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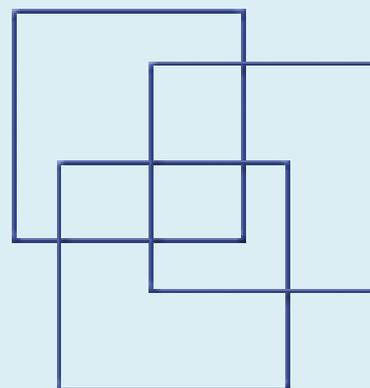
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Report of the Third Regional Seminar on Industrial Relations in the ASEAN Region

25–26 November 2010

Manila, Philippines



ASEAN-ILO/Japan Industrial Relations Project

ILO Regional Office for Asia and the Pacific

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Foreword

The Government of Japan has provided funds for the implementation of a project for improving industrial relations in the ASEAN countries during 2008–11. The project is being implemented jointly by the ASEAN Secretariat and the ILO bringing together representatives of governments, workers' and employers' organizations.

An important element of this project has been a series of tripartite seminars providing a forum for a robust exchange of views on good practices and implementation of industrial relations policies among the tripartite constituents of the ASEAN countries. The first seminar, held in 2009, focused on social dialogue and collective bargaining trends in member states. The second in February 2010 looked at the use of social dialogue and collective bargaining in formulating national policy against the backdrop of the global financial crisis. The third, the subject of this document, centred on legal frameworks for industrial relations and the challenges of drafting and implementing labour legislation and regulation and managing disputes within that context.

ASEAN constituents have been leaders in the drive to change, reform and update industrial relations legislation and regulations against a backdrop of wider development in the region as ASEAN manages the transition towards even greater economic integration. But despite this commonality of purpose, not all ASEAN countries face the same challenges and issues. Some economies and regulatory systems are more mature than others, providing valuable opportunities to share views and experiences as an aid to convergence over time towards a decent work environment across the region.

The seminar consisted of five main sessions across two days. The first session considered the case of Lao People's Democratic Republic through discussion how labour disputes were resolved. The second session looked at the legal framework and practice for dispute resolution through a series of presentations by representatives from tripartite interests in Japan, Singapore and Thailand. The third session considered the social dialogue in the process of amending labour legislation through the sometimes different experiences of Cambodia, the Philippines and Viet Nam. The fourth session focused on improving industrial relations, specifically by identifying labour law provisions that led to disputes. The session consisted of presentations by representatives of Indonesia, Lao People's Democratic Republic and Malaysia. The fifth session turned attention to the industrial relations project in the overall ASEAN framework with input from Mr John Ritchotte, ILO DWT for East and South-East Asia and the Pacific, and Mr Kenichi Kamae, ILO Regional Office for Asia and the Pacific.

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Acronyms and abbreviations

APINDO	Employers' Association of Indonesia
ASEAN	Association of Southeast Asian Nations
CAMFEBA	Cambodian Federation of Employers and Business Associations
CLC	Cambodian Labour Confederation
DOLE	Department of Labor and Employment
DOLISA	Department of Labour, Invalids and Social Affairs
ECOP	Employers Confederation of the Philippines
ECOT	Employers' Confederation of Thailand
FFW	Federation of Free Workers
GMAC	Garment Manufacturers Association in Cambodia
ILO	International Labour Organization
IR	Industrial Relations
ITCs	Industry Tripartite Councils
JBFB	Japan Business Federation
JTUC-RENGO	Japanese Trade Union Confederation
KSBSI	Confederation of Indonesian Prosperity Trade Union
LFTU	Lao Federation of Trade Unions
LNCCI	Lao National Chamber of Commerce and Industry
MEF	Malaysia Employers Federation
MHLW	Ministry of Health, Labour and Welfare
MLSW	Ministry of Labour and Social Welfare
MLVT	Ministry of Labour and Vocational Training
MOHR	Ministry of Human Resources
MOL	Ministry of Labour
MOLISA	Ministry of Labour, Invalids and Social Affairs
MOM	Ministry of Manpower
MOMT	Ministry of Manpower and Transmigration
MTUC	Malaysian Trade Union Congress
NCPE	National Congress Private Industrial of Employees
NGO	non-governmental organization
NTUC	National Trade Union Congress
SNEF	Singapore National Employers Federation
TIPC	Tripartite Industrial Peace Council
TUCP	Trade Union Congress of the Philippines
VCCI	Viet Nam Chamber of Commerce and Industry
VGCL	Viet Nam General Confederation of Labour

