

**INTERNATIONAL LABOUR ORGANISATION  
GARMENT SECTOR WORKING CONDITIONS IMPROVEMENT PROJECT  
KINGDOM OF CAMBODIA**

**FOURTH SYNTHESIS REPORT ON THE  
WORKING CONDITIONS SITUATION  
IN CAMBODIA'S GARMENT SECTOR**

September 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 amended and extended for another three-year period on 31 December 2001. 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. Following this request, the ILO consulted extensively with the Cambodian 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 representative of the United States Government. As a result, 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 in May 2000. 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 through:

- ◆ 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 advice 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 participate in 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 23 September 2002, 204 enterprises have registered with the Project. However, according to the Ministry Of Commerce 13 of these factories have permanently closed operations. 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 ILO monitors with full access to factory premises, allow ILO monitors to interact freely 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 advice of the Project Advisory Committee, has recruited 8 monitors to undertake factory visits. They have been provided with intensive training, covering subjects such as Cambodian labour law and international labour standards, interviewing techniques, report writing, and also including a number 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. 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 prepare a report for the CTA containing their findings and suggestions for areas of improvement. The CTA checks 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 discusses 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 stage also includes a short factory visit to verify further information received. The final report prepared after this meeting is sent to management with a request to sign and return them. 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.

Follow-up visits are undertaken in pairs whereby, in principle, at least one of the monitors was part of the team that undertook the first visit. Follow-up visits focus on progress made in the implementation of the suggestions. In addition, monitors look into changes with regard to fundamental issues such as freedom of association and child labour as well as major changes with regard to issues for which factories were found in compliance with the law after the first monitoring visit. Reports on follow-up visits are sent to management with a request to sign and return it. At this point, management can indicate with which points they do not agree. They are also informed that they can contact the Project at all times to discuss the report or provide additional information if they so desire.

### 1.3.3 Reporting procedures

Based on the reports prepared by the monitoring teams, the CTA prepares a synthesis report every four months that provides an overview of the operation of the monitoring system for the period under review<sup>1</sup>. The synthesis report is presented to the Project Advisory Committee. The Project Advisory Committee discusses each synthesis report and its comments are recorded and attached to the ILO report. The ILO report and the comments of the Project Advisory Committee are made available

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<sup>1</sup> Initially the period for the publication of reports was every three months. Since it was found that this was logistically difficult this period was changed to every four months.

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 is also posted on the ILO website. The first report was published in November 2001, the second in April 2002, and the third in June 2002.

#### **1.4 This synthesis report**

This fourth synthesis report contains an overview of findings for 65 factories. According to figures provided by these factories they employed a total of 75,808 workers of which 67,565 were female and 8,243 male. The 65 factories covered by this report do not include any of the factories covered by the previous three reports.

While the report contains the full details of the monitoring, the key findings for the 65 factories covered by this report indicate the following:

- ◆ There is no evidence of forced labour;
- ◆ There is no evidence of child labour;
- ◆ There is some evidence of sex discrimination, including sexual harassment;
- ◆ 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.

Cooperation of all factories with the Project, and especially the monitors, was satisfactory, except for one. While monitors were able to conduct a visit at this factory, there was no response to subsequent verbal and written requests to set up a

meeting to discuss the draft report with management. With the assistance of GMAC full access was eventually provided.

## **2 WORKING CONDITIONS SITUATION IN 65 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 shortcoming 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:

Fifty-three factories have internal regulations that comply with the law. Ten factories have internal regulations that were developed without consultation with the shop stewards, while one factory had internal regulations that had not been approved by MOSALVY. Twelve factories have clauses in the internal regulations that are outdated, in that the minimum wage is indicated as 40 US\$ rather than 45 US\$ (4 factories), or not clear in that payment for maternity leave is not specified (4 factories), or contrary to the law in that it requires written permission to be exempted from over time work (1 factory), or indicate an incorrect attendance bonus (2 factories). One factory did not have internal regulations.

Out of the 64 factories that had internal regulations, 36 factories had posted them in the workplace, while 23 factories had not. In 4 factories they had been posted but were not easily legible, and in 1 they were posted hidden from view.

Following a post-visit discussion, we observed that 11 factories had posted the internal regulations in the workplace where they had previously not been, while 2 factories had posted a new legible copy of the internal regulations, and one factory claimed it had provided each worker with a copy. One factory presented amended internal regulations, which had been submitted to MOSALVY for approval, which complied with the law where they previously did not. Also, 1 factory had consulted shop stewards on the internal regulations where it previously had not. One factory had amended the internal regulations so as to ensure that the reference to the minimum wage was correct.

### **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, or 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 (2 factories). Elsewhere, workers sign a separate contract/application form for the different categories (14 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 (41 factories). In 1 factory only apprenticeship contracts were used, while other workers entered into verbal agreements. In 8 factories only verbal contracts were concluded.

Out of the 57 factories, which use written contracts/application forms, 22 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 (1 factory), incorrect indications of wages (1 factory), non-payment of indemnity for resignation (2 factories), non or non-correct payment of indemnity for dismissal of probation workers (5 factories), payment of wages only when the specified employment period has ended (1 factory), hours of work, mostly over-time, beyond the legal limit or at the discretion of management (7 factories), an outdated indication of minimum wage payments (3 factories), non-payment of attendance bonus to probation workers (1 factory), a prohibition of organising/participating in a strike (1 factory), a stipulation with regard to a non-paid pre-probation period (1 factory), and arrangements with regard to termination that are not in line with MOSALVY practice (4 factories). In 30 factories contracts/application forms used do not stipulate, or do not stipulate in full, the terms and conditions of employment.

