Report of the
ILO/Trade Union National Conference
On
Current Employment Contract Practices and the Need for its Changes

27 – 28 June 2012

Inter-Continental Hotel, Phnom Penh

CAMBODIA
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I. Background

Employment contracts in Cambodia are governed by the current Labor Law, and Decree No. 38 on Contracts and other Liabilities when linked with disputes. But commonly, regular activities of employee-employer relations are governed by the Labor Law.

According to the 1997 law, there are two types of employment contracts: “fixed duration contracts” (FDC) and “unspecified duration contracts” (UDC). FDC is defined as a period of less than two years with a precise finishing date. It can be renewed one or more times, as long as the renewal doesn’t surpass the maximum duration of two years, and any violation of this rule leads the contract to become a labor contract of unspecified duration.

Normally UDC provides more job security and benefits than FDC. However employers tend to hire workers under FDC rather than UDC as they make it easier to manage flexible production, provide cheaper labour, and help prevent union organizing. Employers believe that when workers find it easy to organize a union and grow stronger, the employers’ chance to exploit workers is reduced.

Currently most trade unions raise big concerns over the prevalent use of FDCs which could undermine trade union rights, reduce workers’ benefits, social security and employment, and create barriers for achieving the ILO’s Decent Work Agenda. Different versions of FDCs are used not only in the garment and footwear industry but also in many other sectors such as construction and their allied businesses, hotels, service companies, and private schools, etc.

According to the research findings on Fixed Duration Contracts (FDCs) of Allard K. Lowenstein International Human Rights Clinic, Yale Law School, USA, which was disseminated through the workshop in August 2011 at Cambodia-Japan Cooperation Institute, was reported on the effects of the increased use of FDCs on Cambodian workers’ rights, under both domestic and international law. The results of the Clinic’s analysis in this report are clear. The shift toward FDCs: (1) results in increased worker insecurity; (2) threatens the enforcement of workers’ rights under domestic and international law; (3) presents obstacles to increased labor productivity; (4) jeopardizes Cambodia’s reputation as a country committed to improving conditions for workers; and (5) increases the threat of a major breakdown of industrial relations and creates a potential provocation for massive strikes. In addition, another trend will increase concern as ASEAN Economic Community (AEC) proposes the economic integration of its member countries after 2015. All economic aspects shall be integrated at the end of 2015. One of the five characteristics of ASEAN Economic Community relates to the creation of single market. This single market for production consists of the free movement of production factors such as goods, services, investments, capital, and skilled labors. However the implementation of those free movements of production factors requires consistency and coherence from ASEAN member countries.

This economic integration will create more job competition between countries. Cambodia will be facing huge challenges in following this collective integration policy because general education and skills of Cambodian workers mean they are not qualified enough to take advantage of the new AEC policy when compared to other people in the region.
Fixed duration contracts for long-term employment are being used for workers as part of the effort to deny access to freedom of association and collective bargaining rights, as well as access to decent work conditions.

If there are no proactive measures and possible strategies to cope up with ASEAN’s economic integration, the ILO’s efforts to promote decent work and social protection will suffer.

Seeing the controversy of using FDCs, Pong-Sul Ahn, Senior Specialist on Workers' Activities, ILO DWT, initiated to bring the critical issue to provincial and national-level forums. Prior to the holding of this conference, four regional workshops on “fixed duration employment contract (FDC) practices” were held during the period of April-June 2012, mainly in Siem Reap, Kompong Cham, Kampot, Sihanouk Ville, and Phnom Penh, in order to share union experiences and challenges on the use of FDC and to find solutions.

First-day, 27 June 2012

Part A.
II- Key Opening Remarks by Distinguished Guests

Mr. Pong-Sul Ahn, the Senior Specialist on Workers' Activities, gave welcome remarks to the conference and highlighted that:

- There were three priorities been adopted on 29 the DWCP for Cambodia, 2011-2015, in February 2012 by the ILO and the tripartite constituents: 1) Improving IR and rights at work; 2) Promoting an enabling environment for decent employment growth, with particular focus on youth; and 3) Improving and expanding social protection. Freedom, Equity, Security and Human Dignity are at the heart of decent work. If the usage of Fixed Duration Employment Contract (FDC) prevails, no job security could exist and thus Decent Work cannot be achieved as well.

- Trade unions in Cambodia claim that employers have made use of the FDC as a tool to threaten workers not to join trade unions, to intimidate union leaders to leave workplace and even to terminate the employment of the union leaders and members. They also opine that FDC has been manipulated to avoid the formation of new trade unions and to undermine trade unions activities and their collective bargaining agreements. If so, it violates ILO conventions No.87 on freedom of association and No.98 on the right to have collective bargaining with which the government of Cambodia is a signatory. FDCs has created not only employment insecurity for many workers but it has also damaged harmonious industrial relations in the country as many workers and unions lodged complaints to the AC in the past.

- Recognising the overuse of the FDC at workplace, the bipartite parties – trade unions and the GMAC - agreed to carry out a fact-based joint research on the prevalence and nature of short term employment contracts in the garment industry when they had a MOU for improving industrial relations in the garment industry on 28 September 2010. Both parties also agreed to examine, on the basis of the research result, limiting the use of fixed duration contracts to legitimate reasons such as business cycle, seasonality, and related reasons. Unfortunately, the joint research was not conducted.
until now, but the report of Yale Law School on the FDC released in April 2011 would be a good reference in understanding the reality of usage of FDC.

- To increase the level of understanding for unionists on the legal and practical barriers of FDCs and to develop union campaigns and actions for the change of the system, trade unions under the financial and technical support of the ILO held four regional workshops, namely, the first one in Kamot Province on 28 – 29 April; the 2nd one in Kampong Cham Province on 19 – 20 May; the 3rd one in Siem Reap Province on 26 - 27 May; and the 4th one in Sihanouk Province 9-10 June. At the next technical session, you will receive a concerted report on the results of the four workshops and action plans designed at the workshops, but I would like to share with you on the problems of their employment raised by many participants, relating to low wages, deficit working conditions, termination of workers without giving legal compensation, forced overtime, discrimination against union, use FDC to control workers from joining and forming a union and to exploit workers’ other benefits like seniority bonus, remunerations, maternity benefits and annual leave, etc.

- Hence, this conference, being attended by over 90 unionists from the confederations and trade unions in the four provinces, is aimed consolidating efforts of trade unions for promoting job security and trade union rights as well as adopting a national plan of action for a safer employment of workers. Union solidarity is indispensable to ensure rights at work and realize fundamental principles and rights at work as well as to achieve a goal of decent work for all workers in Cambodia. Finally, I hope the Conference provides an opportunity to the ILO tripartite constituents as well as other key actors to initiate meaningful social dialogue to further discuss FDC matters and reach a consensus for its amicable solution. Thank you very much (see more in annex)

Mr. Ath Thorn, President of CLC, was invited to make remarks as below:

- As a representative of CLC I have a great honor to be at the opening remarks of today’s important conference. You are all well aware that the FDC issue has a long history and a hard struggle for almost 10 years. It has a big effect on the trade union movement in Cambodia.

- The FDC has been used since 2006 and is now widely used by employers including almost 90% of sub-contractors, and about 400 (50%) of the exporting factories. The number of factories using short labor contracts has increased more than 60% of the total industries in Cambodia.

- There are two reasons that employers like to use short term labor contracts and this is very big concern for unions and workers. (1) Undermine workers' rights and (2) reduce workers' benefits. According to the Cambodian Constitution and the Labor Law, workers have the right to join and form unions freely, but if workers holding short labor contracts, they are afraid to join with unions. Employers can force workers to work over-time, and workers have very little chance to make claims and bargain.

- Cambodian labor law says that if women are working less then one year, she can not claim maternity benefits (50% paid) as well as others including social security, seniority bonus, etc. In my own observation, the employers are using the wrong
contract. They are using the contract for temporary business, seasonal, or increased production for permanent and long investments, which is against the law. Employers have more power to do that because there are not punished, law enforcement is still weak and the unions are not speaking with one voice and weak. That is why employers don’t care about union issues, and there were other problems as well.

