

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

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

October 2003

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 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 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. In November 2002 an additional US\$ 675,000 was received from the USA to strengthen and intensify Project activities.

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 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 19 September 2003, 200 enterprises have registered with the Project. 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 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 12 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 enterprises. 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 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 prepares a synthesis report every four months that provides an overview of the operation of the monitoring system for the period under review¹. 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 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, the third in June 2002, the fourth in September 2002 and the fifth and sixth in June 2003.

¹ 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.

1.4 This synthesis report

This seventh synthesis report contains an overview of findings for 61 factories. At the time of registration, these factories employed 52,349 workers of which 46,144 were female and 6,205 male. The 61 factories covered by this report do not include any of the factories covered by the previous six reports. With the publication of this report all garment factories have been covered at least once by such a report, except those factories that have only recently been established, thus completing a full cycle of monitoring and providing a clear overview of the situation of working conditions in Cambodia's garment sector.

While the report contains the full details of the monitoring, the key findings for the 61 factories covered by this report indicate the following:

- ◆ There is no evidence of forced labour;
- ◆ There is no evidence of discrimination, although 2 incidents of sexual harassment occurred;
- ◆ There is no evidence of child labour with the exception of 2 minor incidents;
- ◆ 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 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 the factories with the Project, and especially the monitors, was satisfactory, except for 4 factories. In one of these monitors were not allowed entry in the first instance though entry was secured following discussions with management. In the other 3 factories monitors were able to conduct a visit, but

subsequent verbal and written requests to set up a meeting to discuss the draft report with management were not responded to. Information for these 3 factories has been incorporated into this report in as far as available.

2 WORKING CONDITIONS SITUATION IN 61 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 14/02):

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:

Forty factories have internal regulations that comply with the law. Four 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 not clear in that payment for maternity leave is not specified (2 factories), or indicate an incorrect wage level (3 factories), or indicate that leave is unpaid (2 factories), or indicate an insufficient number of beds for the infirmary (1 factory), or contain arrangements concerning dismissal that are contrary to the law/MOSALVY practice (3 factories). Five factories did not have internal regulations. One factory had submitted draft internal regulations to MOSALVY but had not yet received approval. Three factories

have internal regulations that were not the subject of consultations with the shop stewards, while another three factories had internal regulations that had not been approved by MOSALVY.

Out of the 55 factories that had internal regulations, 32 factories had posted them in the workplace, while 19 factories had not. In 4 factories they had been posted but were not easily legible.

Following a post-visit discussion, 4 factories had developed internal regulations where they previously did not have them, but in one instance they had not been posted in the workplace. One factory had obtained MOSALVY approval for its internal regulations where they previously had not been approved but these were not in line with the law. One factory had amended the internal regulations so as to ensure the reference to the minimum wage was correct. It had also posted the internal regulations correctly. Also, monitors observed that 5 factories had posted the internal regulations in the workplace, though in 1 factory they were not easily accessible. Two factories had posted a new legible copy of the internal regulations.

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, in 1 factory workers enter into a verbal agreement for the apprentice and probation period but sign a contract when they become regular workers. Elsewhere, workers sign a separate contract/application forms for the different categories (28 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 (22 factories). In 1 factory, only casual workers sign contracts, while other workers entered into verbal agreements. In 9 factories, only verbal contracts were concluded as is allowed under the law.

Out of the 51 factories that use written contracts/application forms, 40 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 (3 factories), a duration of contracts for probationary workers beyond the legal limit of three months (2 factories), an indication of wages below the legal requirement (6 factories), non or non-correct payment of indemnity for dismissal of probationary workers (2 factories), hours of work, mostly overtime, beyond the legal limit or at the discretion of management (7 factories), undue restrictions on annual leave (1 factory), non-payment of attendance bonus to probationary workers (1 factory), a prohibition of organising/participating in a strike (1 factory), arrangements with regard to disciplinary action that are not in line with the law (1 factory), and arrangements with regard to termination that are not in line with the law/MOSALVY practice (16 factories).