In 16 factories casual workers worked for longer periods than allowed under the law.

In 25 factories workers indicated they understood their terms of employment, while in 39 factories workers indicated that they did not understand, or did not understand entirely, the terms of their employment. In 1 factory some workers indicated they did not entirely understand the terms of the employment even though they were provided with a copy of their contract.

In 12 factories some workers indicated they had to pay someone a certain amount of money in order to get a job. In 4 of these factories management had posted warning signs or taken other measures to inform workers they were under no obligations to pay anyone a fee in order to get a job.

During a post-visit discussion of the draft report, 1 factory presented new contracts, which brought the indication for the minimum wage in line with the law, while 2 factories had amended contracts to provide that probationary workers would receive an indemnity when dismissed. One factory presented new contracts containing more details on the applicable terms, while another presented a new contract stipulating that probationary workers would receive the attendance bonus. One factory presented a new contract that brought the length of the apprentice period within the legal limit of two months, and another factory had amended several sections in the contract that had previously not been in compliance with the law. In 2 factories management indicated that all workers had been explained the terms of their employment, which was confirmed by workers, and in another factory all workers had been provided with a copy of their contract. One factory indicated that it had started concluding written contracts with workers where it had previously only concluded verbal contracts.

### **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:

Fifty-five factories indicated that they did not have a collective agreement. Two factories had indicated that a collective agreement had been concluded, but this either amounted to a collective dispute settlement agreement (1 factory), or an agreement to implement the law (1 factory).

Eight factories had a collective agreement concluded in accordance with the relevant rules and regulations. Three such agreements mostly restate the provisions of the law but contain one clause, which is contrary to the law, and the contents of 3 implied that overtime could be worked beyond the legal limit of two hours. Another agreement restated provisions of the law. One agreement restates provisions of the law and spells out arrangements with regard to their application in practice but contained some clauses that were outdated with regard to wages.

#### **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 of 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 1 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 15 factories the minimum wage notice was posted in the factory, while in 50 factories it was not. Following a post-visit discussion, we observed that 13 factories had posted the minimum wage.

In 48 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 (15 factories), the payment sheet did not indicate the calculation but only the total amount (4 factories), the payment slip or other relevant document was in a language other than Khmer (8 factories), not all categories (overtime, public holiday, etc.) were indicated (1 factory), ID numbers did not match workers' names (1 factory), it showed only the total amount for each category (basic wage, overtime, etc.) without indicating the calculation for each category (6 factories), perceived complicated wage calculations (4 factories), workers did not know the appropriate wage rate for night work (1 factory), workers did not know the rate for work on Sunday and Public Holidays (1 factory), workers did not know the piece rate (10 factories), and the payment sheets were not explained to them (2 factories).

During a post-visit discussion, 2 factories presented a recently introduced pay slip and 2 other factories presented recently developed pay slips which would be introduced shortly where they had previously not been provided at all.

In 57 factories, there were indications that workers did not receive the wages they were entitled to. Situations in this respect included continued payment of an apprentice/probation salary when working for longer than two/three months (14 factories); receiving a probationary salary below the minimum wage (3 factories); workers receiving only their piece-rate including over-time and attendance bonus when this falls below the minimum wage (1 factory); non-correct payment of overtime wage, including meal allowance (17 factories); non or incorrect payment of the attendance bonus (16 factories); payment of daily/monthly/overtime wages below the minimum wage to casual workers (33 factories); undue wage deductions for production mistakes made or replacement of tools or violating company rules or absences without permission (19 factories); non-correct payment for work undertaken on Sundays or Public Holidays workers (6 factories); non or incorrect payment of night time wages (20 factories); and non or incorrect payment of seniority bonus (17 factories). In 3 factories indications were that workers were not paid during a one-week pre-probation testing period, in 1 factory that workers were not paid when correcting mistakes made, and in another factory the rounding off of wages led to non-correct payment of wages.

In 11 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 8 of these factories indications were that they made up wages to match the minimum wage, while in 3 factories this was not the case.

In 1 factory wages were regularly not paid on time and in another this was the case when payday fell on a public holiday.

During a post-visit discussion, 2 factories provided documents showing they had started paying the seniority bonus, 2 factories that they had started paying the (correct) attendance bonus, 1 factory that it had started paying the seniority bonus and correct overtime wages, and 2 factories that they had started paying night time wages. In 2 factories they had started paying casual workers the correct minimum wage and for 3 factories indications were that they had stopped making undue wage deductions for unauthorised absences.

In 4 factories indications were that workers 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 all 65 factories workers were recruited locally and were therefore not 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 60 factories normal daily working hours are 8 hours. In 3 factories normal working hours are 7,5 hours for 6 days, in 1 factory normal working hours are 10 hours for 4 days and 8 hours for 1 day, and in another 9.5 hours for 5 days.

In 49 factories overtime hours (occasionally) extend beyond the 2 hours allowed under the law. In 13 factories, overtime appears to be exceptional, while for 45 factories it appears to be undertaken frequently/for several weeks or months in a row. In 12 factories overtime hours occasionally extend beyond midnight.