- Because of this contract, we have seen in recent years the employers and union have very low relationships and have attacked each other, and this is the cause of the failure to renew MOU implementation. However, we will try our best to work together again to renew the MOU. He hopes the tripartite committee will bring the issue up and discuss as well as renew the MOU.

- Concerning the problem of short term labor contracts in the current practice, there are three models and ideas that I would like to discuss. First, the model from Indonesia in which they form a committee and the committee will decide what type of work or business should use FDC and UDC. Second, because of the several meetings and requested from the union organizations as well as GMAC to the 8th Working Group, it has been decided to establish a Tripartite Committee (Union, Employer and Government) lead by H.E. Vong Sauth, Minister of Labor and Vocational Training. There is no need to review the articles at the Constitutional Council, because if the Council ruling supports the employer, workers will go on strike. If workers win then the employer might decide to boycott any tripartite structure. The third model is a union conference that includes results from the regional workshops will submit the outcomes to LAC for a discussion of the unions' proposal.

- Finally, I sincerely thank the ILO and Brother Pong-Sul Ahn in particular, for always paying attention and supporting the unions both financially and technically in order to reach the decent work agenda. I thank all brothers and sisters in this conference and wishes for a successful conference.

Mr. Vong Sovann, president of CCTU, said:

On behalf of CCTU, I would like to give some remarks on the issue of FDC. This is an old issue and this has been continuing for many years. Many meetings and discussions have been conducted but we cannot find the solution... The differences of law interpretation among ACF, Employer's Organization and Ministry of Labor were unclear to all parties and the cause of a lot of conflicts in implementation.”

I thank Bro. Pong-Sul Ahn for supporting today’s conference as well as the regional workshops. I request that the ILO provide expertise to assist Cambodia, especially the tripartite group with regards to unclear interpretations of FDC and UDC to give satisfaction to all parties.

In real practice, all parties are affected, especially workers. Short term labor contracts undermine workers' rights and their benefits. This kind of losing can be called exploitation. Some workers want short term labor contracts but each time must be longer, at least one year. Another characteristic is that the using of short term labor contracts must follow the law; in what kinds of job they can be used. That means long time investment must be long term contracts, and all benefits must be covered. Some
employers are good; they respect the law, but bad employers are sometime facing the strike and poor industrial relations.

In conclusion, I strongly request to continue discussion and to follow the law. We must to do some research at the factory level, to find out which factories do not follow the law, and if we find those factories, they have to be punished. Recently CCTU also requested to the government to look in to accounts with regard to other benefits such as transportation cost, accommodations, food allowance (three times per day), and attendance bonuses. On 11 July there will be a meeting to discuss the above benefits and he hopes this will bring a lot of benefits for workers. I thank the government representative, employers, and all participants in this conference, and hopes the conference will bring good outcomes.

Ms. Sandra D’AMICO, Vice president of CAMFEBA gave her point of view that:

- “On behalf of CAMFEBA, and behalf of our president Mr. Van Sou Ieng, who can't come today because of a regional meeting, it is a great honor to be here in this important conference. I am also very impressed to see many groups of unionists together in this room together, including unions from region. I understand that this is a ILO/trade union conference, not a tripartite conference and I alone represent the employer association. CAMFEBA represent all sectors, garment in particular, banks, restaurants and CAMFEBA represent employer today.

- “I want to comment very briefly in this opening remark. After hearing the unions and ILO remarks, I think it is very dangerous to say that Cambodia is violation the freedom of association conventions. It was well recognized that Cambodia has very good respect for freedom of association and opportunity for that. I do think there are some areas we will continue to work together, employers and workers, to address our concerns in the workplace.

- I wish not to deliberate on the challenges that unions face – I have listened carefully to the conference. I wish to share only that employers have similar challenges and stories as unions. We have lost clients, lost jobs, lost orders and assets because of the enormous amount of strikes. It is not only the worker that is suffering, but industry is suffering too. I do believe that this is because we were not communicating effectively. Employers want to work with a stronger union, but we don't want to negotiate with one union today and another union tomorrow, and over and over again. We want to have one union in one industry or profession so that we can negotiate effectively.

- The invitation letter from the ILO Director in charge of Cambodia has stated the four purposes of the conference, and she finds this to be a big agenda. It is understood that the idea of the fixed duration contract is a concern and she thinks it is very important that we need to be addressing it for both sides (union and employer). Current contracting modalities do not allow flexibility. Ten years ago was a very different economic environment from today, and we have suffered and we still don't know what is happening in Europe and in Cambodia. At the moment, employers are struggling with providing flexi-time unity. We have gone through a financial crisis that continues to affect deeply, particularly in the EU. Unions are a majority in the garment sector, in the informal economy. You need to consider the changing economic environment. University students need to get jobs and skills to become competitive.
• “The big challenge is the number of renewals within the duration of the contract and we implement the renewal. I think from the employers’ perspective, it is not about the violation of workers and opportunity but about the interpretation of labor law. The garment unions cannot ignore GMAC’s effort and readiness to discuss the issue that both employer and union need to settle. Employers should be partners of unions. We all need to consider our future”. She encourages joint union–management teams working together and hopes the trade union law will be completed soon.

• Your Excellency’s, ladies and Gentlemen, we have just received the letter # 673 dated June 20, 2012, of the council of ministers within Approval of Samdech Akkak Moha Sena Padei Decho Hun Sen, Prime Minister of Cambodia, to push the discussion on Trade Union Law as soon as possible. I wish to confirm that employers, represented through CAMFEEBA are open and at the table to continue supporting our respective legislation developments and deliberations.

• Finally, she thanks the government, unions, the ILO, and all participants for joining this event. (Please see further information in Annex).

H.E. Seng Sakada, Director General of Labor, Ministry of Labor and Vocational Training.

• Industrial relations have become a source of great concern over the use of fixed duration contracts (FDCs). The Cambodian labor law defines two types of labour contracts: Fix duration contract and Unspecific Duration Contract. Labor contracts of unspecified duration and. An FDC can be renewed one or more times as long as the renewal does not surpass the maximum duration of two years. However, in case of no prior notice the contract shall be extended for the duration equal to that stated in the first contract or in case of no prior notice the contract shall be deemed a contract of unspecified duration provided the total length of the renewed contract exceeds two years. Although the labor law allows the use of and specifically defines FDCs their daily practice by both parties remains inconsistent.

• The labor law also clearly states measures to protect worker interests that any provision of a contract that contradicts the law shall be voided. As we all are aware, even if legal provisions exist if a party has no will to enforce, and even if we use a contract of any type, problems still arise.

• I hope that you all will find the presentations, questions and answers and discussions in these two days most useful. The objectives of the presentations are to present challenges we are currently faced with and some possible solution. Furthermore I wish to recommend the conference as follows:

- Explore ways to compromise between employers and employees and submit those outcomes to the tripartite committee, concerned with interpreting this labour contract issue, chaired by H.E. Vong Soth, minister of labour and vocational training.
- Continue to enforce the MoU entered between employees and employers which was completed since September 2011.
- Sit down to work together, especially for workers and employers, to improve working conditions.

- I strongly hopes that this two day conference will bring about a successful solution to the issue of FDCs. He then declares the National Union Conference on the Implementation of Current Labour Contracts and the Need for Change officially opened.

Part B: Technical Sessions

1) **Aim and the objectives of the conference was introduced by Nuon Rithy.** National Consultant of the ILO, has taken about 15 minutes, explained to all audients. The Conference aims to discuss the following issues:
   - To bring about deep concerns over widespread use of Fixed Duration Contracts (FDC) in Cambodia and
   - To bring unity and solidarity among local, national and International unions, sectors for the massive of concerned;
   - To report the results and experiences of the four provincial workshops held in May and June 2012;
   - To consolidate efforts of trade unions in different regional areas for job security and respect for trade union right in promoting decent work; and
   - To adopt national union resolution and launch national union campaign for a safer employment of workers.