In 33 factories casual workers worked for longer periods than allowed under the law.

In 10 factories, workers indicated they understood their terms of employment, while in 51 factories, workers indicated that they did not understand, or did not understand entirely, the terms of their employment.

In 17 factories, some workers indicated they had to pay someone a certain amount of money in order to get a job.

During a post-visit discussion of the draft report, 1 factory presented new contracts that brought the indication for wages to be paid in line with 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:

Fifty-three factories indicated that they did not have a collective agreement. Eight factories had a collective agreement concluded in accordance with the relevant rules and regulations. Four such agreements restate the provisions of the law but also contain clauses which are contrary to the law, while the contents of 3 implied that overtime could be worked beyond the legal limit of two hours. One agreement mostly restates the provisions of the law but also contained one clause, which provided for better conditions than 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 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 who 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. Night time, 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 16 factories the minimum wage notice was posted in the factory, while in 45 factories it was not. Following a post-visit discussion, we observed that 9 factories had posted a minimum wage notice.

In 50 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 did not indicate the calculation but only the total amount (11 factories), the payment slip or other relevant document was in a language other than Khmer (10 factories), not all categories (overtime, public holiday, etc.) were indicated (6 factories), it showed only the total amount for each category (basic wage, overtime, etc.) without indicating the calculation for each category (3 factories), perceived complicated/unclear wage calculations (16 factories), workers did not know the appropriate wage rate for night work (1 factory), and workers did not know the piece rate (1 factory).

In 58 factories, there were indications that workers did not receive the wages to which they were entitled. Situations in this respect included continued receipt of an apprentice/probation salary when working for longer than two/three months (9 factories), non-correct payment of overtime wages, including meal allowance (25 factories), non or incorrect payment of the attendance bonus (16 factories), payment of a daily/monthly/over time wages below the minimum wage to casual workers (42

factories), undue wage deductions for production mistakes made or replacement of tools/I.D. cards or violating company rules or absences without permission (21 factories), non-correct payment for work undertaken on Sunday or Public Holidays (12 factories), non or incorrect payment of night time wages (17 factories), and non or incorrect payment of seniority bonus (15 factories). In 6 factories indications were that workers were not paid during a (pre-probation) testing period.

In 29 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 14 of these factories, indications were that they made up wages to match the minimum wage, while in 14 others this was not the case. In 1 factory indications were that only the wages of some workers were made up to match the minimum wage.

In 4 factories wages were regularly not paid on time.

During a post-visit discussion, 2 factories provided documents showing it had started paying the (correct) seniority bonus and in 1 factory indications were that it had stopped making undue wage deductions for breach of company rules.

In 1 factory 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 all 61 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 80/99, 100/02, 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 57 factories normal working hours were 8 hours. In 3 factories normal working hours were 9 hours and in another 8 hours for 5 days and 7 hours for 1 day.

In 50 factories overtime hours (occasionally) extend beyond the 2 hours allowed under the law. In 6 factories overtime appears to be exceptional, while for 55 factories it appears to be undertaken frequently/for several weeks or months in a row. In 11 factories overtime hours occasionally extend beyond midnight.

Workers in 12 factories indicated that working overtime is undertaken voluntarily, while in 49 factories workers indicated overtime was not, or not always voluntarily undertaken.

All factories officially have Sunday as their designated 24 hours off. In 51 factories, work was undertaken on Sunday/ weekly time-off, either occasionally (33 factories) or frequently/for several weeks/months in a row (18 factories). In 35 factories workers indicated that working on a Sunday/weekly time-off was undertaken voluntarily, while in 16 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 2003, 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 an 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.²

Practice:

In all factories, workers indicated they were aware which days were public holidays. In 53 factories work was undertaken on public holidays. While for 43 factories this appears to be occasional, for 10 factories it appears to be frequent. In 38 factories workers indicated that working on a public holiday was undertaken voluntarily, while in 15 factories they indicated this was not undertaken, or not always voluntarily undertaken.