Workers in 20 factories indicated that working overtime is undertaken voluntarily, while in 42 factories workers indicated overtime was not, or not always voluntarily undertaken.

Following a post-visit discussion, indications in 1 factory were that overtime work was undertaken voluntary and within the time limits set by law where it had previously not been.

Sixty-one factories officially have Sunday as their designated 24 hours off, while 2 factories have weekly time-off by rotation and 2 factories have Saturday and Sunday as weekly time-off. In 50 factories work was undertaken on Sunday/weekly time-off, either occasionally (41 factories) or frequently/for several weeks/months in a row (9 factories). In 27 factories workers indicated that working on a Sunday/weekly time-off was undertaken voluntarily, while in 23 factories workers indicated this was not, or not always, voluntarily undertaken.

### **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.<sup>2</sup>

Practice:

In all 65 factories workers indicated they were aware which days were public holidays. In 54 factories work was undertaken on public holidays. While for 48 factories this appears to be occasional, for 5 factories it appears to be frequent and workers in 1 factory indicated that work was undertaken on all public holidays. In 29 factories workers indicated that working on a public holiday was undertaken voluntarily, while in 25 factories they indicated that this was not undertaken, or not always undertaken voluntarily.

Sixty-four factories officially provide 18 days of annual leave and in 1 factory management indicated they did not know if and how annual leave was provided. In 22 factories workers can take annual leave while unused leave is compensated for in cash, but in 2 such factories workers said that they could not take annual leave and payments made were incorrect. In 1 such factory workers were unable to verify how many days off they had taken and whether compensation for the remaining days was correct, and in yet another such factory workers claimed they could not freely avail of their annual leave. In 19 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 the 19 factories that apply this practice, indications in 3 were that compensation provided was incorrect and in 3 factories that some annual leave was scheduled by management. In 4 factories workers could not freely avail themselves of their annual

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<sup>2</sup> Sick leave is not further regulated with regard to length, conditions and percentage of wage payments.

leave because management scheduled it. In 1 factory indications were that workers have to take all their annual leave. In 1 factory workers indicated that they could take annual leave but that they were not compensated for unused annual leave. In 2 factories workers could use a limited number of days annual leave and were compensated for the other days, but for both of these factories indications were that the compensation was either not paid or incorrect and that it was difficult/impossible for workers to take annual leave. For 8 factories indications were that paid annual leave was not provided nor compensated for in cash. For 5 factories not enough information was available.

During a post-visit discussion, 4 factories provided documents showing it had compensated workers for unused annual leave.

All 65 factories covered by this report officially provide a total of 7 days special leave. In 17 factories workers indicated they could not take special leave for all reasons laid down in the law or only for a limited number of days at a time. In 17 factories paid special leave taken was, as is allowed under the law, deducted from the annual leave, but in 5 of these wages were not paid when all annual leave had been used and in another wages were paid only for 1.5 days. In 2 factories special leave was paid half but not deducted from annual leave, but in 1 of these half payment was made only for special leave given because the worker got married. In 3 factories special leave was paid and not deducted from the annual leave, but in 1 such factories it was provided only for 3 days. In 8 factories special leave was not paid but also not deducted from annual leave. In 2 factories special leave was not paid but deducted from annual leave. In 3 factories special leave was mostly paid and not deducted from annual leave but sometimes not paid and not deducted from annual leave. In 22 factories special leave was (mostly) not paid. For 2 factories not enough information was available.

During a post-visit discussion 2 factories indicated that they had started providing paid special leave in accordance with the law.

In 16 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 hospitals/clinics or had to be verified by factory medical staff, and in one of these the medical certificate had to be signed by the director of the hospital. In 4 factories sick leave was provided when a medical certificate could be provided/a medical certificate could be provided indicating a serious injury but no paid sick leave was provided for minor illnesses certified by the company's medical staff. In 1 factory paid sick leave is provided when certified by factory medical staff but not when sickness occurs outside the factory. In 5 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 or not paid. In 35 factories, wages are not paid regardless of whether workers have a medical certificate or not. For 3 factories not enough (clear) 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 19 factories maternity leave is provided in accordance with the law, while in 3 factories provisions made for maternity leave are better than those required by law. One factory had opened about a year before the monitoring visit and no worker had requested maternity leave yet. In another factory maternity leave had never been requested and workers stated that pregnant women resigned voluntarily. In 2 factories paid maternity leave is provided but the payment is made after the worker has returned to work and in 1 of these workers claimed that not everyone entitled to it was provided paid maternity leave. In 5 factories paid maternity leave of 90 days is provided but at less than half pay and payment is made after the worker had returned to work. In 23 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/forced to resign upon becoming pregnant. In 1 factory, which predominantly employs men maternity leave had never been requested. In 7 factories indications were that paid maternity leave was not provided and in one of these indications were that pregnant women were forced to resign. In 2 factories workers claimed that pregnant workers were forced to resign and subsequently reinstated as new workers. In 1 factory workers claimed some pregnant workers were forced to resign. In 2 factories workers were reinstated at probationary level if they took additional sick leave without a medical certificate after their maternity leave. For 2 factories not enough information was available.

