliness to an appropriate level.

2.2.9 Seating

Law (Prakas 053/00):

Every enterprise should provide suitable chairs according to the needs of the workers. Workers undertaking their work in a standing position should be provided with suitable chairs close to the workplace in case they need them.

Practice:

In all 34 factories, the seating arrangements for workers who undertake their work sitting down were not appropriate in that heights could not be adjusted or lacked a backrest.

Workers in 32 factories who undertook their work in a standing position were not able to sit down when taking a break because they were either not allowed to do so (7 factories) and/or no, or not enough, chairs/benches were provided for this purpose (29 factories).

Following a post-visit discussion, we observed that 3 factories had provided some benches to workers who do their work standing and 1 factory had made an announcement to workers who do their work standing that they could take a break outside the workplace since providing workers with chairs inside the workplace was not possible due to a lack of space.

2.3 Labour Relations

2.3.1 Workers' freedom to organise

Law (Art. 266, 267, 280):

Workers and employers have, without distinction whatsoever and prior authorisation, the right to form professional organisations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and Individually, of the persons covered by the organisations' statutes. Workers' unions and employers' associations have the right to draw up their own statutes and administrative regulations, as long as they are not contrary to laws in effect and public order, to freely elect their representatives and to formulate their work programme. Acts of interference are forbidden. Acts of interference are primarily measures tending to provoke the creation of worker organisations dominated by an employer or an employers' organisation, or the support of worker organisations by financial or other means, on purpose to place these organisations under the control of an employer or an employers' organisation.

Practice:

In 15 factories, no union was present. In 14 factories, 1 union was present, and in 5 factories 2 unions were present.

In 27 factories, there were no indications that there were circumstances that hampered workers in freely organising, while in 7 factories such indications were present. In this respect, workers in 2 factories indicated that workers complaining to management were dismissed without valid reason, and workers in 1 factory indicated that workers trying to set up a union were dismissed without a valid reason, or they were afraid of possible management reaction if they would set up, or join, a union. Also, in 1 factory, management doubled the union dues collected by a union, in 1 factory workers claimed that the leader of an unregistered union had been appointed by management, and in 2 factories workers indicated they felt the union was under the influence of management.

2.3.2 Anti-union discrimination

Law (Art. 279, 293, Prakas 313/00):

Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal. The three most senior leaders of a registered union, including the chairperson, vice-chairperson and the secretary, can be dismissed only after authorisation from the Labour Inspectorate.

Practice:

In 30 factories there were no indications of anti-union discrimination. In 4 factories, indications were present such as the firing of union leaders/activists without a valid reason (3 factories), and warning a union leader allegedly without a valid reason (1 factory).

2.3.3 Shop stewards

Law (Art. 283, Arts. 285, 287, 288, 292, 293, Prakas 659/98):

In every enterprise where at least 8 workers are normally employed, the workers shall elect a shop steward to be the sole representative of all workers who are eligible to vote. The number of shop stewards is set in proportion to the number of workers in the establishment as follows: from 8 to 50 workers one official shop steward and one assistant shop steward; from 51 to 100 workers two official shop stewards and two assistant shop stewards; more than 100 workers: one extra official shop steward and one extra assistant shop steward for each group of one hundred workers.

Procedures applicable to shop steward elections include that the election shall take place during working hours, that the ballot is secret, that elections for stewards and assistants are separate but at the same time, that the shop stewards are elected from the candidates nominated by the workers/representative union organisations within each establishment, that the employer organise the elections, and that the Labour Inspectorate is notified of the election results. Shop stewards can only be dismissed after authorisation from the Labour Inspectorate.

The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspectorate.

Practice:

In 11 factories, the elections of shop stewards and shop steward assistants were held in accordance with the applicable rules and procedures and the appropriate number of shop stewards and assistants were elected. In 1 of these factories, ILO monitors observed shop steward elections. In 14 factories, such elections were not held in accordance with the applicable rules and procedures because workers/unions were not allowed to nominate their candidates (7 factories), and/or the workers were not given the required time to decide who to vote for (10 factories), and/or only one electoral body was created (1 factory), and/or election procedures were not announced long enough in advance (3 factories). In 1 factory a copy of an invitation letter to MOSALVY to observe/organise shop stewards was provided but not the minutes of the elections, and workers in this factory said there were no shop stewards in the factory. In 7 factories the term of office for shop stewards had expired. In 1 factory, shop steward elections had not been held and workers claimed shop stewards had been appointed directly by management. In 1 factory, shop steward elections had never been held.

2.3.4 Liaison officer

Law (Sarachor 021/99):

Every enterprise should recruit at least one independent officer who is responsible for solving complaints and other issues brought forward by employees. This officer will be paid by the employer and agreement concerning a candidate should be obtained from the union or worker representatives prior to recruitment.

Practice:

In 31 factories, a liaison officer had not been recruited, while 3 factories had submitted the name of a candidate to MOSALVY but had not received a reply yet.

