

Labor-Management and Employer/Employee Rights and Obligations: Industrializing Countries

Cambodia Moves Toward Industrialization

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The last decade has treated Cambodia much better than the preceding decades. After a century of French Colonial Rule, Cambodia became independent in 1953, and then followed the chaos of US bombing during our Vietnam war, civil war, the despotism of the Khmer Rouge and Pol Pot with more civil war until the mid 1990s. Throughout that period Cambodia, like the other countries in Southeast Asia was and has remained primarily agricultural, with only a small percentage of its population affected by globalization.

The Cambodian Labor Market

Cambodia is largely a subsistence agricultural economy with an active population (between 15-64) in 1999 of 4 million with an average 3.8 years of schooling with poor roads and bridges, inadequate power supplies and lack of institutional and government support. 68% of those over age 10 are in the workforce and only 29% having schooling beyond primary school and 29% with no schooling at all¹. 74% of the population is under 25 years of age². The literacy rate is 47.6% for males and 29.2% for females. 15.1 are wage employed (33.8% in urban areas). As of 1999, 73% of those employed are in agriculture, hunting and forestry and only 5.3% in the manufacturing sector, 0.4% in hotels and restaurants and 1.4% in construction,. The bloated civil service/defense sector employs 3.2% of the workforce with an average monthly salary in 1999 of \$23 per month.. With the growth of the garment, tourism and construction sector from 1993 to 1999 the percentage of wage employed in the manufacturing sector has risen from 39.8% to 49.7% of the population³. There is significant migration of skilled workers in construction and machinery and electronics repair from Vietnam and of unskilled into higher paying agriculture in Thailand, and from rural to urban areas.

Cambodian labor law provides protections against child and forced labor although government enforcement of protective legislation is weak to non-existent. Yet the progressive laws support strong worker protections and are thus a potential advantage for foreign investors concerned about their labor market reputation⁴

¹ Martin Godfrey et al, *A Study of the Cambodian Labor Market Working Paper* 18, Cambodian Development Research Institute August 2001, p. 5-

² Cambodian Researchers for Development (CRD) *Garment Employees I Cambodia a Scio-Economic Survey*, ADB, p.

³ Martin Godfrey op cit at p.28

⁴ Booz Allen Hamilton, USAID Southeast Asia Commercial Law and Institutional Reform and Trade Diagnostics – Cambodia, April 2007 p.1

The Growth of the Cambodian Garment Industry

Although there was a history of silk and cotton production since French Colonial Rule, it was not until the mid 1990s that textile and garment producers from Hong Kong, Taiwan, Malaysia, and Singapore began operations in Cambodia, enticed by a large pool of surplus labor, low wages and domestic peace and security following the 1991 Paris Peace Accord. They were also lured to Cambodia by the opportunity to take advantage of the country's then easy market access to the US and EU markets, and encouraged by the adoption of the new constitution in 1993 which sought to move from a predominantly centrally planned to a free economy.⁵ In 1997 Cambodia was granted Most Favored Nation status by the US and signed a framework agreement allowing greater access to the European markets under the Generalized System of Preferences. In 1999 the WTO Agreement on Textiles and Clothing as part of the Uruguay Round of multilateral trade liberalization required that the Multi-Fibre Agreement quotas be removed by Dec 31, 2004. The imposition of that deadline made it essential to expedite the development of the garment industry in the hope that it would be strong enough to withstand the elimination of the quota protections and continue operations in Cambodia. Garment investment between 1996 and 2003 accounted for 36% of foreign fixed capital investment. The number of garment factories rose from 20 in 1995 to 197 in 2003, with employment increasing from 18,000 to 234,000 in that same period⁶.