2) **Presentation by An Nan, Consultant for Workers Rights Consortium.** This is Yale Report on research findings on Fixed Duration Contracts (FDCs) of Allard K. Lowenstein International Human Rights Clinic, Yale Law School, USA, which was disseminated through the workshop in August 2011 at Cambodia-Japan Cooperation Institute, was reported on the effects of the increased use of FDCs on Cambodian workers’ rights, under both domestic and international law.

   - Why this research was undertaken? Debate amongst key stakeholders about using FDC/UDC, Attempts to amendment the labor law on FDC related article. Buyers and international stakeholders react on this amendment attempt. (See the letters attached) Employers and some government officials argue for the increased of use of FDCs they said that increased to use of FDCs is needed to keep the garment industry competitive, while labor unions and NGOs argue against the increased of use of FDCs. At the mean time, the Khmer version of the Labor Law supports increased use of FDCs. Actually workers can choose only FDC or not sign contract. Workers did not have choice to choose between FDCs and UDCs.

   - Employer threaten of not renew the contract when contract end which make workers fear to raise any violations. Employers may explicitly refer to potential non-renewal of the contract when asking workers to work overtime. And in conclusion, the Lowenstein Clinic’s research makes clear that the widespread use of FDCs leads to increased worker vulnerability, decreased protection of freedom of association, and multiple violations of domestic and international law.

   - So that the report has recommended to the parties concerned such as Cambodian Government, International Buyers, Garment Manufacturers Association of
Cambodia, Arbitration Council, ILO-Better Factories Cambodia, United States Government and Other Major Trade Partners (please see more specific recommendation in attached presentation).

3) Presentation by Pong Sul Ahn, ILO-DWT in Bangkok. His presentation on "The Fixed-term Employment Contract in Cambodia against the ILO policy and Conventions" is summarized as below:

- The Guiding Principles of an ILO Employment Policy. Preamble to the Constitution of the ILO (1919) states the regulation of labour supply and the working hours, benefits and labour rights arising out of the employment.
- ILO Declaration of Philadelphia (1944) was adopted at 26th Session of the ILC. It recognises the obligation of the ILO to promote full employment and the raising of standards of living. These were justified because employment is a means of ensuring minimum living standards.
- Global Jobs Pact (2008) was adopted to respond to the global financial and economic crisis. The GJP is based on the Decent Work Agenda and the ILO Declaration on Social Justice for a Fair Globalisation. The government of Cambodia adopted the GJP with the ILO technical assistance.
- ILO Employment Policy Convention 122 (1964). Employment Policy Convention and Recommendation No. 122 (1964) adopted to promote full, productive and freely chosen employment. The convention also seeks to promote quality of work, equality and non-discrimination. There are four keys noted points such as Employment promotion and protection, Work for all who want/ or seek to work, Quality - Such work is as productive as possible, Non-Discrimination - There is freedom of choice of employment and fullest possibility for each worker to utilize her/his skills, irrespective of race, gender, age, religion, political opinion, social origin, etc. The current use of FDC is very much against the principle of the convention as it discriminates workers in terms of payments, benefits and entitlements.
- The Labor Contract in Cambodia: Fixed Duration Contract (FDC) which must be written and stipulate dates of initiation and conclusion of the contract. Termination of the contract at the specified date of conclusion is a simple procedure, providing notice and a minimum of 5% of length of the contract severance pay is given. There still controversial Articles 65-73, GMAC argues that the duration of FDC is unclear and the Ministry of labour has of the same view as them. The Arbitration Council constituted by the tripartite partners ruled out that the use of FDC is entitled for 2 years and the International Trade Union Confederation report on 1-3 Nov. 2011 in Geneva and the Yale Law School study paper clearly state that the FDC has been violating workers’ fundamental rights, especially ILO conventions No.87 and No.98
- National Trade Union Conference on Fixed Duration Employment Contracts in Phnom Penh on 19-20 Dec. 2011 was recommended for role of government, the role of GMAC, the role of buyers and the role of the unions.
- And the conclusion of his presentation were:
  - The FDC is misused for discrimination against the union members and leaders as well as distorting employment relationships.
  - The FDC is against the ILO constitution, its declaration of Philadelphia (1944), the Global Jobs Pact and the Labor Code (1997) in the country.
There is need to comply with the decision made by the ACF and a recommendations by the ITUC and hence to establish stable employment relationships regulated by the Labor Code.

4) Consolidated Provincial Reports, Challenges/ Weakness, Strength and Future.
This was presented by Nuon Rithy, Union Representatives from 4 Provinces and follow general evaluations by Vathanak, National Project Coordinator of the ILO-TUSJ project in Cambodia.

This is one among other purposes of the agenda that to consolidate efforts of trade unions in different regional areas for job security and respect for trade union right in promoting decent work. The objectives of these workshops were:
• To provide awareness raising on legal and practical barriers of FDCs with a focus on violation of FOA and CB;
• To understand the reality of using the FDC system at workplace in the target provinces;
• To expand solidarity and network among different union organizations in different area and sector to fight against short term employment contract and FDC;
• To share experience, challenges and best practice to all participants;
• To bring for more union's supporters in this issue especially from Labor Ministry
• To develop a union action plan and the campaign to revise the FDC for main 5 provinces such as Siem Reap, Kampong Cham, Kampot Sihanouk Province and Phnom Penh. The workshops were conducted on:
  - Kampot Province was conducted on 28 – 29 April 2012,
  - Kampong Cham Province was conducted on 19 –20 May 012
  - Siem Reap Province was conducted on 26 – 27 May 2012
  - Sihanouk Province was conducted on 9 – 10 June 2012

The table Summary Number of Union Representatives participated in 4 workshops Conducted in the above Provinces.

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<td>Construction (BWTUC)</td>
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<td>• National Unions</td>
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<td>Garment &amp; Textile(FTUWKC)</td>
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<td>Informal Economy (IDEA)</td>
</tr>
<tr>
<td></td>
<td>• National Union</td>
<td></td>
<td></td>
<td></td>
<td>Garment and</td>
</tr>
</tbody>
</table>
- The topics had been discussed during the above workshop were
  - The key message from the National Union Leaders, Provincial Department of Labor and Vocational Training and ILO Representative;
  - Overview of employment and employment contract practice in each province
  - Overview on Cambodia Employment and Employment Contracts (What FDC, and UDC are? What FDC impact to workers and union? How this will effect of union works and life?
  - Yale Report on research findings on Fixed Duration Contracts (FDCs) of Allard K. Lowenstein International Human Rights Clinic, Yale Law School, USA, which was disseminated through the workshop in August 2011 at Cambodia-Japan Cooperation Institute,
  - Panel Discussion (over view of employment contract at the workplace)
  - The method for union campaign
  - Identify real action to fight against FDC for long term investment
  - Develop Regional Action Plan and adopt joint union statement.

- Problems facing: This Fix term duration contract in long-term investment enterprises are widespread using in many garments, shoes, construction, salt mine and hotel industries. Many unions and workers noted that this kind of contract has been used after 2005, when the quota system was finished. The factory closure, changing the name and re-open the new factory. Most of the contracts are verbal. Many employers using this because they were excused that, unpredicted of a business, allowing of production flexibility, promoting of comparative advantage in the region

  How is FDC affected to workers' Decent Work Condition? Cannot exercise FOA & CB, say no to O.T, and say no to arbitrary assignment of work, access to annual leave and other leave entitlements, access to maternity benefits, access to seniority bonus, access to skill increase and productivity, access to other social insurance schemes (health insurance, pension fund..) afraid to join with the union, having bad health condition and having low wages. Violating workers’ rights, provisions stipulated in national, international laws and poor industrial relations, creating labor unrests like strikes and demonstrations.

- The strength of this regional workshops are as follows: Introduced each other, difference union leaders (make friends, brothers and sisters) Hear the problems and share experience from difference sectors across the region (national and local). Together identified possible activities to address FDC for long-term investment. Developed individual respective union and joint Action Plan. Established follow up mechanism (commitment and solidarity among unions)

- Plan of Action from the four Provinces

  Kampot Province: Composed of unions in salt fields, construction materials union, and railway restoration.
### Kampong Cham Province:

Composed of Rubber Plantation Union, Union Tobacco and Leaf Processing, and Garment Factory Union.