During a post-visit discussion, indications in 2 factories were that they had started paying half wages for maternity leave where they previously provided less than half.

### **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 2 factories time-off for breast-feeding is provided, while in 61 factories such time-off is not provided. In 1 factory time-off for breast-feeding is only provided to workers living nearby the factory. In 1 factory predominantly employing men time-off for breast-feeding had never been requested.

During a post-visit discussion, indications were that 6 factories had started providing time-off for breast-feeding, but in 1 factory only those who could provide a birth-certificate from a government hospital were provided such time-off and in another workers were not aware that they had the right to time-off for breast-feeding. In 1 factory breast-feeding was being provided to all nursing mothers where it had previously been provided only to those living nearby the factory.

### **2.1.10 Nursing room/day-care centre**

Law (Art. 186)

Enterprises 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:

Fifty-six factories did not have a nursing room or day care centre. Two factories were not required to establish such facilities since they employed less than 100 women. Seven factories did not have a day-care centre but did have a nursing room, but in 1 instance this was not in operation and in 4 instances workers were

not aware there was a nursing room. Of the factories that did not have a day care centre, 1 factory paid for the cost of private day-care centres.

Following a post-visit discussion, we observed that in 4 factories a nursing room had been set up, in 2 factories an unsuitable space had been designated as a nursing room, and 2 factories were 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 62 factories workers indicated they had not experienced sexual harassment. In 1 factory workers indicated that they felt sexually harassed by male medical staff and in another female workers indicated they had been subject to sexual harassment from their male co-workers. In 1 factory a line supervisor had sexually harassed 2 workers but had subsequently resigned from work and paid the workers compensation.

In 36 factories, workers indicated they sometimes felt mistreated by supervisors. Examples given by workers include chiding (3 factories), cursing (23 factories), shouting (11 factories), throwing cloth at workers (9 factories), twisting ears (4 factories) and hitting workers (2 factories). In one factory monitors witnessed that a union leader shouted at management without apparent provocation.

During a post-visit discussion, 1 factory indicated that the line supervisor identified as treating workers without respect no longer worked for the factory since it had suspended operations in the section where she worked. Another factory indicated it had instructed line supervisors to treat workers with respect and workers indicated that the situation had improved.

### **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.<sup>3</sup>

Practice:

In 63 factories covered by this report, workers indicated that there was no discrimination.

In 1 factory indications were that men were systematically provided with contracts of longer duration than women and in another that only men were recruited.

### **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 65 factories that forced labour was imposed.

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<sup>3</sup> 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.

### **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.<sup>4</sup>

Practice:

In all 65 factories no indications were found that child labour was practiced. In 3 of these factories, management did not adequately verify worker's age before recruitment but analysis of documents and observation of workers' appearance and indications from interviews were that no child labour was practiced. In another of these factories some workers had been instructed to hide during the monitoring visit. Further investigation showed that 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 one factory, workers of a sub-contractor sometimes worked on factory premises. Regular workers of this factory indicated in interviews that they believed some of the workers from the sub-contractor were under-age. The factory provided us with copies of the personnel documents of 9 workers of the sub-contractor. We checked the relevant documents and found that for 8 out of the 9 workers names and birth dates were different from the CV as compared to their official civil documents (family book, residence book, citizen ID/voter's cards, residence certificate and physical examination certificate issued by local authorities). Examination of the official documents of these 8 workers showed irregularities in these documents for 6 of them. The 2 workers for which the documents were in order were over 15 years of age. The documents for the 6 remaining workers were verified against the original documents kept in the commune offices where these workers are registered. This verification showed that 5 of them were 15 or older when recruited but that the 6<sup>th</sup> was recruited in 1999 when she was 14 years and ten months old. Considering that the sub-contractor is not registered with the project and monitors therefore have

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<sup>4</sup> 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.

no access to it, management of the factory agreed to further cooperate with the project to gain access to the sub-contractor's premises to verify workers' age.

## **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.

NB. The findings of the monitoring activities undertaken showed that very few of the enterprises had developed, let alone adopted and implemented, a safety and health policy. It was felt that it would therefore be a useful undertaking to develop a standard policy that could be used throughout the sector and provide employers with a tool with which to assess the basic safety and health situation in their enterprise. Thus, the Project developed a policy providing employers with the basic elements of an occupational safety and health policy, which they can alter and adapt in accordance with their particular needs. The Project also developed a self-assessment checklist that can be used by employers and workers as an easy tool to find out whether safety and health practices in their enterprise are up to standard. These two tools were combined into a publication entitled "Occupational Safety and Health in Cambodia's Garment Sector; A basic safety and health policy and self-

assessment checklist". In July 2002, the publication was made available in Chinese, English and Khmer and distributed to all factories registered with the Project. It should be noted here that Project monitors visited the factories covered by this report before the distribution of this publication.

Practice:

There were 3 factories that had a safety and health policy and 62 factories that did not.

#### 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. Recently, the Department of Occupational health developed a standard reporting format for accidents/illnesses, which factories have to submit on a monthly basis. Serious accidents have to be notified immediately.

Practice:

In 43 factories, the number of accidents/illnesses was recorded, while in 22 factories it was not. Of the 43 factories that kept a record 7 factories transmitted it to the relevant authorities.

During a post-visit discussion, indications were that 5 factories had commenced recording accidents and 3 factories had started notifying the relevant authorities.