The 2004 profile of garment industry workers show that 67% are between 18 and 24 years of age, with 90% having less than 9 years of formal education, 72% unmarried and 78.5 having no children.⁷ 73% of the garment workers surveyed are working at their first job.⁸ The monthly income in the garment industry, including overtime pay is \$50-\$75, with a cost of living of \$20-\$40 and remittances to family of about \$10-\$30 or about 39% of their wages per month⁹. 90% of garment workers are women who usually migrate from large families in rural areas for economic reasons¹⁰

Hotel and Construction Industries

Cambodia, although a small country, enjoys a robust tourist industry which in 2005 1,421,615 tourist arrivals, an increase of 35% over the prior year. Tourism, largely to Angkor Wat and Cambodia's beaches, is now the second largest foreign currency earner in Cambodia's economy. With that on going growth there has also been a substantial increase in hotel construction. Unionization has increased in both hotels and construction, with workers gaining many of the protections and benefits developed by the garment industry, including access to the Arbitration Council¹¹

⁵ Omar Bargawi, *Cambodia's Garment Industry- Origins and Future Prospects*, Overseas Development Institute, London, ESAU Working Paper 13, p 4.

⁶ Ibid at .9

⁷ CDR op cit at p.11

⁸ Ibid at p.24

⁹ Ibid at p.33,37

¹⁰ Ibid at p. 48

¹¹ Booz Allen Hamilton op cit at p. 9

Trade Union Movement

In 1979 the Cambodian government nurtured the development of the initial trade union movement which in 1999 became the Cambodian Federation of Independent Trade Unions. The first truly independent and opposition-oriented trade union was created in the garment industry in 1996 and undertook communication with the international trade union movement¹². This resulted in greater international awareness of working and labor union conditions in Cambodia which has continued with assistance offered from unions abroad and has stimulated much of the consumer and student involvement in labor and working conditions in the country, including provision of on the spot union personnel assistance.

ILO Entry

1998 labor, consumer and student groups pressured the US government to review the alleged abuse of worker rights in Cambodian factories during the period when US garment workers were seeking to restrict imports to protect jobs.¹³ This led to the US-Cambodia Trade Agreement on Textiles and Apparel (GATA) which linked annual increases in market access to improvement in labor rights, particularly the ILO Core Conventions against child and forced labor, protecting against discrimination and encouraging freedom of association and the right to collective bargaining. In 2001 the ILO, the garment manufacturers, and the Cambodian government undertook the Better Factories Cambodia project, the first and only project of its kind, to monitor factory working conditions supplying information to evaluate increases in market access. The program has been quite successful to get workers jobs above poverty levels, attract increased investment and engage in ILO organized tripartite functions, workshops and training¹⁴. Despite the concern over the impact of the December 31, 2004 end of the Multi-fibre Agreement when it was feared that factories would close or move to China, the industry has continued to thrive in Cambodia, When the feared deadline arrived there were some 250,000 employed in 225 garment factories. Since then garment industry employment and the number of factories has increased. At present there are 289 factories employing 355,000 workers. The majority of the factories employ between 500 and 2000 workers with six employing more than 5000 workers¹⁵. Van Sou Ieng, The President of the Garment Manufacturers Association in a conversation in 2006 attributed the continued operation in greatest part to the better labor management atmosphere, stating that the unions had been a positive force for communicating management's needs to the workers particularly when there was union support of the message. He noted for example, that if the factory needed to increase productivity or speed of operations it happened more smoothly once he convinced the union leadership of the need, and was able to implement changes with union endorsement and increased awareness of the pressures of international competition and the international market. The most welcomed result of unionization, he continued, was the end of wildcat strikes which had theretofore been a serious impediment to meeting the strict delivery deadlines to overseas

¹² Dennis Arnold Labor in Pos MFA Cambodia Consultancy Study for Oxfam Working in Cambodia July 2006 p 4

¹³ Ibid. 5

¹⁴ Ibid 6

¹⁵ ILO Better Factories Cambodia, Nineteenth Synthesis Report on Working Conditions in Cambodias Garment Sector, 31 October 2007, p.2

customers. Now, he added “we resolve disputes internally and send the most serious disputes to the Arbitration Council and the problems are out of the way.”