<table>
<thead>
<tr>
<th>No</th>
<th>Activities to be carried out</th>
<th>Time Frame</th>
<th>Human and Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Provide awareness-raising to members on FDC and UDC and its impact for the long term job</td>
<td>On-going</td>
<td>Local Union, Activist</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Campaign materials</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>transportation cost</td>
</tr>
<tr>
<td>2</td>
<td>Strengthening and Organizing in collaboration with other union networking</td>
<td>On-going</td>
<td>Activists</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>application forms</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Union's fund</td>
</tr>
<tr>
<td>3</td>
<td>Seeking cooperation partners and support from other institutions (national and International)</td>
<td>On going and</td>
<td>Union Leaders</td>
</tr>
<tr>
<td></td>
<td></td>
<td>continue</td>
<td>• transportation cost</td>
</tr>
<tr>
<td>4</td>
<td>Request for meeting and negotiation with Employer through Union Committee</td>
<td>Jan – Mar 013</td>
<td>• Union Leaders</td>
</tr>
<tr>
<td>5</td>
<td>Give some signals of unhappiness over use of FDC by posting some banners at the workplace</td>
<td>Apr 013</td>
<td>• Union Activists</td>
</tr>
</tbody>
</table>

### Siem Reap Province:

Composed of Hotel and Services Union, Construction Union, Beer and Food Union, Informal Economy Union.

<table>
<thead>
<tr>
<th>No</th>
<th>Activities</th>
<th>Timeframe</th>
<th>Responsible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Disseminate to members, workers on impact of uses of labor contract of FDC</td>
<td>On-going 012</td>
<td>Union Organizers</td>
</tr>
<tr>
<td>2</td>
<td>Strengthening and increase members support by 70%-80%</td>
<td>On-going 12 and 2013</td>
<td>Union Organizers and Fed. leaders</td>
</tr>
<tr>
<td>3</td>
<td>Seeking support and cooperation with national and international institutions, relevant</td>
<td>On-going 2012</td>
<td>Secretary Federation</td>
</tr>
<tr>
<td>No</td>
<td>Activities of Garment and Shoe Factory Unions</td>
<td>Timeframe</td>
<td>Responsible</td>
</tr>
<tr>
<td>----</td>
<td>---------------------------------------------</td>
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<td>-------------</td>
</tr>
<tr>
<td>1</td>
<td>Disseminate to members, workers on impact of uses of labor contract of FDC</td>
<td>On-going 2012</td>
<td>Union Organizers</td>
</tr>
<tr>
<td>2</td>
<td>Strengthening and increase members support by 70%-80%</td>
<td>On-going 2012</td>
<td>Union Organizers and Fed. leaders</td>
</tr>
<tr>
<td>3</td>
<td>Seeking support and cooperation with national and international institutions, relevant institutions</td>
<td>On-going 2012</td>
<td>Secretary Federation Leaders</td>
</tr>
<tr>
<td>4</td>
<td>Proposal and submit for negotiation with employer (Individual Union and national)</td>
<td>July 2012</td>
<td>Federation Leaders</td>
</tr>
<tr>
<td>5</td>
<td>Submit proposal to the Ministry in charge of labor to settle the problem and if failed, a tripartite mechanism will be used.</td>
<td>July –August 012</td>
<td>Working group Federation Leaders</td>
</tr>
<tr>
<td>6</td>
<td>Signal dissatisfaction on use of FDC for long-term employment (Red ribbon, wearing sign on T-Shirt, leaflets)</td>
<td>September 2012</td>
<td>Federation Leaders</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No</th>
<th>Activities supported by Port Workers Union and Informal Economy</th>
<th>Timeframe</th>
<th>Responsible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Disseminate to members, workers on impact of uses of labor contract of FDC</td>
<td>On-going 2012</td>
<td>Union Organizers</td>
</tr>
<tr>
<td>2</td>
<td>Ready to join campaign with garment and shoe factory through Tuk Tuk,</td>
<td>July –Sep 12</td>
<td>Union Organizers and Fed. leaders</td>
</tr>
<tr>
<td>3</td>
<td>Provide materials support for the campaign</td>
<td>When requested</td>
<td>Union Committee</td>
</tr>
<tr>
<td>4</td>
<td>Signal dissatisfaction with use of FDC for long-term employment (Red ribbon, wearing sign on T-Shirt, leaflets)</td>
<td>September 2012</td>
<td>Federation Leaders</td>
</tr>
</tbody>
</table>

- Evaluation of the four regional workshops by Vathanak, National Project Coordinator of the ILO ACTRAV Project on Trade Unions for Social Justice.
5) The View of ITUC-AP with regards to Employment Contract (PRECARIOUS WORK), Experience from other countries in the region. Presented by Patuan Samosir, Senior Officer, Organizing and Projects Department, ITUC-Asia Pacific

Introduction: Precarious Work is one of the most challenging and threatening features of the new global economy. Due to flexible labor market policies, employment structure has significantly changed; surge in informal and precarious workforces (such as contract workers) Economic growth in the region has not contributed to the employment in terms of quality and quantity. PW is a term used to describe work that is not-permanent, indirect, informal and/or otherwise insecure (ITUC Definition)

Case from Korea:
- To overcome the 97-98 financial crisis, beginning 1998, Korean Govt. emphasizing labor market flexibility to attract FDI inflows
- A very high level of casualisation, over 50% of the workforce.
- The average monthly pay of irregular workers was 54.8% of their regular counterparts.
- 50.6% of irregular workers were hired for less than 6 months (Korea industry report, Sept. 2011)
Under the amendment from employment Act in Japan:
- Hiring dispatched workers by the day or for a term of thirty day or less is prohibited
- Limit on the ratio of dispatched workers who will dispatched to other group companies (limit is 80%)
- Dispatching a worker is prohibited during the period of one (1) year consider balancing the wages with those of the regular workers who engage the same type of work (only consideration-not necessary mean pay equity)

Precarious work has been on the rise in Australia:
- According to ACTU, around 40% of workers are engaged in insecure work arrangements such as casual work, fixed term work, contracting or labour hire
- ACTU recently commissioned an independent inquiry “to examine the extend of the insecure work and its impact on workers, their families and to provide recommendations on measures that can be taken to address any problems that are identified.”

Precarious Work in Indonesia:
- Workers receive only a basic wage, equal to the regional minimum wage without any other allowances; even they do the same tasks as permanent workers
- Contracts are generally very short, ranging from one to six months, and can be added any time
- Workers bargaining position with the agency is very weak because he/she can easily be replaced by another person

Problems:
- The outsourcing system regulated by the Labour Law provided a legal basis for companies to replace permanent workers with contract workers
- The companies close down without due compensation
- The agency threaten their jobs if they unionize
- Contract workers do not enjoy the same rights as their permanent counterparts
- Union Response
- Organize precarious workers into trade unions
- Provide education and training on PW rights
- Undertake capacity building on precarious work issues at the workplace level
- Campaign for legal and regulatory reform to extend and protect rights

Conclusion: Organize, Organize and Organize.

6) Presentation of the ACF on UDC award by Mr. Sok Lor, Executive Director of ACF.

Labour Contract Interpretation and Ways Forward
- Different interpretations of the provisions on labour contract under the labour law.
  MoLVT Interpretation
  A specific duration contract can be extended once or more times as long as each renewal does not exceed 2 years.

Arbitration Council Interpretation
A specific duration contract can be extended once or more times as long as the total length (including the duration of the renewed contract) does not exceed 2 years (Arbital award 10/03 Jacksintech).

- Common consequences of the different applications of labour contracts. A labour dispute on the different interpretations of the provisions of a labour contract (some cases might lead to strikes...) which can cause damage to both the employer and employee and union.

- Some options as ways forward:
  - Advocacy by parties to support their respective positions because this issue has been happening for nearly ten years and no progress made
  - Negotiations between employers and unions to find a win-win solution
  - Using conciliators to facilitate negotiations (such as AC experts, experts from international arbitration institutions, ILO experts

**Questions and Answers:**

A participant from Kampong Cham has asked that: "My union has received Arbitration Ruling of Successful Complaints, but when we conducted strike the employers said illegal strike" What would you explain about this?