Fifty-seven factories officially provide 18 days of annual leave. Four factories had been in operation less than one year and therefore did not have to provide annual leave.

In 3 factories workers could not freely avail themselves of their annual leave because it was scheduled by management, but in 2 of these factories unused leave was compensated for while in 1 factory it was not. In a number of factories all 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. This system is used in 23 factories, but in 3 of these factories compensation provided was incorrect and in 14 factories (some) annual leave was scheduled by management. In 14 factories workers can take annual leave while unused leave is compensated for in cash, but in 4 such factories, workers said that they could not freely take annual leave/some leave was scheduled and/or payments

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

made were incorrect, while in one 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 workers claimed they could not freely avail themselves of their annual leave. In 2 factories workers indicated that they could take annual leave but that unused annual leave was uncompensated. In 7 factories indications were that paid annual leave was not provided nor compensated for in cash. For 3 factories not enough information was available.

During a post-visit discussion, 1 factory provided documents showing it had started compensating workers for unused annual leave.

All factories covered by this report officially provide a total of 7 days special leave. In 14 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 10 factories paid special leave taken was, as is allowed under the law, deducted from the annual leave, but in 2 of these wages were not paid when all annual leave had been used, and in 6 factories not all special leave taken was paid. In 1 factory special leave was paid and not deducted from the annual leave. In 8 factories special leave was not paid but also not deducted from annual leave. In 4 factories special leave was not paid and also deducted from annual leave. In 25 factories indications were that special leave was not (fully) paid. For 1 factory not enough information was available.

In 6 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. In 9 factories paid sick leave was provided when a medical certificate could be provided by workers but no paid sick leave was provided for minor illnesses. In 1 factory paid sick leave is provided when certified by factory medical staff but not when sickness occurs outside the factory. In 2 factories paid sick leave is provided with a medical certificate but only for a limited number of days. In 2 factories paid sick leave is provided with a medical certificate but days taken are deducted from annual leave and/or not paid. In 36 factories indications were that wages are not paid regardless of whether workers have a medical certificate or not. For 5 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 14 factories maternity leave is provided in accordance with the law, while in 1 factory provisions made for maternity leave are better than those required by law. In 3 factories, which had opened about a year before the monitoring visit no worker had requested maternity leave yet. In 1 factory paid maternity leave is provided but the payment is made after the worker has returned to work. In 8 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 22 factories 90 days leave was provided but at less than half pay. In 1 of these factories workers indicated that some women had been fired/forced to resign for becoming pregnant, and in another that maternity leave was only provided once and not for any subsequent pregnancies.

In 12 factories indications were that paid maternity leave was not provided, and in 4 of these indications were that pregnant women were forced to resign/dismissed. In 4 factories workers claimed some pregnant workers were forced to resign. In 1 factory workers were reinstated at the probationary level upon returning from maternity leave. In 2 factories workers were reinstated at probationary level if they took additional sick leave without a medical certificate after their maternity leave.

During a post-visit discussion, indications in 4 factories were that they had started paying half wages for maternity leave where they previously provide less than half. In 2 factories payments for maternity leave had increased but still did not amount to half of the wages.

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 3 factories time-off for breast-feeding is provided, while in 58 factories such time-off is not provided. During a post-visit discussion, indications were that 1 factory had started providing time-off for breast-feeding.

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-five factories did not have a nursing room or day care centre. One factory was not required to establish such facilities since it employed less than 100 women. Two factories did not have a day-care centre but did have a nursing room but in both instances it was not in operation. One factory did not have a nursing room but did have a day-care centre but it was not in operation. One factory did have a day care centre and a nursing room but they were not in operation. In one factory construction of a nursing room/day-care centre was in process. Of the 58 factories that did not have a day care centre one factory paid for the cost of private day-care centres but for children under 18 months only.