In 2006, according to Ken Loo, General Secretary of the GMAC, garment exports hit US\$2.7 billion in value, with more than US2.1 billion going to the US. In a recent email he expected that volume and factory output to continue to rise through 2009, with foreign companies building in Cambodia as well as China. He also noted that the largest number of new investors is from the Chinese mainland

The Better Factories Cambodia

The ILO Better Factories Cambodia provides a program of ILO monitoring of factories in place of the excessive interruption of production that characterized factory monitoring by the overseas buyers. ILO monitoring also assures independent verification of working conditions in the ongoing effort to increase compliance to ILO Core convention standards. In the six months prior to the 31 October 2007 report, 227 factories were visited. For 18 new factories it was their first visit, while for 29, it was their 7th visit. A checklist of 500 separate items from a checklist approved by the government, unions and employers is used to assess compliance with labor contract requirements, wage and hours laws, leave entitlement, worker welfare, labor relations and occupational safety and health. Individual workers are interviewed at their workplace. Compliance with wage and hours requirements was at 95-97%, annual leave provision at 94%, paid sick leave at 68%, voluntary overtime at 78%, exceptional required overtime at 14%, overtime limited to 2 hours per day at 38%, provision of personal protective equipment at 56% and installation of needle guards on sewing machines at 48%, and payment of maternity leave at 95%. In that same six month period the ILO found one instance of a factory with one underage worker (an individual who was 15 years 11 months of age who took paid leave and returned when she was 15), no factories with forced labor, 18 factories engaging in instances of prohibited discrimination (usually termination of a pregnant worker), 168 factories with at least one active and registered union with 326 unions in place and with a unionization rate of 43%. 17 factories interfered with freedom of association, 8 factories engaged in anti union discrimination and 30 strikes in 29 factories, and those were strikes where the workers failed to comply with the legal requirements for striking.¹⁶ Average compliance was found to run 81-100% in all the factories visited¹⁷ The areas needing improvement among the factories were cited as need for improved lighting (17% of the factories), reducing heat at the workplace (10%), more timely election of union stewards (9%), holding regular emergency drills(8%) training and encouraging use of protective equipment(7%), increasing infirmity staff during work hours(6%), and ensuring medical examination prior to hire(5%)¹⁸

Dispute Resolution

The acceptance of trade unions in the garment factories as well as the advent of collective bargaining has provided a vehicle for peaceful resolution of disputes which previously had

¹⁶ Ibid at p. 7

¹⁷ Ibid at p. 11.

¹⁸ Ibid at p. 14

been the cause of frequent strikes and work stoppages. According to a 2006 ILO survey of women in the garment industry (90% of the work force), 72% of the factory managers reported that their last dispute with workers was resolved internally. Of those taken outside 35% were resolved by the labor inspectorate, 32% by the union federation, 20% by the Garment Manufacturers Association, and 10 by resort to the Arbitration Council. Managers also reported a 96% decrease in strikes over the prior 5 years as well as 97% decrease in time lost due to strikes¹⁹

Booz Allen Hamilton in its April 2007 Report on Commercial and Institutional Reform cited “uniformly unreliable courts...plagued by corruption” and cited the Arbitration Council as “the one bright light in the Cambodian dispute resolution landscape” as “gaining respect of both labor and employers”, and responsible for “both a reduction in the number of unauthorized strikes and a significant decrease in the time it takes to resolve a dispute”. It noted that “in the short term the challenge will be to operate the proposed commercial arbitration board in a way that borrows from the successes of the Labor Arbitration Council”²⁰

The appeal of the Cambodian Arbitration Council is based in large part on distrust of the courts and the government. As Booz Allen Hamilton reported

“Without exception all interviews specifically said they would avoid the courts if at all possible. Cambodia’s courts are lacking in training, staff and equipment and are universally perceived as corrupt”²¹

Among the corruption issues often cited as plaguing the country and buttressing the benefits of the Arbitration Council are the following:

- Judges sell judgments and court staff sell services
- At all levels of the bureaucracy, jobs are bought and sold
- Public employees routinely shirk normal working hours, with government offices typically being virtually empty after lunch
- Corruption undermines the integrity of the law degree. People who rarely attend class often earn their degrees based on a payment at the end of the term.
- In most government agencies, lawful fees are not posted and “informal” fees are demanded²²

The Cambodian Arbitration Council was founded in 2001 to hear all collective disputes both of rights and of interest. Disputes are initially presented to the Labor Inspector for conciliation within the Ministry of Labour, who must take up the case within 48 hours of submission. If the dispute is not resolved within 15 days it is referred to the Arbitration Council within 5 days by

¹⁹ ILO and World Bank, *Cambodia Women and Work in the Garment Industry 2006*, p 21

²⁰ Booz Allen Hamilton op cit at p.7

²¹ Ibid at p.25

²² Ibid at p.13

the Minister of Labor. The referred disputes are heard by a three member panel, composed of one member from the labor panel of 10 arbitrators, one member from the employer panel of 10 arbitrators, and the two partisan arbitrators then choose the Chair from the 10 person neutral arbitrator panel of 10. The arbitrators initially discuss the dispute with the parties and failing agreement give them the option of a binding or non binding award. The awards are not binding unless the parties agree to make them binding. An adversarial hearing is then held and the panel must issue its decision within 15 days of referral from the Minister. If the parties agree to a binding decision it is then enforceable as a final court judgment. If the case is not binding either party may reject the award within eight days and the matter is referred to court for adjudication..

The Council heard and decided 230 cases in its first two years of operation, with 70% of its awards being accepted by the disputants. 80% of the cases arise in the garment industry, 20% in the tourism hospitality sector. As of this writing on March 12, 2008, the Council has received 531 cases, 190 of which were settled prior to award, with 331 going to decision. Ten cases are currently in process.

36% of the cases in the first two years were resolved by agreement prior to issuance of the award. Conciliation by the panel is endorsed by the parties. At present the Council does not hear individual complaints but there is pressure to have them do so²³. This would of course increase the workload requiring an increase in the current total number of arbitrators, now at thirty,

Booz Allen Hamilton attributes the success of the Council to the following:

- Politically neutral selection of the pool of arbitrators with assistance from international donors, with arbitrators of high experience, education and integrity
- The tripartite selection process from the three panels increases the parties confidence and eliminates bias toward either party
- Reasoned decisions are promptly published and disseminated and serve as precedent for the parties and for the Council's future decisions
- The process is perceived as open and transparent
- The fact that most decisions are non binding eliminates the incentive for corruption since if one party is believed to have bribed a panel the other party can simply reject the decision
- Both sides have a strong incentive to resolve a dispute quickly – a lengthy court battle in the midst of a strike could cost the workers salary and the employer productivity²⁴

Conclusion

Cambodia is now as it was 15 years ago a largely subsistence agricultural economy barely recovering from multiple eras of oppression and violence. Its abundance of

²³ Leon Sibbel, ILO Arbitration Council Review June 2005 at p. 11

²⁴ Boos Allen Hamilton op. cit at 62

unemployed, low wage rates and new found peace and stability at the time of increasing expansion of apparel assembly in south east Asia made it a natural locus for factories looking to benefit from the newly opened opportunities afforded by globalization and liberalized trade restrictions. The energy and innovation of the ILO, international organizations, US and European governments in working with the unions and employers in formulating the Better Factories Cambodia Project to monitor and help improve workplace fairness and creating the Cambodian Arbitration Council as a body of skilled arbitrators with honesty and integrity sorely missing in the Cambodian legal and governmental structure have made a big difference. In addition to helping the workers and employers develop a viable garment industry, with spill over to helping develop the hotel and construction industries they have helped the country and improved its economy and standing in the world. The effectiveness of the efforts after the end of the multi fibre agreement and the continued vitality and expansion of the economy demonstrates the importance and effectiveness of a coordinate program to help bring workplace fairness to the industrializing world. It serves as an instructive model for other developing countries and a showplace of the fruits of labor management cooperation.