1. Welcome and opening session

Moderator: Mr John Ritchotte, Industrial Relations Specialist, ILO DWT for East and South-East Asia and the Pacific

1.1 Welcome address by the ILO and the MHLW representatives

Ms Alcestis Abrera-Mangahas, Deputy Regional Director for Policy and Programmes, ILO Regional Office for Asia and the Pacific

Ms Abrera-Mangahas traced the evolution of the important discussions at seminars within the ASEAN-ILO/Japan Industrial Relations Project. The first in 2009 focused on social dialogue and collective bargaining trends in member States. The second in 2010 examined the use of social dialogue and collective bargaining in formulating policy at the national level in the context of the global economic crisis. Current discussions centre on legal frameworks for industrial relations and, as importantly, the use of dialogue and consultation in the development and drafting of labour legislation.

Ms Abrera-Mangahas noted that ASEAN Member Countries are among the most active in the region in terms of reviewing and amending legislation. The intense interest in updating legislation reflected a renewed confidence and belief in the power of labour law and legislation as a foundation for a sound industrial relations system in each member country and across the ASEAN. She cautioned the delegations, however, that labour legislation had the potential to be the source of disputes between workers and employers or between social partners and the government itself. The problem of disputes arising from the law, however, could be greatly reduced if workers and employers were closely involved with the drafting of the legislation. Careful notes should be taken during the drafting process to ensure that all parties are aware of the intent of the drafters. She stressed that the development of good legislation required good process. Experience garnered by the ILO and in member countries showed that this process must include a robust tripartite dialogue in order to be successful. More than most other kinds of legislation, labour law must be – to the greatest extent possible – practical, simple, and easy to apply.

Ms Abrera-Mangahas closed her message expressing hope that during the Seminar, the tripartite participants would consider and compare different tripartite practices and processes, drawing from the very rich experience among ASEAN Member Countries and, in the process, identify some of the root causes of disputes.

Ms Chihoko Asada, Deputy Assistant Minister, Ministry of Health, Labour and Welfare, Japan

Ms Asada opened her message on a positive note with the observation that, although almost all Asian economies had been affected by the recent global economic crisis, the region had been the first to recover and continued to be a driving force in the world. She lamented, however, that the fruit of economic growth was not shared by all, as poverty and inequity continued to be a concern in the region. Ms Asada noted the calls from Asia and the Pacific region economic leaders to share wealth equitably through a strategy for inclusive and sustainable growth. She advanced the idea that sound industrial relations could be a basis for sharing and extending the fruits of growth to all. She expressed the hope that dialogues between workers and employers seeking to promote productive activities and continuous capacity building among partners would contribute to sound and harmonious relations. She closed her message expressing the intention of the Japanese government to collaborate with ASEAN in promoting sound industrial relations and inclusive growth in the region.

1.2 Opening remarks

H.E. Rosalinda Dimapilis Baldoz, Secretary, Department of Labor and Employment, Philippines

Ms Baldoz stressed the importance of the seminar and the knowledge sharing taking place in ASEAN-Japan meetings on Industrial Relations. The process was taking place within the context of wider development in the region, she noted. ASEAN was at an important stage of transition toward realising the free flow of goods ahead of accelerated economic integration in 2015¹ and efforts to establish the ASEAN community by 2020. Secretary Baldoz praised the ASEAN Guidelines on Good Industrial Relations Practices, which were set in Hanoi on May 2010.

She also made reference to how instructive the ASEAN Charter² was in dispute settlement. It favoured consensus-building and persuasion and could be applied to industrial relations. Secretary Baldoz outlined past and current efforts of the Philippines in contributing to more harmonious industrial relations. Under the new Administration, the Government of the Philippines was stepping up efforts towards achieving the twin goals of job creation and poverty reduction under a framework of inclusive growth. The Government, through the Department of Labor and Employment, was aiming for faster disposition of labour cases and to reach out to more industries, enabling them to form tripartite councils to develop ethical and responsible self-governance.