#### 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 23 factories indications were that the employer did provide compensation. In 1 factory almost full compensation was provided. In 1 factory compensation is limited to 50% of the actual cost. In 5 factories indications were that compensation was provided in some instances but not in all. In 2 factories compensation was provided for incidents inside the factory but not for those that had occurred outside the factory. In 3 factories partial compensation for costs was paid but subsequently deducted from wages. In 8 factories (partial) compensation was provided for costs incurred but no wages were paid. In 10 factories indications were that the employer did not provide any compensation. In 10 factories no, or not enough reliable documents were available to verify whether or not compensation was paid as claimed by management.

In 1 factory workers claimed that a worker had fallen ill inside the factory and subsequently died at home. No compensation was provided.

#### 2.2.1.4 Emergency arrangements

Law:

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

Practice:

In 48 factories the emergency exits were unlocked, clearly marked and easily accessible. In 9 factories one or more emergency exits were locked, in 6 factories they were not clearly marked, and in 3 factories they were not easily accessible. In 1 factory exit doors were sometimes locked during overtime and in another the factory gates were always locked during working hours. In 38 factories regular emergency drills were held and/or workers were aware what to do in case of an emergency, while in 27 factories this was not the case.

During a post-visit discussion, 2 factories had unlocked an emergency door/a number of emergency exit doors, which had previously been locked, another had made emergency exit doors easily accessible where they had previously not been,

and 3 factories had clearly marked exit doors where they had previously not been. Also, 4 factories had held an emergency drill.

In 50 factories an appropriate number of fire extinguishers was available that were within easy reach of workers, while in 12 factories these were not all within easy reach. In 3 factories not enough fire extinguishers were available. In 19 factories workers and/or other personnel had been trained in the use of fire extinguishers.

During a post-visit discussion we observed that 2 factories had installed additional fire extinguishers and another had placed them in easy reach.

#### 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 12 factories. In 27 factories first aid boxes were not available in an appropriate number, and/or in 26 factories all or some were not properly stocked, and/or in 8 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 3 factories. No first aid boxes were available at all in 10 factories.

Following a post-visit discussion, we observed that 3 factories had installed 1 first aid box where previously there were none and 3 other factories had installed several where previously there were none, but in 1 of these factories they were not properly stocked. Four factories had installed additional first aid boxes, but in 1 these were not properly stocked, while 6 factories had properly stocked the first aid kits where they were previously not. Also, four factories had installed a sufficient number of first aid boxes where there had previously not been, but in one they were not properly stocked and in another they 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 60 factories infirmaries had been set up. Two factories employed less than 50 workers and therefore do not have to establish an infirmary. In 3 factories no infirmary had been set up, although in 2 of these an office area had been designated for such purpose but was not operational. In 4 factories infirmaries were either empty or locked. In 5 factories the space used as an infirmary was inappropriate for its purpose. In 52 factories infirmaries did not have a nurse/doctor on duty during working hours, especially over-time and/or had not recruited a doctor/nurse(s) or not for the required number of hours. In different instances infirmaries did not have (enough) medical supplies and/or instruments (30 factories), and/or did not have an appropriate temperature (1 factory) or cleanliness level (4 factories). In 1 factory workers indicated that it was difficult to get access to the infirmary, in 1 factory that there were restrictions on the provision of medicines, and in 5 factories that medicines were not provided free of charge. In one infirmary used by 3 different factories medical staff only spoke Mandarin and no interpretation was available. None of the infirmaries had the required hospitalisation capacity. In 1 factory workers indicated that workers were not provided with the appropriate care when they fainted and in another workers indicated it was difficult to be given medicine.

Following a post-visit discussion, we observed that 1 factory had set up an infirmary although its capacity was limited and it did not have the required number of medical staff. In 1 factory indications were that it had taken measures to ensure the appropriate placement of the infirmary, that 2 factories had improved the cleanliness of the infirmary, that 5 factories had improved the availability of medical supplies and equipment, that 1 factory had recruited the required number of medical staff, and that 1 factory had ensured that medical staff was on duty during

overtime. In one infirmary used by 3 different factories medical staff had been recruited that spoke Khmer where staff previously only spoke Mandarin.

## **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 dyeing section are included.

In 15 factories a substantial amount of washing/dyeing products are used. The storage of these substances was not appropriate in that they are not kept in a specifically arranged and separate storage area (7 factories), and/or labels or data sheets are not in Khmer (13 factories), and/or containers are not properly covered (1 factory). In 3 factories workers indicated that they had been explained/trained in the handling of these substances, while in 12 factories they had not.

During a post-visit discussion we observed that 1 factory had set up a separate storage area.

### **2.2.2.2 Protective measures**

Law:

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

Practice:

In 12 out of the 14 factories where protective equipment was regularly provided to all workers who need it, a substantial number of workers did not use it. In all of these 12 factories workers indicated they did not want to wear the protective equipment provided because of the physical discomfort or because they were not in the habit of using it. In 51 factories, no suitable protective equipment was (regularly) provided to (all) workers who needed it.

In 28 factories workers in certain sections, mostly sewing, were not allowed to wear their own footwear nor were they provided with suitable alternative footwear. In one factory workers had to pay for the footwear they were required to wear.