Following a post-visit discussion, we observed that in 1 factory a nursing room had been set up, while another factory was in the process of setting up a

nursing room. In one factory construction of the nursing room/day-care centre had been completed but they were not in operation yet.

2.1.11 Sexual harassment/indecent behaviour

Law (Art. 172):

All forms 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 59 factories workers indicated they had not experienced sexual harassment. In 1 factory, a worker indicated that she felt sexually harassed by a line supervisor. In another factory a line supervisor had allegedly sexually harassed one worker. The case was settled and compensation paid, and both the worker and the supervisor still work in the factory.

In 45 factories workers indicated they (sometimes) felt mistreated by supervisors. Examples given by workers include chiding (26 factories), shouting (24 factories), throwing cloth at workers (2 factories), and hitting workers (3 factories).

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.³

³ 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.

Practice:

In all of the 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 or herself voluntarily.

Practice:

No indications were found in any of the 61 factories that there was forced labour.

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.⁴

Practice:

In 59 factories, no indications were found of child labour. In 11 of these factories, management did not adequately verify the age of workers before recruitment but analysis and verification of documents and/or observation of workers' appearance/observation of workers/indications from interviews were that there was no child labour.

⁴ 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.

In one factory, monitors noted 4 workers who appeared to be under age. Documents provided by management were unreliable. Verification of the relevant documents of these workers at the relevant commune offices showed that 3 workers had been 15 years or older at the time of recruitment. The remaining worker was 14 years old at the time of recruitment. She had turned 15 at the time the verification mission was carried out by the monitors.

In another factory monitors noted 3 workers who appeared to be under age. Documents provided by management were unreliable for 2 of the 3 workers. Verification of the relevant documents of these 2 workers at the relevant commune office showed that one worker had been older than 15 at the time of recruitment but that the other worker had been 14 years and 5 months at the time of recruitment. She has since turned 15.

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 3 factories that had a safety and health policy, but for 2 of these factories it was in English only. There were 58 factories that did not have a safety and health policy.

During a post-visit discussion, 3 factories showed that it had developed a safety and health policy but in 1 factory it was written in English only.

2.2.1.2 Work related accidents

Law (Prakas 243/02):

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 35 factories, the number of accidents/illnesses was recorded, while in 26 factories it was not. Of the 35 factories that kept a record 16 factories transmitted it to the relevant authorities. During a post-visit discussion, indications were that 3 factories had commenced recording accidents and that 7 factories had started notifying the relevant authorities.

2.2.1.3 Compensation for work related accidents

Law (Article 248, 253, 254 and Prakas 243/02):

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 or her beneficiaries as an annuity.

Practice:

In 8 factories indications were that the employer did provide compensation. In 3 factories compensation was provided for treatment in a clinic, including hospitalisation but not for other cases. In 6 factories indications were that compensation was provided in some instances but not in all. In 4 factories (partial) compensation for costs was paid but subsequently deducted from wages. In 10 factories (partial) compensation was provided for costs incurred but no wages were paid. In 19 factories indications were that the employer did not provide any compensation. In 8 factories no, or not enough reliable documents were available to verify whether compensation was paid as claimed by management. In 3 factories management and workers indicated no accidents had occurred.

2.2.1.4 Emergency arrangements

Law:

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

Practice:

In 31 factories the emergency exits were unlocked, clearly marked and easily accessible. In 1 factory not enough exit doors were present. In 14 factories one or more emergency exits were locked, in 14 factories they were not clearly marked, and in 6 factories they were not easily accessible. In 25 factories regular emergency drills were held and/or workers were aware of what to do in case of an emergency, while in 36 factories this was not the case.

During a post-visit discussion, monitors noted that 2 factories had unlocked an emergency door/a number of emergency exit doors, which had previously been locked, 3 factories had made emergency exit doors easily accessible where they had previously not been, and 1 factory had clearly marked exit doors where they had previously not been. Also, 2 factories had held an emergency drill.