In conclusion, she stated that the social partners' capacities need to be strengthened and improved, noting the increasing importance of social partnerships and the need for more effective tripartism and social dialogue at all levels. Labour, management and the Government should responsibly unite behind a common programme of job-rich growth and productivity enhancing reforms in an environment of industrial peace based on social justice.

2. Introduction: The Third Regional Seminar

The Third Regional Seminar of the ASEAN-ILO/Japan Industrial Relations Project was held from 25 to 26 November 2010 in Manila with the thematic title "Legal Framework and Practice for Labour Dispute and Settlement".

The Seminar was conducted with the following strategic objectives:

- For governments and social partners to share experiences of the foundation of sound industrial relations, the legal and regulatory framework as well as the process for amending it; and
- To provide valuable lessons through that sharing of experiences, for countries undergoing or planning to undergo legislative reforms industrial relations in.

The two-day seminar was hosted by the Department of Labor and Employment (DOLE) of the Philippines and organised by the ILO/Japan Multi-bilateral Programme, Regional Office for Asia and the Pacific (RO-Asia and the Pacific) in Bangkok, in collaboration with the ASEAN Secretariat. The Seminar was supported by the Ministry of Health, Labour and Welfare of Japan.

¹ The ASEAN Secretariat: *ASEAN Economic Community Blueprint* (Jakarta, 2008), pp. 6-10.

² The ASEAN Secretariat: *The ASEAN Charter* (Jakarta, 2008), pp. 22-23.

The Seminar was attended by tripartite partners' representatives of the government, workers' and employers' organisations of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Philippines, Singapore, Thailand, Viet Nam and Japan.

3. Lao People's Democratic Republic national workshop results and follow-up

Presenters: Mr Bounpone Mountivong, Deputy Director, Ministry of Labour and Social Welfare (MLSW), Ms Boutsaba Vilack, Technical Staff, Lao National Chamber of Commerce and Industry (LNCCI), and Ms Pathoumthong Luangvilay, Coordinator, Lao Federation of Trade Unions (LFTU)

Ms Boutsaba reported the result and process of a national workshop conducted in August 2010 that a scenario on labour disputes in Lao People's Democratic Republic, a description of how labour disputes were resolved and settled and the specific recommendations arising from the workshop. She cited an example of how disputes resulting from collective bargaining agreements were settled where tripartite partners settled issues through dialogue and consensus rather than conflict and confrontation. The process in Lao People's Democratic Republic was quite different from arbitration because the latter arrives at a solution based on decision of tripartite while arrangements arising from collective bargaining usually represent the choices or compromises of the parties concerned. The settlement of disputes through trade union action were limited and it could have the effect of guaranteeing industrial peace for the duration of the agreements either generally or, more usually, on matters covered by the agreement.

Some of the specific recommendations that could be undertaken as future steps arising from the workshop were: to promote the tripartite system and collective agreement by implementing the Law on Trade Union; to provide consultation on labour law for employers and workers and to revise some articles of labour law and lastly, to upgrade knowledge on fundamental principle for employers and workers.

Plenary discussion

- The percentage of workers hired by employers in Lao People's Democratic Republic (about 300 companies as direct employers and 20,000 companies as indirect employers);
- Estimates of the percentage of workers who know their rights with regards to labour legislation (most ordinary workers are not familiar with labour laws);
- Why there was a reported 25.5 per cent cancellation of labour disputes (labour disputes came from many companies where workers were not knowledgeable of the law and their rights, they just wanted an amnesty. After employers explained to workers that their complaints were not guaranteed, then they withdrew their labour dispute cases);
- Number of labour disputes from 2006 to present (some 1,080);
- How Collective Bargaining Agreement deadlocks are resolved (training is conducted to resolve Collective Bargaining Agreement deadlocks);
- Minimum wage implemented in the country (US\$50 a month and \$20 input);

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- If there were plans of amending laws in Lao People’s Democratic Republic (yes, and some laws that have already been amended are currently being implemented).