Following a post-visit discussion, we observed that in 5 factories workers had been provided with protective equipment where they previously had not been, and that in 1 factory workers had been provided with suitable footwear.

### **2.2.3 Lighting**

Law:

There are no specific legal requirements with regard to lighting.

Practice:

In 60 factories lighting was of an appropriate level. In 5 factories lighting was not appropriate in particular sections. Following a post-visit-discussion, we observed that 1 factory had improved lighting in a particular section 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 44 factories the noise level was within appropriate levels, while in 21 factories this was not the case. In 16 factories this was due to noise generated by machines operated directly by workers, in 4 factories due to the placement of the generator, and in 1 factory due to faulty fans.

Following a post-visit discussion, we observed that in 2 factories workers in a particular section had been provided with protective equipment.

### **2.2.5 Machine safety**

Law:

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

Practice:

In 37 factories the condition and maintenance of machines and wiring systems was of an appropriate standard from a safety point of view, while in 28 factories it was not.

During a post-visit discussion, we observed that the condition and maintenance of machines and wiring had improved in 2 factories, and had been improved to an appropriate standard in 5 factories.

### **2.2.6 Ventilation and heat**

Law:

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

Practice:

In 11 factories, the temperature and measures taken to ensure ventilation and air circulation were appropriate, while in 44 factories this was not the case, either for the entire factory (19 factories) or for certain sections (35 factories).

After the discussion of the draft report, we observed that 1 factory had started spraying the roof with water in order to reduce the temperature level. Also, 3 factories had installed additional ceiling/standing/exhaust fans and 2 of these had also started spraying the roof with water. In 1 factory the workplace had been re-arranged in one section and as a result the temperature level had been reduced to appropriate levels. One factory had installed air-conditioners in a particular section.

### **2.2.7 Housekeeping**

Law:

There are no specific legal requirements with regard to housekeeping.

Practice:

In 28 factories general cleanliness was of an appropriate level, while in 37 factories this was not the case.

In 23 factories the storage of, or waste from, products in process was not appropriate in terms of hampering the free flow of people and production materials.

In 3 factories equipment to transport heavy/bulky materials was not available in appropriate numbers, in 1 factory 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 in 4 factories and had improved to an appropriate standard in 9 factories. One factory had provided additional equipment to transport heavy/bulky materials.

### **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 factories except 1 drinking water was provided to workers. In 22 factories the water was placed, in general terms, in a non-hygienic environment, while in 2 factories it was placed too close to the toilets. In 5 factories workers said there was sometimes not enough water. In 5 factories not enough drinking stations were available, in 4 factories some of the available containers of drinking water were broken/not of an appropriate standard, and in another no water dispensers were used but bottles of water. In 1 factory workers claimed that the water was not clean and in 1 factory the frequency and length of drinking breaks was monitored/regulated. In 45 factories no or not enough cups were (regularly) provided.

Following a post-visit discussion, we observed that 1 factory had started providing drinking water where it had previously not but workers indicated there was not enough. Six factories had provided workers with (individual) drinking cups/bottles and another 6 factories had cleaned drinking areas, one of which had also fixed broken water containers. One factory had established more drinking stations.

#### 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 31 factories the number of fully functioning toilets was in line with, or above, the legal requirements, while in 11 factories it was not. In 23 factories there were a sufficient number of toilets but some toilets were not functioning/broken/not built to standard or not functioning properly. In 29 factories the cleanliness of the toilets was of an appropriate level, while in 36 factories this was not the case. In 13 factories the timing, frequency or length of toilet breaks was monitored/regulated and in 2 of these factories this could lead to the imposition of warnings or fines.

Following a post-visit discussion, we observed that 2 factories had fixed some of the toilets, which were previously not fully functioning and 3 factories 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 63 factories the seating arrangements for workers who undertake their work sitting down were not appropriate in that heights could not be adjusted or seats lacked a backrest, while in 1 they were appropriate. One factory only undertakes activities that require workers to stand.

Workers in all 65 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, and/or no, or not enough, chairs/benches were provided for this purpose.

Following a post-visit discussion, we observed that 3 factories had provided some benches to workers who do their work standing.

## **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 21 factories no union was present. In 28 factories 1 union was present, in 13 factories 2 unions were present, and in 3 factories 3 unions were present.

In 49 factories, there were no indications that there were circumstances that hampered workers in freely organising, while in 16 factories such indications were present. In this respect, workers in 1 factory indicated that workers/union leaders complaining to management were allegedly dismissed without valid reason, workers in another factory indicated that workers trying to set up a union were dismissed without a valid reason, and in 8 factories they were afraid of possible management reaction if they would set up, or join, a union. In 1 factory management had warned a union leader to undertake activities to set up a union outside the factory. In 3 factories workers indicated they felt the union was under the influence of management or management interfered in union activities.

During a post-visit discussion workers and union leaders in 1 factory indicated that, following a determination of the most-representative union in the factory, they no longer felt unions were under management control.