In 39 factories, an appropriate number of fire extinguishers was available that were within easy reach of workers, while in 9 factories not all were within easy reach. In 13 factories not enough fire extinguishers were available and in 5 factories some of these were also not within easy reach.

During a post-visit discussion we observed that 1 factory had installed additional fire extinguishers and 4 factories had placed them within 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 workplace.

Practice:

An appropriate number of properly stocked and easily accessible first aid boxes were available in 7 factories. In 24 factories first aid boxes were not available in an appropriate number, and/or in 21 factories all or some were not properly stocked, and/or in 13 factories they were locked without someone being present directly on the work floor who had the key or otherwise not easily accessible. No first aid boxes were available on the work floor in 21 factories.

Following a post-visit discussion, 5 factories had installed several first aid boxes where previously there were none and 1 factory had installed 1 where previously there were none, but in one they were not easily accessible. Six factories had installed additional first aid boxes, but in 2 of these they were not properly stocked. One factory had installed additional first aid boxes, properly stocked all where they had previously not been and had also ensured that they were easily accessible to workers where they previously had not been.

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 56 factories infirmaries had been set up. In 1 factory the infirmary was under construction. In 2 factories the space used as an infirmary was inappropriate for its purpose. In different instances infirmaries did not have a nurse/doctor on duty during working hours, especially overtime (47 factories), and/or had not recruited a doctor/nurse(s) or not for the required number of hours (40 factories), and/or did not have (enough) medical supplies and/or instruments (38 factories), and/or did not have an appropriate temperature (1 factory) or cleanliness level (5 factories). In 4 factories 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 another factory that medicines were not provided free of charge. In 55 factories infirmaries did not have the required hospitalisation capacity. In 2 factories workers indicated that workers were not provided with the appropriate care when they were sick/fainted and in another 2 factories that access to the infirmary was restricted. In 4 factories no infirmary had been set up.

Following a post-visit discussion, we observed that one factory had increased the hospitalisation capacity of the infirmary although it still fell below legal requirements.

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 covered by this report.

In 10 factories a substantial amount of washing/dyeing products is used. In all 10 factories the storage of these substances was not appropriate in that they are not kept in a specifically arranged and separate storage area (8 factories), and/or labels or data sheets are not in Khmer (9 factories).

2.2.2.2 Protective measures

Law:

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

Practice:

In 8 factories protective equipment was regularly provided to all workers who needed it. In 7 of these a substantial number of workers did not use the equipment provided indicating they did not want to wear the protective equipment provided because of the physical discomfort or they said they were not in the habit of using it. In 53 factories no suitable protective equipment was (regularly) provided to (all) workers who needed it.

In 37 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, monitors observed that in 5 factories workers had been provided with protective equipment where they had previously been not, in 1 factory workers had been provided with suitable footwear and in another factory workers had been allowed to wear their own footwear.

2.2.3 Lighting

Law:

There are no specific legal requirements with regard to lighting.

Practice:

In 52 factories lighting was of an appropriate level, while in 9 factories it was not, either for the entire factory (2 factories) or for particular sections (7 factories).

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 17 factories this was not the case. In 12 factories this was due to noise generated by machines operated directly by workers, in 5 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 1 factory the generator had been moved.

2.2.5 Machine safety

Law:

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

Practice:

In 39 factories the condition and maintenance of machines and wiring systems were of an appropriate standard from a health and safety point of view, while in 22 factories it was not.

During a post-visit discussion, we observed that the condition and maintenance of machines and wiring had been improved to an appropriate standard in 1 factory.

2.2.6 Ventilation and heat

Law (Prakas 125/01 and 147/02):

The employer has an obligation to ensure a good/clean atmosphere at the workplace. To this end the employer has to take measures to ensure appropriate air circulation, avoid the use of dangerous substances, take measures to release dangerous substances from the atmosphere outside the workplace and provide appropriate protective equipment. The employer also has an obligation to ensure that work is undertaken in a thermal environment that does not affect a worker's health. To this end the employer has to take appropriate heat reduction measures.