AFC: As far as the interpretation of these articles still controversial the ACF will ruling the same and employer will complaints the same thing. The best way we have to change its and accept for all partis with common understanding.

The first day of the programme was adjourned at 5 pm with a brief summary by Nuon Rithy.

**Day two: 28 June 2012**

7) **Panel Discussion: moderated by Pong-Sul Ahn, ILO**

Union views (position) on employment contracts in current labor law and practices

Panelist discussion representing by sectors:

1. Ms. Suon Sokunthea-Garment in PP from NITUC
2. Ms. Srun Chanthorn-Shoe SHV from CLUF
3. Ms. Yen Sokkheng-Garment Kpg Cham from FTUWKC
4. Mr. Chen Chansotha-Gov’t official from Ministry of Labor
5. Ms.. Tol Sothea-Beer Promoter SR from IDEA
6. Ms. Tep Choy-Construction SR from BWTUC
7. Ms. . Chhun Pov- K-Cement Kampot and
Panel Discussion

- Ms. Soun Sokunthea: "Current FDC undermines workers' rights and reduces workers' benefits. Workers are feeling insecure about their jobs, and health problems because of over work that cause low productivity".

- Ms. Srun Chanthol: "Many workers do not know about their contracts what kind of contracts they are holding. The employer just gives them the blue cards for starting work, and it is up to the employer when this will change to white. Workers think the white card means a better position (more long term employment). Employers force over time until 12 o’clock at night, although they know this is against the law. But workers are scared to refuse".

- Mr. Yen Sokheang: "Many women workers at his factory have had abortions because they are afraid to lose their jobs. They can not get maternity benefits because their contracts are less than one year. If the employers see pregnant women workers, their contracts will not be extended".

- Mr. Chun Pov, from Cement Factory in Kampot: "Many workers in Cement factory do not know about their contracts. Normally, the employer agrees to employ and worker start to work. When the employer is not happy workers will be dismissed without any notice or benefits. Occupational Safety and Health is another main problem in his factory".

- Mr. Tep Choy, Siem Reap Construction Union: "95% of construction workers do not understand what FDC and UDC are. It very much depends on employers and sub-contractors. There are poor working condition and very little personal protection equipment (PPE). Workers get daily rate payment, but women receive less than men although they have the same work. Workers lodge their complaints to local authorities when they have problems but the local authority asked workers to pay them in advance before settling the problem. When workers have work-related accident, co-workers send to the hospital.

- Ms. Tol Sothea-Beer Promoter in Siem Reap: "There is no written labor contract for beer promoters. Employers just asks them to write his/her CV and have an interview before employing. She used to work as a Tiger Beer Promoter for 6 years but received no benefits when she resigned from this work. Employers provide only one box of beer during Khmer New Year. As a beer promoter she has been forced to drink and has been sexually harassed. The company formed its own
union and fought against the real union. Hieneken beer company had a mass lay-off for workers but gave notice for 15 days only.

- Mr. Chen Chansotha-Gov’t official from Ministry of Labor and Vocational Training. "You can not stop using FDC. You should give employers flexibility, which the law also allows. As a labor inspector he has to implement the law. Different interpretations are each person rights. All kinds of contracts must receive the same benefits as stated in the law. You can logde the complaint to provincial labor department or ministry if there is a violation of the law. You have to survey the number of workers that need FDC and how many want UDC. Both employer and worker have to solve this problem for a win-win situation.

- As a moderator Pong–Sul Ahn summarised the key issues raised by the panelists and came up with his observations as below:
  1. Many workers do not know what FDC and UDC are. Hence, awareness raising training needs to be conducted at respective workplaces. Ministry official also mentioned that because both verbal and written employment contract enables workers to entitle to the same benefits, the workers should know about their entitlement and claim their benefits to the employers.
  2. The interpretation of Article 67 of the Labour Code by the ACF has to be respected by all parties because the ACF is constituted by tripartite representatives. The FDC must be brought to discuss and negotiate at the tripartite committee instead of requesting the interpretation of the Constitutional Council.
  3. Trade unions all know the difficulty of FDC, undermining workers’ rights and reducing workers' benefits. In order to improve the FDC system, workers and trade unions should lodge complaints to the provincial labour departments or the central office against the violation of the law.
  4. Trade unions need to carry on a campaign at national and provincial level to mobilize grass-roots workers and bring the FDC to a negotiation table with the employers and the government.
  5. Some participants doubted the neutrality and accountability of the LAC, but the majority of the participants believed in the LAC as a tripartite bargaining place on the FDC. At the tripartite negotiation, to make the role of the LAC more accountable, trade unions may like to seek independent organizations like the ILO to observe the negotiation and provide technical assistance.

8) Group discussions and adoption of a Master Action Plan

Group Discussion
- After group reports, a National Action Plan has been developed as below:

<table>
<thead>
<tr>
<th>Priorities</th>
<th>Time Frame</th>
<th>Responsible</th>
</tr>
</thead>
</table>
| 1- Provide awareness raising, disseminate to members, workers on impact of uses of labor contract of FDC:  
  - Develop training materials (content, leaflets, other campaigning materials)  
  - Collect information from members about difference kind of contract  
  - Conduct training, workshop and meeting  
  - Place some stickers in the public areas and tuk tuk  
  - Raise workers concerned through radio and TV  
  - Urge Ministry of labor, enterprises to give chance for worker accept contract by their own choice before start working. | Done and on-going | Union Organizers |
| 2- Strengthening and increase members support:  
  - Organized and non-organize workplace | Done and on-going | Union Organizers |
| 3- Prepared union proposal for negotiation with employer (Individual Union and National)  
  - Collect information from the workplace on affective using FDC  
  - Organizing  
  - Provide training/awareness raising to members  
  - Prepare union's proposal for negotiation  
  - Summit union's complain to Provincial Labor Department or MoLVT  
  - Seek cooperation with other related national institutions, international | July 2012 | Federation Leaders and Confederation Leaders |
| 4- Submit proposal to the Ministry in charge of labor to settle the problems and if failed, a tripartite mechanism will be used.  
  - The issue must be discussed at tripartite committee  
  - Find solution in common benefits (win win solution)  
  - No need to interpret this law at Constitutional Council  
  - We need technical assistance  
  - We need observers  
  - The report of result of discussion must be truth, accuracy and acceptable by all parties  
  - International cooperation will improve the image in the public. | July – August 012 | Working group Federation Leaders |
| 5- Signal dissatisfaction on use of FDC for long-term employment  
  - Red ribbon wearing sign on T-Shirt, leaflets  
  - Picketing and Express unions view at the public events | Sep 2012 May 2013 | All members Federation Leaders |
9) Closing Remarks

- **Mr. Kim Chan Somnang:** "on behalf of Brother Som Aun, I represent NACC has an honor and good opportunity to join this two days conference. As NACC representative I fully support the 5 priorities results we had discussed. I hope these result will become a real action although during the discussion we faced differences but at the end we have come up with a common platform. NACC will join further discussion after this conference even some points need to be compromised with other union. As informed during the conference some points are on-going. I'm sure these results will be benefits to all our members and I will share this information to other affiliates as well. I can say that this two days we have done a successful work and I wish all participants go back home safely, especially for those from the provinces.

- **Mr. Srey Kim Heng**, representative of CCU. "First of all, I would like to thanks Bro. Pong Sul, ILO representative, union representatives from local and national that spends their value time to participated full two days conference. I would say that this 2-day conference has been actively discussed by all our participants and come up with good points but I would like to request that this has to further follow up because FDC has been badly affected to our brothers and sisters at the workplace for many years. I hope unions' complaints to change from FDC to UDC will become a law and anti-union discrimination will be finished" Finally, he wishes all participants good health and success with their work.