### **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 53 factories there were no indications of anti-union discrimination. In 12 factories, indications were present such as the dismissal of union leaders/activists allegedly without a valid reason (4 factories), the dismissal of union leaders for organising a strike (1 factory), the transfer of a union leader to a different branch (2 factories), the transfer of a union leader to a different position with less pay (1 factory), alleged fighting with a union leader after a strike (1 factory), and perceived preferential treatment of workers who were members of a certain union over workers who were members of another union (1 factory). Also, in 1 factory a union leader was prevented from undertaking activities in the factory. He was subsequently accused by guards of creating problems and physically attacked by unidentified persons outside his house. It remains unclear whether management was involved. In another factory 2 union leaders were beaten outside the factory and accused by their attackers of causing problems in the factory. They filed a complaint with the relevant authorities without result. They stated that they thought that foreign line supervisors were responsible and not higher management. The factory paid for medical expenses and sick leave.

### **2.3.3 Shop stewards**

Law (Art. 283, Arts. 285, 287, 288, 292, 293, Prakas 286/01):

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 19 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 2 of these factories ILO monitors observed shop steward elections. In 29 factories such elections were not held in accordance with the applicable rules and procedures because workers/unions were not allowed to nominate (all) candidates (16 factories), and/or the workers were not given the required time to decide who to vote for (17 factories), and/or only one electoral body was created (6 factories), and/or not all eligible workers were allowed to vote (2 factories), and/or not enough shop stewards were elected (3 factories). In 1 factory all shop stewards had resigned or were transferred to another factory. In 13 factories the term of office for shop stewards had expired. In 2 factories 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.

In 2 factories indications were that shop stewards had been fired without prior authorisation from MOSALVY)

During a post-visit discussion, 4 factories indicated that they had held shop steward elections where the term of office of shop stewards had previously expired. In 1 such factory all procedures had been followed, but an analysis of relevant documents showed that in the 3 other factories elections had not been held entirely in accordance with the applicable rules and procedures. In 1 factory shop steward elections were held in accordance with the rules where previously no elections had been held. In another factory new elections were held in conformity with the relevant rules and procedures where previously not all rules and procedures had been followed. In one factory where workers claimed shop stewards were directly appointed by management without holding elections, new elections were held but indications were that less than half the total number of workers in the factory were allowed to vote which would make the elections invalid.

### **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 is to be paid by the employer and agreement concerning a candidate should be obtained from the union or worker representatives prior to recruitment. MOSALVY has to certify the appointment.

Practice:

Fifty-eight factories had not recruited a liaison officer, while 3 factories had. Four factories had submitted the name(s) of (a) candidate(s) to MOSALVY but had not received a reply yet.

Following a post-visit discussion, 18 factories presented documents showing that they had appointed a liaison officer but in 3 of these factories workers/shop stewards had not been consulted on this appointment.

### **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 41 factories no collective dispute occurred, while in 24 factories collective disputes did occur.

At 3 factories worker complaints concerning non-compliance with several provisions of the law had been discussed with management, a solution agreed upon and subsequently implemented in one and partly implemented in the other two. In

one factory a complaint concerning non-compliance with several provisions of the law had been forwarded to management who subsequently allegedly dismissed/forced union leaders to resign. The parties did not discuss the complaint. In 1 factory workers demanded re-instatement after alleged dismissal without a valid reason. No agreement was reached and workers subsequently accepted compensation for dismissal. In another factory workers demanded payment of 50% of their wages during a two-week period of suspension. No agreement was reached. In one case, a factory was taken over from the Government and workers not taken over by the new employer demanded indemnity. An agreement was reached and implemented but payments could not be verified for correctness due to the absence of documentation. In 1 factory complaints concerning non-compliance with several provisions of the law had been discussed with management, a solution agreed upon and partly implemented. Subsequently the factory wanted to terminate two union leaders, which resulted in a strike (see under 2.3.6). In another factory complaints concerning non-compliance with several provisions of the law had been discussed with management, a solution agreed upon and partly implemented. Subsequently, the factory wanted to terminate 5 workers allegedly for complaining about working conditions, which resulted in a strike (see under 2.3.6).

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.<sup>5</sup>

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

Practice:

In 48 factories no strike occurred during the 12 months before the monitoring visit. In 15 factories 1 strike occurred, in 1 factory 2 strikes occurred, and in 1 factory 3 strikes occurred during the 12 months before the monitoring visit.

The reasons for strikes held were the dismissal of 2 shop stewards allegedly for organising a strike (1 factory), the transfer of a union leader (1 factory), the alleged transfer/dismissal of workers for having complained about overtime hours (2 factories), non-compliance with various provisions of the law (12 factories), wages were not paid on time (1 factory), a change in payment for overtime (1 factory), to protest against the alleged dishonest behaviour of an administrative officer (1 factory) and in solidarity with a strike at a sister factory (1 factory).

In the 22 cases of strikes held, 12 agreements were reached/solutions found with the assistance of the Labour Inspectorate, 2 agreements were reached/solutions found with the assistance of another government authority, and 6 agreements were reached/solutions found without assistance from the Labour Inspectorate. One case is under consideration by MOSALVY. The solidarity strike ended once an agreement was reached in the sister factory.

Of all 20 agreements reached/solutions found following a strike, indications in 10 instances were that they had been implemented or were, at least to some degree, in the process of being implemented, while in 10 they had been only partly implemented. One agreement reached contained several clauses that were in breach of the law.