Practice:

In 8 factories the temperature and measures taken to ensure ventilation and air circulation were appropriate. In 53 factories this was not the case, either for the entire factory (37 factories) or for certain sections (16 factories).

After the discussion of the draft report, we observed that 2 factories had improved ventilation and air-circulation.

2.2.7 Housekeeping

Law:

There are no specific legal requirements with regard to housekeeping.

Practice:

In 18 factories general cleanliness was of an appropriate level, while in 43 factories this was not the case.

In 31 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 6 factories equipment to transport heavy and/or bulky material was not available, in 9 factories this equipment was not available in appropriate numbers, and in 2 factories the equipment available was not appropriate for having to transport materials between floors.

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 6 factories. One factory had provided additional equipment to transport heavy/bulky material.

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 drinking water was provided to workers. In 18 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. In 7 factories workers said there was

sometimes not enough water. In 10 factories not enough drinking stations were available, and in 2 other some of the available containers of drinking water were broken/not of an appropriate standard. In 1 factory workers claimed the water was not clean. In 1 factory the frequency and length of drinking breaks was monitored/regulated. In 53 factories no or not enough cups or other sanitary means for drinking water were (regularly) provided.

Following a post-visit discussion, 7 factories had provided workers with (individual) drinking cups/bottles and 2 factories had cleaned/improved drinking areas. 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 21 factories the number of fully functioning toilets was in line with, or above, the legal requirements, while in 15 factories it was not. In 24 factories the number of toilets was as required but in 22 of those factories some toilets were not functioning/broken/not built to standard or not functioning properly and in 2 factories some could not be locked. In 32 factories the cleanliness of the toilets was of an appropriate level, while in 29 factories this was not the case. In 23 factories the timing, frequency or length of toilet breaks was monitored/regulated and in 4 of these factories this could lead to the imposition of warnings or fines.

Following a post-visit discussion, monitors observed that 1 factory had built additional toilets, 5 factories had fixed (some) toilets and 3 factories had improved cleanliness to an appropriate level. One factory no longer monitored the length of toilet breaks.

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 60 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. One factory only undertakes activities that require workers to stand.

In 57 factories workers 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 2 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 workers' 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 17 factories no union was present. In 33 factories 1 union was present, in 6 factories 2 unions were present, in 4 factories 3 unions were present, and in 1 factory 4 unions were present.

In 50 factories there were no indications that there were circumstances that hampered workers in freely organising, while in 11 factories such indications were present. In this respect, workers in 3 factories indicated that workers/union leaders complaining to management were allegedly dismissed without valid reason, workers in 2 factories claimed that workers trying to set up a union were allegedly dismissed without a valid reason, in 1 factory that workers were warned to stop their activities, in 3 factories workers were afraid of possible management reaction if they would set up, or join, a union, and in 2 factories workers indicated they felt the union was under the influence of management or management interfered in union activities.

In 2 factories management deducted union dues from wages but a number of workers indicated they had never agreed to this. For one of these factories no documents were available to verify this situation, while for the other monitors noted that at recruitment workers signed an authorization sheet/union membership form, which was attached to the employment contract.

During a post-visit discussion, monitors observed in 1 factory that management had obtained written agreement from workers to deduct union dues from their wages where it had previously not.