- **Mr. Pong-Sul Ahn:** "Dear Brothers and Sisters, we have had this two-day conference on FDC and UDC. Before this conference we made a big investment in organizing the regional workshops for your own rights and for the development of your trade union. Because of that, we were ambitious to achieve a good result from the conference. The two-day conference has been successful with the concrete outcomes of the action plan. I would like to thank you all that actively participated and contributed to the discussions. I also would like to thank our brothers and sisters who came from the provinces and provided inputs as well as officials from the Ministry of Labor and Vocational Training, especially HE. Seng Sakada and Mr. Chansotha, who is still with us to observe the results of the conference. It is a great attention paid by the ministry and it is also a good signal to take this issue for the future negotiation and discussion with employer, trade union and government. I also appreciate Ms Sandra DÁMICO representing the employers and showed willingness and readiness to discuss on the FDC. As result of the conference we have a Master Plan to be implemented and we have a time line. There are a lot to do in workplaces to achieve our goal. Training on the FDC with members and workers is one of them. I would like to encourage all of you to really take this agenda at your workplace and consolidate the efforts to take this issue as a national agenda to discuss at the LAC or another tripartite body and then come up with a solution. I have to say now that we have had a lot of good discussions and made good advancement on the FDC issues, but somehow there is need to have giving and taking bargaining on this matter. Maybe the employers may bring their own agendas at the bargaining table, so you need to have a good understanding on the system. You may lose something but gain something. I also encourage the government to facilitate the process of the bipartite discussion. I wish you all have a safe trip back to your place. I thank Bro. Rithy, Bro. Vathanak, Bro. Kimly and Sister MC for their hard work for the success of this conference. Thanks to all
union leaders who attended and guided this conference. With these all efforts have brought this conference successful. Thank You.

III- Part C,
Conclusions and Evaluations:

- The Conference was conducted according to the schedule and had remarkable results with participation from 95 union representatives, employer, government, and labor-supportive for a total of over 115 participants.
- The concerns over the views on fixed duration employment contracts (FDC) were explicitly demonstrated and the need for changes of its misuses were expressed, including effects on freedom of association, collective bargaining rights, health conditions, benefits and job security of workers, and workers’ access to decent work as described in the Cambodia DWCP 2011-2015.
- To improve the situation, all participants joined the working groups, presented their group outcomes, and consolidated the five key priorities into a national action plan. However, according to the current situation the government also wished to discuss this issue at its Ministry of Labor and Vocational Training working group. The conference then decided to choose priority number 4 as the first step for action to be taken, submitting their letter to the government and requesting an urgent discussion in the tripartite group. The ILO–Trade Union for Social Justice Project in Cambodia has been asked to act as a facilitator for a union discussion a week after the Conference. As clearly stated in the national action plan, the unions will be committed to priority number 5 if priority number 4 cannot succeed through the tripartite discussion.

Evaluations of the Conference by Participants

1) How is the topic discussed at the conference related to your work?
   0 Not related    7 Medium    55 Very much

2) What was the point that you found most useful?
   - FDC and the need for its change
   - Presentation from the 4 provinces
   - The Inter-Union Committee able to attend this conference
   - Panel discussion and group discussion
   - Experience sharing from different country by ITUC-AP
   - Presentation by ILO, ACF and Yale Report on Tearing Apart at the Seams
   - Representative from employer, government and unions joint this conference
   - The joint National Action Plan

3) What was the point that you found useless/ you don't like?
   - The response of official from the government
   - The difference view of union with regards to FDC
   - Some participants did not respect the time
   - Some questions were not related to the subject discussed
• Employer representative just stays for the opening
• Some union leaders left before ending the conference

4) What would your suggestion to improve this?
• Discipline should be improved in the conference (no telephone ring and come on time, questions and answers must be related to the points discussed)
• The employer representative should stay until the end of the conference
• Provide more training to local unions and provinces

5) In general, is the conference useful for you and your union?
0 No, 2 Some 60 Very much

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IV- Part C, Annex

**Final Programme:**
**ILO/ Trade Union Conference on the Current Employment Contract Practices and the Need for its Changes**
**Inter-Continent Hotel Phnom Penh**
**27 - 28 June 2012**

**Day-One: 27 June 2012**

<table>
<thead>
<tr>
<th>Time</th>
<th>Discussion Themes</th>
<th>Key Actors</th>
<th>Coordinators/facilitators</th>
</tr>
</thead>
<tbody>
<tr>
<td>07:30-08:45</td>
<td>Registration</td>
<td>• Kimly, Admin. Asst</td>
<td>• Nuon Rithy ILO Consultant</td>
</tr>
<tr>
<td>08:45-09:00</td>
<td>Announce program and salutation to national anthem</td>
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<td></td>
</tr>
<tr>
<td>9:00 – 09:50</td>
<td>Opening session:</td>
<td>- Mr. Pong-Sul Ahn</td>
<td>Ms. Ou Tepphallin</td>
</tr>
<tr>
<td></td>
<td>- Key note from ILO</td>
<td>- Union Representatives (Mr. Ath Thorn-CLC, Mr. Vong Sovann-CCTU)</td>
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<tr>
<td></td>
<td>- Union representatives</td>
<td>- Ms. Sandra DÂMICO</td>
<td></td>
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<td></td>
<td>- Key note from CAMFEBa</td>
<td>- HE. Seng Sakada</td>
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<tr>
<td></td>
<td>- Key note from MoLVT</td>
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<tr>
<td>09:50-10:30</td>
<td>Group photo and Coffee Break</td>
<td></td>
<td></td>
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<tr>
<td>10:30-10:45</td>
<td>Introduction to group</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Day Two: 28 June 2012

<table>
<thead>
<tr>
<th>Time</th>
<th>Discussion Themes</th>
<th>Key Actor</th>
<th>Coordinators/ Facilitators</th>
</tr>
</thead>
<tbody>
<tr>
<td>07:30-8:30</td>
<td>Registration</td>
<td></td>
<td>Kimly</td>
</tr>
<tr>
<td>08:30-09:30</td>
<td>Union views (position) on employment contracts in current labor law and practices</td>
<td>Panelist discussion representing by sectors: Ms. Suon Kunthea-Garment in PP (1), Mss.</td>
<td>Pong-Sul Ahn- ILO</td>
</tr>
<tr>
<td>Time</td>
<td>Event Description</td>
<td>Organizer</td>
<td></td>
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</tr>
<tr>
<td>09:30 – 10:00</td>
<td>Open Floor for Discussion on generic employment contracts Q and A</td>
<td>Srun Chanthorn-Shoe SHV (2), Mr. Yen Sokkheng-Garment Kpg Cham (3), Mr. Chen Chansotha-Gov’t official (7), Mrs. Tol Sothea-Beer promoter SR (6), Mr. Tep Choy-Construction SR (5) and, Mr. Chhun Pov- K-Cement Kampot (4).</td>
<td></td>
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<tr>
<td>10:00 – 10:20</td>
<td>Coffee Break</td>
<td>Plenary session</td>
<td></td>
</tr>
<tr>
<td>10:20 – 12:00</td>
<td>Development of Master Action Plan for national and regional levels</td>
<td>Group division</td>
<td></td>
</tr>
<tr>
<td>12:00-13:30</td>
<td>Lunch Break</td>
<td></td>
<td></td>
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<tr>
<td>13:30-13:40</td>
<td>Energizer game</td>
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<td>13:40 - 14:30</td>
<td>Group report</td>
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<td>14:30-15:10</td>
<td>Q&amp;A</td>
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<td>15:10 -15:30</td>
<td>Coffee break</td>
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<td>15:35 – 15:50</td>
<td>Adoption of the Master Action Plan</td>
<td>Plenary session</td>
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<td>15:50-17:00</td>
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<td>- Conclusion of the workshop</td>
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Speech at
ILO/Trade Union Conference on the Current Employment Contract Practices and the Need for its Changes
By Pong-Sul Ahn
Senior Specialist on Workers’ Activities

- Mr Seng Sakada, Director General, Ministry of Labour and Vocational Training
- Mrs. Sandra D’AMICO, Vice President of CAMFEBA
- Dr Vong Sovann, President of CCTU
- Representative from the NACC
- Representative from the CLC
- Sisters and Brothers
- The media

On behalf of the ILO, I have the pleasure to warmly welcome you all to this conference, which will discuss the FDC system in Cambodia.