2.3.5 Collective disputes (last 12 months before monitoring visit)

Law (Art. 302, 303, Prakas 144/97):

A collective labour dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardise the effective operation of the enterprise or social justice. The parties shall communicate the collective labour dispute to the Labour Inspector of their province or municipality for conciliation.

Practice:

In 14 factories, no collective dispute occurred during the last 12 months, while in 20 factories collective disputes did occur.

At 1 factory, 15 workers were dismissed allegedly without a valid reason. These workers were reinstated with MOSALVY assistance. In all other cases, collective disputes led to strikes and will be discussed under paragraph 2.3.6.

2.3.6 Strike/lock-out (last 12 months before monitoring visit)

Law (Art. 318, 320, 323, 324, 330, 332, 333, 337):

A strike is a concerted work stoppage by a group of workers that takes place within an enterprise for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work. The right to strike can be exercised when the union representing the workers deems that it has to exert this right to enforce compliance with a collective agreement or the law. It can also be exercised, in a general manner, to defend the economic and socio-occupational interests of workers. The right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been tried out. A strike shall be declared according to the procedures set out in the union's statutes, which must state that the decision to strike is

adopted by secret ballot. A strike must be preceded by prior notice of at least 7 working days and be filed with the enterprise and MOSALVY. A strike must be peaceful. The worker shall be reinstated in his job at the end of the strike. The employer is prohibited from imposing any sanction on a worker because of his participation in a strike. The Labour Court or, in the absence of the labour Court, the general court, has sole jurisdiction to determine the legality or illegality of a strike.[4]

A lockout is a total or partial closing of an enterprise by the employer during a labour dispute. The right to a lockout shall be exercised under the same provisions as the right to strike.

Practice:

In 15 factories no strike occurred during the 12 months before the monitoring visit. In 13 factories 1 strike occurred, in 3 factories 2 strikes occurred, and in 3 factories 3 strikes occurred during the 12 months before the monitoring visit.

The reasons for strikes held were the dismissal of a union leader(s)/shop stewards allegedly without a valid reason (1 factory), the dismissal of a union leader for allegedly organising a violent strike (1 factory), the dismissal of 2 shop stewards allegedly for organising a strike (1 factory), non-compliance with various provisions of the law (10 factories) incorrect payment of wages (1 factory), a piece rate that workers felt was too low (1 factory), disagreement between workers of two merged branches over starting time of working hours (1 factory), a proposed change in the date of payment (2 factories), demand for payment of 45 US$ minimum wage following the issuing of the relevant regulation (1 factory), non-payment of over time and/or meal allowance (1 factory), and to try and prevent the departure of a popular manager (2 factories).

In the 28 cases of strikes held, 16 agreements were reached/solutions found with the assistance of the Labour Inspectorate and 10 agreements were reached/solutions found without assistance from the Labour Inspectorate. In 2 instances, no agreement was reached.

Of all 26 agreements reached/solutions found following a strike, indications for 9 of them were that they had been or were, at least to some degree, in the process of being implemented, while in 5 instances they had not been implemented, and in 10 instances they had only partly been implemented. With regard to the 2 strikes held to prevent the departure of a popular manager, no agreement was reached. However, this is considered to be management prerogative, but in one of these the conciliation agreement was not implemented with regard to payment of wages during the strike.

After 21 strikes, all workers were reinstated in their jobs. In 1 factory, 2 shop stewards were fired for organising a strike but subsequently reinstated following a second strike. Unidentified men attacked and wounded one of the shop stewards during the period he did not work. It remained unclear whether the attack was related to his activities on behalf of workers. In 1 factory management attempted to transfer union leaders to a

different position but they refused. In 1 factory, one worker was fired for participating in a strike. In 1 factory, 7 workers were fired for organising a strike. In 1 factory, 4 union leaders (some of which were also shop stewards) were fired and eventually accepted dismissal/resigned with payment of indemnity. In 1 factory, a union leader was fired for allegedly organising a violent strike, detained by the police, sent to the Provincial court and subsequently released following a weeklong strike. He was not re-instated but did receive an indemnity payment.

None of the 28 strikes held were organised by workers/unions in accordance with the applicable rules and procedures. Of all 28 strikes held, 25 were peaceful, while 3 were not.

There were no lockouts in any of the factories covered by this report during the last twelve months before the monitoring visit.

2.3.7 Individual disputes (last 12 months before the monitoring visit)

Law (Art. 300, 301, Prakas 145/97, 318/01):

An Individual dispute is one that arises between the employer and one or more workers or apprentices Individually, and relates to the interpretation or enforcement of the terms of a labour contract or apprenticeship contract, or the provisions of a collective agreement as well as regulations or laws in effect. Prior to any judicial action, an Individual dispute can be referred for a preliminary conciliation, at the initiative of one of the parties, to the Labour Inspector of his province or municipality.