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 57 factories there were no indications of anti-union discrimination. In 4 factories indications were present such as the dismissal of union leaders/activists allegedly without a valid reason (1 factory), the dismissal of union leaders for organising a strike (1 factory), and the transfer of union leaders to a different branch (1 factory). Also, in one factory 3 union leaders had been dismissed allegedly for setting up a union and organising a strike. Management based the dismissal on alleged threat of violence against fellow workers, presenting a statement from one worker in this respect signed by three witnesses. The 3 leaders were subsequently arrested on the basis of a complaint from workers that they had coerced them into taking part in the strike. They were released on the same day because of lack of evidence. A demonstration had also been staged outside the relevant courthouse. Workers who had supposedly filed the complaint indicated that they had thumb-printed a document they thought related to an increase in wages presented to them by their superiors. Also, around 40 workers were allegedly dismissed for having participated in a strike related to the above events.

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 9 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 40 factories such elections were not held in accordance with the applicable rules and procedures because workers/unions were not allowed to nominate (all) candidates (26 factories) and/or the workers were not given the required 2-hour break before voting (33 factories), and/or only one electoral body was created (1 factory), and/or not enough shop stewards were elected (6 factories) and/or the ballot was not secret (1 factory). In 7 factories the term of office for shop stewards had expired. In 5 factories 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 it had held shop steward elections where the term of office of shop stewards had previously expired. In 3 such factories all procedures had been followed, but in the other factory elections had not been held entirely in accordance with the applicable rules and procedures. In 1 factory shop steward elections were held where previously no elections had been held but they had not been held entirely in accordance with the applicable rules and procedures.

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:

In 30 factories a liaison officer had not been appointed, while 29 factories had, though in 6 such factories shop stewards had not been consulted. Two factories had submitted the name(s) of (a) candidate(s) to MOSALVY but had not received a reply yet.

Following a post-visit discussion, 6 factories showed that they had appointed a liaison officer but in 1 such factory workers/shop stewards had not been consulted on this appointment. In 2 factories shop stewards had been consulted post-facto.

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 36 factories no collective dispute occurred, while in 25 factories collective disputes did occur.

Workers' complaints had been discussed with management, an agreement reached and subsequently implemented in 3 factories and partly implemented in 4 others. In 1 factory complaints had been discussed and agreed upon but this had happened a few days before the monitoring visit so it was not possible to verify whether the agreement had been implemented or not.

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.⁵

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 39 factories no strike occurred during the 12 months before the monitoring visit. In 17 factories 1 strike occurred, in 4 factories 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 3 shop stewards allegedly for organising a strike (1 instance), the transfer of workers (1 instance), the dismissal of workers (2 instances), non-compliance with various provisions of the law (20 instances), incorrect payment of wages (3 instances), and that wages were not paid on time (1 instance).

In the 28 cases of strikes held, 23 agreements were reached/solutions found with the assistance of the Labour Inspectorate, 1 agreement was reached/solution found with the assistance of another government authority, and 1 agreement was reached/solutions found without assistance from the Labour Inspectorate. In 3 instances, no agreement was reached.

Of all 25 agreements reached/solutions found following a strike, indications for 5 of them were that they had been implemented, while in 15 instances they had partly been implemented and in 3 instances they had not been implemented. In one instance the agreement had been made just before the monitoring visit and it could therefore not be assessed whether or not the agreement had been implemented. In another instance neither management nor workers could provide sufficient

⁵ Cambodia does not have a labour court system.

information on the exact content of the agreement to be able to verify whether or not it had been implemented.

After 25 strikes all workers were reinstated in their jobs. In 1 factory a number of workers were allegedly fired for participating in a strike. In one factory 9 worker representatives were allegedly fired for organising a strike and subsequently accepted compensation of an unknown sum of money. In another factory 3 union leaders and about 40 workers were allegedly fired for organising/participating in a strike.

None of the strikes were organised by workers/unions in accordance with the applicable rules and procedures, although in 2 instances seven days' prior notice was given. Of the 28 strikes held, 25 were peaceful, while 2 were not. In one factory management claimed violence had occurred while workers denied this.