As you know, the DWCP for Cambodia, 2011-2015, was adopted on 29 February 2012 by the ILO and the tripartite constituents – the government, the employers and trade unions. It has three priorities such as (1) improving IR and rights at work, (2) promoting an enabling environment for decent employment growth, with particular focus on youth, and (3) improving and expanding social protection. Freedom, Equity, Security and Human Dignity are at the heart of decent work. If the usage of Fixed Duration Employment Contract (FDC) prevails, no job security could exist and thus Decent Work cannot be achieved as well.

The usage of the FDC is rampant, in the garment and shoe sectors, sharing around 60-70% of the factories registered by the ILO BFC (Better Factories Cambodia) for its monitoring on compliance with labour standards. The unofficial figure of using the FDC may be higher than the BFC data. The use of FDC is also spreading to other sectors. However, Article 67 of the Labour Code states that the FDCs should be used primarily for temporary work to replace the absence of regular employment, seasonal work, and occasional periods of extra work or a non-customary activity of an enterprise.

Trade unions in Cambodia claim that employers have made use of the FDC as a tool to threaten workers not to join trade unions, to intimidate union leaders to leave workplace and even to terminate the employment of the union leaders and members. They also opine that FDC has been manipulated to avoid the formation of new trade unions and to undermine trade unions activities and their collective bargaining agreements. If so, it violates ILO conventions No.87 on freedom of association and No.98 on the right to have collective bargaining with which the government of Cambodia is a signatory. FDCs has created not only employment insecurity for many workers but it has also damaged harmonious industrial relations in the country as many workers and unions lodged complaints to the AC in the past.

Recognising the overuse of the FDC at workplace, the bipartite parties – trade unions and the GMAC - agreed to carry out a fact-based joint research on the prevalence and nature of short term employment contracts in the garment industry when they had a MOU for improving industrial relations in the garment industry on 28 September 2010. Both parties also agreed to examine, on the basis of the research result, limiting the use of fixed duration contracts to legitimate reasons such as business cycle, seasonality, and related reasons. Unfortunately, the
joint research was not conducted until now, but the report of Yale Law School on the FDC released in April 2011 would be a good reference in understanding the reality of usage of FDC.

The Arbitration Council is a statutory body set up by the Prakas on the Arbitration Council (no. 338, issued on 11 December 2002) and the AC arbitrators are representatives nominated by the bipartite partners on an equal footing. Therefore, any decision made by the AC should be respected by all parties. The bilateral debate between trade unions and the GMAC on the interpretation of Article 67 (2) has continued for many years. The AC award issued on 23 July 2003 on the case of Jacqintex Garment Co., Ltd. concerning FDC states that The Arbitration Council finds that contracts of fixed duration employment shall automatically be transformed to undetermined duration contracts where the total duration of the employment contract (including the period of the initial contract and any renewals) exceeds 2 years. So all parties have to refer this award as a practice of the law.

The concerns of trade unions with the FDCs have been sympathised by various reports including the International Trade Union Confederation (ITUC) report on “Internationally Recognised Core Labour Standards In Cambodia: Report For The WTO General Council Review Of The Trade Policies Of Cambodia (Geneva 1-3 November 2011)”, the study paper of Yale Law School, titled “Tearing At the Seams: How Widespread Use of Fixed Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry (New York and Phnom Penh, April 2011)”, and the ITUC GS’s letter sent to the GS of the GMAC dated 2 March 2012.

In order to address the concerns of workers and trade unions on FDC, trade unions had a national workshop on 19 and 20 December 2011, with participation of 52 people from 7 confederations, 2 non-affiliated federations and labour-supporting organizations. After discussing the misuse of the FDC system, the unions adopted a resolution urging the concerned parties to apply the law and to respect labour rights.

To increase the level of understanding for unionists on the legal and practical barriers of FDCs and to develop union campaigns and actions for the change of the system, trade unions under the financial and technical support of the ILO held four regional workshops, namely, the first one in Kampot Province on 28 – 29 April; the 2nd one in Kampong Cham Province on 19 – 20 May; the 3rd one in Siem Reap Province on 26 -27 May; and the 4th one in Sihanouk Province 9-10 June. At the next technical session, you will receive a concerted report on the results of the four workshops and action plans designed at the workshops, but I would like to share with you on the problems of their employment raised by many participants, relating to low wages, deficit working conditions, termination of workers without giving legal compensation, forced overtime, discrimination against union, use FDC to control workers from joining and forming a union and to exploit workers’ other benefits like seniority bonus, remunerations, maternity benefits and annual leave, etc.

Hence, this conference, being attended by over 90 unionists from the confederations and trade unions in the four provinces, is aimed consolidating efforts of trade unions for promoting job security and trade union rights as well as adopting a national plan of action for a safer employment of workers. Union solidarity is indispensable to ensure rights at work and realize fundamental principles and rights at work as well as to achieve a goal of decent work for all workers in Cambodia.
Finally, I hope the Conference provides an opportunity to the ILO tripartite constituents as well as other key actors to initiate meaningful social dialogue to further discuss FDC matters and reach a consensus for its amicable solution. Thank you very much.

**OPENING REMARKS MS. SANDRA D’AMICO, VICE PRESIDENT OF THE CAMBODIAN FEDERATION OF EMPLOYERS AND BUSINESS ASSOCIATIONS (CAMFEBA)**

**THE ILO/TRADE UNION CONFERENCE ON THE CURRENT EMPLOYMENT CONTRACT PRACTICES AND THE NEED FOR ITS CHANGES**

**INTER-CONTINENTAL HOTEL 27-28 JUNE 2012**

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Respected Excellency Seng Sakada, Representative of H.E. Dr. Vong Sauth, Minister of Labor and Vocational Training,

Mr. Pong Sul Ahn, Senior specialist in Workers’ Activities

Dr Vong Sovann, Mr. Som Aun, Mr. AthThorn and Union representatives from around the country

Your Excellencies, Distinguished guests, ladies and gentlemen

On behalf of Cambodian Federation of Employers and Business Associations (CAMFEBA), our President Mr. Van who is currently attending a regional AFTEX meeting and our members, it is my great honor to be invited to attend this conference organized by the ILO and the unions. It is an ILO and Trade Union Conference, *(ad lib: not a tripartite conference as mentioned earlier)* and I am grateful that employers are given the opportunity to provide some remarks on the agenda.

*“Ad Lib based on notes from remarks: Before I read my speech, let me take this opportunity to remark briefly on the opening remarks of the ILO and the unions.*

1. I wish not to deliberate on the challenges that unions face – I have listened carefully to the conference. I wish to share only that employers have similar challenges and stories as unions. We have lost clients, lost jobs, lost orders and assets because of the enormous amount of strikes. It is not only the worker that is suffering, but industry is suffering too.

2. I think it is wrong to say that Cambodia is in breach of international conventions, in particular the Freedom of Association convention number 87. It is well recognized that freedom of association is well practiced in Cambodia.

3. Mr. AthThorn mentioned that employers exploit a fragmented union movement. I must say that employers disagree with this. We have struggled over the years to negotiate with unions, precisely because you are fragmented and we spend hours negotiating with union 1, then union 2, then union 3 to reach agreement, only to start all over again because the first union disagrees and has had different thoughts. A fragmented union movement is precisely why we requested for a trade union law, in the hope that a more consolidated trade union movement will provide a representative voice to speak too, to negotiate with.

4. Dr Sovann mentioned that we all have different interpretations of FDC and this is correct. Employers also have challenges and it is important that the challenges and different perspectives are discussed and communicated.