Practice:

In 28 factories there were no indications that any Individual disputes had been referred to the Labour Inspectorate or other authorities. In 4 factories, 1 Individual dispute was referred to the Labour Inspectorate, in 1 factory, 2 Individual disputes, and in 1 factory, 3 Individual disputes had been referred to the Labour Inspectorate. Out of the 9 Individual disputes referred to the labour inspectorate, an agreement was reached and implemented in 3 cases, while in 3 cases an agreement was reached but not implemented by the employer. Also, 1 ongoing Individual dispute is under consideration by MOSALVY. One Individual dispute had been referred to the court after parties did not agree during conciliation and the subsequent judgement handed down was accepted and implemented by the parties, while another Individual dispute had been referred directly to the court but the judgement handed down had not been implemented by the employer.

Where Individual disputes led to strikes, they are also incorporated in section 2.3.6.

3 Agreement of Factories with Findings

Of the 34 factories to which a final report was sent, 8 factories had returned the final report as of 2 April 2002. Of these, 6 factories agreed with all the suggestions for

improvement in the report, while 2 factories indicated they did not agree with some of the findings/suggestions in the report or provided additional information. Additional information provided by factories will be discussed during the first follow-up visit to the relevant factory.

Concluding Remarks

This second synthesis report largely confirms the findings of the first report in showing that situations in factories differ, sometimes dramatically, again illustrating that, while no factory is perfect, measures can be taken to ensure that profitability goes hand in hand with decent working conditions.

The ILO will continue working with all parties involved to bring about improvements in working conditions. To this end, the ILO, together with MOSALVY, is developing a training programme for labour inspectors so that they are better able to undertake their duties. Also, since the findings of the first and the second synthesis report show that virtually no factories have occupational safety and health policies, the ILO is in the process of developing a basic policy to be distributed to factories in Khmer, English and Chinese. It should also be mentioned here that a new ILO project has been operational since January 2002, which aims to improve the institutional capacity of all parties involved in solving labour disputes.

Statement of the Project Advisory Committee on the Release of the Second ILO Synthesis Report on the Working Conditions Situation in Cambodia's Textile and Apparel Sector

On 4 April 2002, the Project Advisory Committee (PAC) of the ILO Garment Sector Working Conditions Improvement Project, which comprises three representatives each from the Government of Cambodia, the Garment Manufacturers Association in Cambodia and the Cambodian trade union movement, met in Phnom Penh to review and endorse the Second ILO Synthesis Report on the working conditions situation in Cambodia's textile and apparel sector as follows:

The members of the PAC welcome the release of the Second Report on the ILO labour conditions monitoring programme and wish to express its appreciation to the ILO project team for its continued efforts.

We continue to believe that the joint decision of the PAC to support the ILO programme has brought positive benefits to all of the parties in Cambodia and has led to improved working conditions and greater respect for the rights of workers. We also believe that, especially at these times where the garment sector in Cambodia is feeling the effects of the economic slow-down in the United States and Europe, all parties involved have to

intensify their efforts towards ensuring that working conditions throughout the sector are further improved.

We are pleased that with regard to the fundamental labour standards of the ILO, the Second Report confirms that forced labour and discrimination, with the exception of a limited number of cases of sexual harassment, are not matters of concern in the factories surveyed. We note with satisfaction that, with the exception of one minor incident, there was no evidence of child labour. We also note that in a majority of factories covered by the second report no violations of trade union rights were indicated but acknowledge with concern that in a number of factories such violations did occur. While the number of trade unions and trade union members continues to grow and now comprise 9 federations and over 253 factory level unions, the PAC is fully aware that more work remains to be done to ensure that worker's rights to organise are fully enforced in the garment sector. We note that the Second Report confirms that certain areas, including those pertaining to wages and overtime work, require the intensified attention of all parties involved.

All members of the PAC restate their full commitment to the continuation of the ILO monitoring project, and again pledge their full cooperation to the ILO in this regard. While realising that certain issues remain areas of concern for the U.S. Government, we again express the hope that the unprecedented effort towards improving working conditions in Cambodia will receive the level of support from the U.S. Government, we believe, it deserves. While there are indications that U.S. buyers have a renewed interest in doing business in Cambodia, we reiterate our request that all buyers demonstrate their support for the efforts underway in Cambodia through expanded and long-term commitments to sourcing from our garment industry.

We trust that the positive partnership being built in the Cambodian garment industry will continue to receive the continued support of all concerned and will lead to the further improvement of working conditions in Cambodia's textile and apparel sector. We, the Members of the Project Advisory Committee, remain fully committed to this goal.

Phnom Penh, 4 April 2002

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1. Sick leave is not further regulated with regard to length, conditions and percentage of wage payments.

2. Discrimination on the basis of union membership or union activities is included in Article 12 of the Labour Code but has been left out of this section of the report since it is covered separately by section 3.2 on anti-union discrimination.

3. Article 177 stipulates that Prakas will define what types of employment or work would constitute hazardous and light work. These have not been issued yet.

4. Cambodia does not have a labour court system.