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 53 factories there were no indications that any individual disputes had been referred to the Labour Inspectorate or other authorities. In 7 factories 1 individual dispute was referred to the Labour Inspectorate or other authorities, and in 1 factory 3 individual disputes had been referred to the Labour Inspectorate. Out of the 10 individual disputes referred to the labour inspectorate, an agreement was reached and implemented in 6 cases, while in 1 case no agreement was reached. In one factory no documents were available to ascertain how an individual dispute had been resolved. Two individual disputes were referred to the court where they are in process.

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

3. AGREEMENT OF FACTORIES WITH FINDINGS

Of the 58 factories to which a final report was sent, 6 factories had returned the final report as of 19 September 2003. Of these, 3 factories agreed with all the suggestions for improvement in the report, while 3 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

With the publication of this seventh synthesis report all garment factories in Cambodia have been covered at least once by such a report, with the exception of recently established factories. It completes a full cycle of monitoring and provides a reasonably consistent overview of the working conditions situation in Cambodia's garment sector. It once again shows that certain problems, such as the ones related to wage payments and working overtime are widespread, and that some freedom of association problems do exist, but that child labour is an incidental problem whereas forced labour is not a problem at all.

It also shows again that situations in factories differ, sometimes dramatically, and indicates that measures can be taken to ensure that profitability goes hand in hand with decent working conditions. This, first and foremost requires a change in attitudes of those involved. Monitoring helps in this respect by pointing out shortfalls and clarifying situations and responsibilities. Monitoring alone though is not enough. Recognition by all parties involved that each has a responsibility to ensure that workers are treated fairly and in compliance with the law, and that the future of the garment sector will largely determine the future of Cambodia, are necessary first steps. This report shows that some involved have not yet taken those steps.

The ILO will continue working with all parties involved to bring about improvements in working conditions. To this end, the ILO has started a training programme with 8 garment factories aimed at illustrating that improvements in occupational safety and health, human resources management, worker-management cooperation leads to improvements in productivity and quality. Also, during training

provided to labour inspectors the need for the development of a tool that inspectors could use in the advisory role they have towards factories was expressed. Such a tool is currently under development and will be made available in Khmer, English and Chinese.

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

On 19 September 2003, 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 Seventh ILO Synthesis Reports on the working conditions situation in Cambodia's textile and apparel sector as follows:

The members of the PAC welcome the release of the Seventh Report on the ILO labour conditions monitoring programme and once again wish to express its appreciation to the ILO project team, which consistently demonstrates a fair and balanced approach 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 note with satisfaction that the Seventh Report once again confirms that forced labour is not a matter of concern in the factories surveyed. We are also pleased to note that, with the exception of a limited number of cases of 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 Seventh Report no violations of trade union rights were indicated but that in a limited number of factories such violations did occur.

The members of the PAC note with concern the incidents of child labour. Though limited in terms of number of workers involved and an appropriate solution has been found in all three active cases identified, the PAC calls upon all parties involved to establish a permanent and institutionalised mechanism for the removal of children identified and their placement in appropriate educational facilities combined with the provision of an alternative source of income.

We note with regret that the Seventh Report again indicates that the payment of wages and the nature and frequency of overtime work are the most widespread problems in the garment sector in Cambodia. We call upon all employers to fulfil their legal obligations in this respect.

The members of the PAC note that with the publication of this report all garment factories registered with the project have been covered at least once by such a report, apart from those that have been recently established, completing a full cycle of monitoring and providing a clear overview of the situation of working conditions in Cambodia's garment sector. The PAC considers that while progress has been made during this cycle, many problems remain and that ultimately these can only be solved if all parties involved take serious their obligations under the law and work together to create a climate of mutual respect.

All members of the PAC express their full appreciation for the assistance provided by the ILO in ensuring that the parties involved are in a better position to undertake their duties and responsibilities. In light of the benefits brought about by the ILO Garment Sector Project, all members of the PAC welcome the indication of the US Government that it is willing to partially fund extension of the project for a further two years. We support such an extension and pledge our full cooperation to the ILO in this regard.

Phnom Penh, 19 September 2003