5. I also wish to remind the conference here today that workers and unions do not exist without employers, and employers do not exist without unions. In this regard, it is important that both sides are considerate of the challenges we each face.
CAMFEBA received an invitation letter from Mr. JiuangWang, Director of the ILO which stated the discussion today is about employment contract practices and the need for changes, in particular:

1. To bring about deep concerns over widespread use of the Fixed Duration contracts
2. To report results and experiences of four provincial workshops held in May and June
3. To consolidate efforts of trade unions in different regional areas for job security and respect for trade union rights in promoting decent work and finally
4. To adopt national union resolution and launch a national union campaign for safer employment of workers

This agenda you have set, is admirable and exhaustive! It is my hope that in the course of deliberations in the next two days, you will consider the broader economic environment and the changes in the employment environment in general.

Ad Lib: Ten years ago the economic environment was very different today. We have seen many things happen and change. We have gone through a financial crisis that continues to affect deeply, particularly in the EU. We remain uncertain of the impact that all this crises will have on Cambodia. We cannot use the crises as main issue to stop negotiations or discussions, but we need to remember that our business environment, industries, and opportunities are vastly different than 10 years ago.

Employers are facing similar challenges as unions in employing workers and ensuring we create decent work and employment opportunities. Our current contracting modalities do not allow for the flexibility required in industry which is vastly different today than it was 10 years ago. Contracting is challenging as it does not allow to create new jobs and to provide economic opportunities in new industries such as exploration and our construction sector. It does not allow to provide flexible part time opportunities in new emerging industries such as call centers, service centers, logistics and packing and replacement of workers such as part time contracting which is very common in most countries across the asean region. Dr. Sovann refers to this as casualization of work which is a necessary form of employment, particularly for young people and youth today.

Unions are in majority active in the garment sector, and the particular challenges you face and deliberations you have today, must consider the broader economic environment and the vast number of youth who are graduating and require to find work experience. Many young people work part time in the morning and study in the afternoon. They do this for more than 2 years at a time to gain experience and skills. It is important for employers to provide such opportunities to youth, an important part of the DWCP as the ILO mentioned.

If we review legislation in the region, we see that Cambodian law is in particular on fixed duration contracts, limits the duration to 2 years which is the first challenge for employers. In other countries, it is 6 or even 10 years in China. The number of renewals within the duration as well as the coverage of benefits and employment seniority is in particular the challenge and question we all face in how the law is implemented in Cambodia. This is the issue for parties to discuss and agree on.

I believe that for the garment industry in particular, you have an employer counterpart through GMAC who is willing, open and ready to discuss different perspectives so that worker and employer concerns can be addressed. They have always been open and ready to talk to solve challenges and discuss issues.

It is important that in ensuring job security, good working conditions and decent work, we do not limit the opportunities of job creation and do we do not limit the opportunities for young people to find employment to gain experience. How the investor views its opportunity to invest in Cambodia, is in large part impacted by its opportunity to create jobs and employment based on the needs of the industry.
**Our competitiveness as a Cambodian economy needs to consider the broader ASEAN and opening up of borders in the future.** Our labour and industrial relation laws play an important role in this respect. Being too restrictive to achieve a one sided agenda that is not balanced and considers not only the employer and the worker but our country competitiveness, will not benefit our ability to be competitive in the future. Employers should be a partner of the Union agenda in promoting decent work and in particular on safe work that you are discussing today and unions should be on the employers agenda too. I encourage you to seek joint employer and union activities on a topic in particular that are of joint concern.

Your Excellency’s, ladies and Gentlemen, we have just received the letter # 673 dated June 20, 2012, of the council of ministers within Approval of Samdech Akkak Moha Sena Padei Decho Hun Sen, Prime Minister of Cambodia, to push the discussion on Trade Union Law as soon as possible. I wish to confirm that employers, represented through CAMFEBA are open and at the table to continue supporting our respective legislation developments and deliberations.

To conclude, I would like to express my sincere appreciation to H.E. Seng Sakada for sparing his time to preside over this conference. I know your agenda is particularly full with ASEAN and we are privileged to have your presence and guidance.

I wish all of participants’, as unions would say, brothers and sisters, success in your future endeavors and a fruitful conference. Employers look forward to working together and hearing the results of the conference.

Thank you!

**Sandra D’AMICO**

**Vice President**

**Cambodian Federation of Employers and Business Associations (CAMFEBA)**
Opening Remarks by H.E Seng Sakada, Director General of the General Department of Labor, Ministry of Labor and Vocational Training

On the Opening of Union Conference on the Implementation of Current Labor Contracts and the Need for its Changes

27-28 June 2012
Inter-Continental Hotel, Phnom Penh

Mr Pong Sul Ahn, ILO senior specialist to Bangkok
Ms Sandra D’AMICO, employer representative
Mr Kim Chan Samnang, representative of the National Union Alliance Chamber of Cambodia
Mr Vong Sovann, President Cambodian Confederation of Trade Unions
Mr Ath Thorn, President Cambodian Labor Confederation
Representative of Royal Government of Cambodia (Ministry of Labor and Vocational Training)
NGO representatives
Representatives of workers from the six provinces and capital,

Distinguished guests, ladies and gentlemen,
It is a great pleasure for me to be here with you all to make a few opening remarks at the Union Conference on the "Implementation of Current Labor Contracts and the Need for its Changes" organized under the financial support of ILO. To date, the national tripartite workshop on globalization and regional integration and new technology discoveries has focused on the current practices and future opportunities of industrial relations in Cambodia.

Likewise, industrial relations have become a source of great concern over the use of fixed duration contracts (FDCs). The Cambodian Labor Law defines two types of labor contracts:

1- Labor contracts of unspecified duration and
2- Labor contracts of specific duration or a fixed duration contract, which is made in writing, with a clear start and end date, and does not exceed two years. An FDC can be renewed one or more times as long as the renewal does not surpass the maximum duration of two years. However, in case of no prior notice the contract shall be extended for the duration equal to that stated in the first contract or in case of no prior notice the contract shall be deemed a contract of unspecified duration provided the total length of the renewed contract exceeds two years. Although the labor law allows the use of and specifically defines FDCs their daily practice by both parties remains inconsistent.

We all are concerned that the use of FDCs will have such disadvantages as:

- No job security for workers (envisioning if the employer will renew the contract when it expires)
- Few benefits (a part from the garment and footwear sectors)
- Being conducive to preventing professional organizations from getting bigger.
- Easiness to terminate a labor contract.
- Deprivation of professional organizations' rights and freedom
- Obstacles to increased productivity
- Oppression, exploitation, discrimination, elimination of rights and freedom of collective bargaining, and so forth. These are not all obstacles to the use of FDCs as every contract is made with the agreement of both the employee and the employer. In addition the Labor Law
also clearly states measures to protect worker interests that any provision of a contract that contradicts the law shall be voided.

As we all are aware, even if legal provisions exist if a party has no will to enforce, and even if we use a contract of any type, problems still arise. The current use of FDCs is provoking serious confrontations in industrial relations. It is however not something that we should be hopeless about because if we try hard to find a good solution that will not cause any party, the employee or the employer, to lose their interests. Moreover I feel that employees and employers are inter-dependent partners. As such both parties need to foster the principles of good faith and mutual trust, communicate effectively, are willing to abide by the law, accept each other's legality, exchange information, promote a mutual understanding atmosphere, have common structures and proper negotiations, promote training, and so on. These are the core of good workplace cooperation, build a peaceful workplace and especially promote social stability. This may in part be a solution which can alleviate the concern over the use of FDCs.

I hope that you all will find the presentations, questions and answers and discussions in these two days most useful. The objectives of the presentations are to present challenges we are currently faced with and some possible solutions that we need to address them and to share with you good experiences from all participants this conference. Furthermore I wish to recommend the conference as follows:

- Explore ways to compromise between employers and employees and submit those outcomes to the tripartite committee, concerned with interpreting this labor contract issue, chaired by H.E. Vong Sauth, Minister of Labor and Vocational Training.
- Continue to enforce the MoU entered between employees and employers, which was completed since September 2011.
- Sit down to work together, especially for workers and employers, to improve working conditions.

Inclosing, I strongly hope that this two day conference will bring about a successful solution to the issue of FDCs. May I wish you all the best of health and success in your work. With this, I declare the National Union Conference on the Implementation of Current Labor Contracts and the Need for its Changes officially opened.

Thank you very much.