After 15 strikes all workers were reinstated in their jobs. In 1 factory a union leader was transferred to another position with a lower salary. In 1 factory seven workers were allegedly fired for participating in a strike and not hired when they applied for a job at another branch. In 1 factory one worker was allegedly fired for organising a strike and a shop steward was allegedly forced to resign. In one factory 12 worker representatives were allegedly fired for organising a strike. After conciliation from MOSALVY they accepted compensation of an unknown sum of

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<sup>5</sup> Cambodia does not have a labour court system.

money. In 1 factory 3 workers were fired for allegedly organising a strike. In 1 factory 5 union leaders/ shop stewards were fired allegedly for organising a strike. Three of them were arrested but released the following day. The workers filed a complaint with MOSALVY, which issued a letter ordering the employer to reinstate the workers. Management refused. The workers filed a complaint with the court, which ruled that the workers should be paid back wages and be reinstated. Management appealed this decision at the High Court in Phnom Penh. The appeal is pending. For one factory not enough information was available.

None of the 22 strikes held were organised by workers/unions in accordance with the applicable rules and procedures. All strikes held were peaceful.

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 49 factories there were no indications that any individual disputes had been referred to the Labour Inspectorate or other authorities. In 10 factories 1 individual dispute, in 3 factories 2 individual disputes, in 2 factories 3 individual disputes, and in 1 factory 4 individual disputes had been referred to the Labour Inspectorate. Out of the 26 individual disputes referred to the labour inspectorate, an agreement was reached and implemented in 13 cases. In 8 cases no agreement was reached but in 5 of these cases an agreement was reached directly between the parties and implemented after MOSALVY conciliation had failed. In 1 instance the worker was advised by MOSALVY to file a complaint with the criminal police, which the worker did not do. The worker still works in the factory reportedly without any problems. One other individual dispute was referred to the commune police and is currently pending investigation. Also, 2 ongoing individual disputes

are under consideration by MOSALVY. In one factory no documents were available to ascertain what the dispute was about and if and how it was solved.

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

### **3. AGREEMENT OF FACTORIES WITH FINDINGS**

Of the 65 factories to which a final report was sent, 9 factories had returned the final report as of 23 September 2002. Of these, 4 factories agreed with all the suggestions for improvement in the report, while 5 factories indicated they did not accept some of the suggestions in the report. Additional information provided by factories will be discussed during the first follow-up visit to the relevant factory.

### **CONCLUDING REMARKS**

As the fourth in a series, this synthesis report contributes to providing a fuller picture of working conditions in Cambodia's garment sector. A number of similar problem areas could be traced through the earlier reports, and this one is no exception, with the payment of wages and overtime work giving rise to numerous recommendations. Problems in the area of freedom of association have also been raised in each report. However, another more positive trend can now be seen from the various reports: between the time the draft recommendations were issued to the management of the factories and the time the draft was discussed with each factory, some improvements had already been made.

The changes made by management are certainly encouraging, and provide a foundation for optimism that improvements will continue to be made before the next report on this group of companies is released. But for this process of overall improvement in the garment industry to maintain momentum, employers, trade unions and Government will each have an important role to play. The Government has a responsibility for establishing an enabling environment for sound industrial relations, including with respect to legislation, as well as a responsibility to ensure that effective enforcement will be sustainable. The unions will also be in an important position to affect the sustainability and continuation of the improvements through worker awareness of their rights and obligations, and continuing dialogue on the issues from shop floor level to the national level.

While it is clear that all the parties involved are working towards the goal of improving working conditions, with some being more proactive than others, this

report indicates that much still remains to be done. Since the monitoring process has been going on for more than a year, it is perhaps time for each party to reflect on the contribution it has made to improving working conditions, and how best it can contribute in future to ensuring that Cambodia becomes known for producing garments in a socially responsible manner. While the ILO can provide some assistance in the pursuit of this goal, only the parties directly involved can make it a reality.

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**STATEMENT OF THE PROJECT ADVISORY COMMITTEE  
ON THE RELEASE OF THE FOURTH ILO SYNTHESIS REPORT ON THE  
WORKING CONDITIONS SITUATION IN CAMBODIA'S TEXTILE AND APPAREL  
SECTOR**

On 25 September 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 Fourth 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 Fourth Report on the ILO labour conditions monitoring programme and again wish to express its appreciation to the ILO project team, which has proven to be balanced in making its assessments, for its continued efforts.

We 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, at these times where the garment sector in Cambodia is recovering from 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 generally acceptable.

We note with satisfaction that the Fourth Report confirms that forced labour and child labour are not matters of concern in the factories surveyed. We are also pleased to note that, with the exception of a limited number of cases of sex-discrimination, including sexual harassment, discrimination was not found to be a matter of major concern.

We also note that in a majority of factories covered by the Fourth Report no violations of trade union rights were indicated but that in a limited number of factories such violations did occur. We express our particular concern with regard to those instances where probable intimidation was used. The PAC is fully aware that more work remains to be done to ensure that worker's rights to organise are further enforced in the garment sector. In this respect, we are pleased to note that initial steps are being taken in a number of factories to come to a common platform of understanding through collective bargaining.

We concur with this Fourth Report that the payment of wages and the nature and frequency of overtime work are a worrying practice.

The PAC calls upon buyers and the US Government to demonstrate their support for the efforts underway in Cambodia through expanded and long-term commitments to sourcing from our garment industry, and by considering how they can further contribute to improved working conditions in Cambodia's garment sector.

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.

Phnom Penh, 25 September 2002