4. Legal framework and practice for dispute resolution

4.1 Legal framework in case of Singapore

Presenter: Mr Kelvin Ng Kwek Wee, Senior Labour Relations Officer, Ministry of Manpower (MOM), Singapore, Mr Hong Seng Toh, Deputy Director, Singapore National Employers Federation (SNEF), and Mr Ng Hoi Pin Emdund, Principal Industrial Relations Officer, National Trade Union Congress (NTUC)

Mr Ng Kwek Wee presented that the legal framework for industrial relations contained in the Singapore Employment Act and the Industrial Relations Act; dispute resolution practice in both unionised and non-unionised sectors and a discussion on the Singapore tripartite framework. The procedure for settlement of employment disputes began with the registration of a claim with Labour Court, followed by a preliminary inquiry and the process of settlement. If the claim was settled, a Consent Order was issued and if the claim was not settled, parties could appeal to the High Court.

A section of the report dealt with the frequency of union and non-union claims lodged between 1999 and 2009. Mr Ng noted that the examination of claims in both sectors followed a process enshrined in the Recognition of a Trade Union Employee Regulation. He concluded his presentation by discussing the Singapore Tripartite Framework which consisting of government, trade unions and employers adopting a partnership and problem-solving approach to prevent or resolve employment and labour dispute issues. At the workplace level, tripartism was also very much alive in Singapore as Tripartite Committees/Workgroups are also formed to deal with difficult employment issues.

4.2 Legal framework and practice for dispute resolution: A case study in Japan

Presenters: Ms Chihoko Asada, Deputy Assistant Minister, Ministry of Health, Labour and Welfare, Japan and Mr Koji Suzuki, Assistant Director, International Division, Department of International Affairs, Japanese Trade Union Confederation (JTUC-RENGO)

Ms Asada opened her presentation by describing the country’s legal framework and practice for dispute resolution. She explained the legal framework both in collective and individual labour relations with a detailed description of labour dispute resolution mechanisms and a discussion of a case study which examined the case of unfair labour practice by the Labour Relations Commission in Japan. The case study highlighted factors that contributed to the success or high performance of dispute settlement; trends in cases of unfair labour practice; determining who the “employers” were in the cases; the notion of duty to bargain in good faith and the Labour Commission’s decision when multiple unions exist in a workplace.

Mr Suzuki gave a presentation complementing that of the government and fleshing out scenarios concerning non-regular workers in Japan. It described how non-regular workers access labour dispute settlements through individual claims, the comparative trend of regular and non-regular workers in Japan and the state of unionisation in the country. He continued his presentation by discussing the services offered by JTUC-RENGO in helping non-regular workers organise. He explained to participants how enterprise-level management-labour relations work in Japan. He concluded his presentation by offering a possible role for Japan and ASEAN countries in the medium term to reduce insecurity and precarious employments and create decent work in the region.

4.3 Legal framework and dispute resolution in Thailand

Presenters: Ms Siriwan Akaravanich, Senior Labour Official, Bureau of Labour Relations, Department of Labour Protection and Welfare, Ministry of Labour (MOL), Thailand and Ms Siriwan Romchattong, Secretary General, Employers' Confederation of Thailand (ECOT)

Ms Siriwan Akaravanich detailed the policies and practices under Thailand's Labour Relations Act B.E. 2518 (1975). She explained that conditions of employment, changes in those conditions and the complaints arising from them were based on workplace agreements arrived at between the employer and the employee. She also elaborated on how demands and complaints arising from such agreements were settled. The process included adjustment of existing agreements, demands (or complaints) submission, and the receipt of demands, negotiation and conciliation. She also discussed the issue of unsettled labour disputes and the efforts being made to finally settle such cases; the process within the Thailand Labour Relations Committee; the role of the Minister of Labour; the appointment of arbitrators and the implementation of labour relations measures in the event of strikes or lockouts. She also highlighted the provisions for good faith negotiations contained in Thailand.

Ms Siriwan Romchattong added that employers in Thailand were pushing for a revision of Thai labour laws which had been in effect since the mid-1970s, saying that new work conditions need to be protected and regulated by law.

Plenary discussion

- If there is tripartite agreement reached in workplaces in the countries that presented for the Session, how do tripartite partners respond to the increasing number of non-regular workers? And if there is no tripartite agreement, the bilateral agreements presumably will come into effect at a workplace. How are these agreements promoted and to what extent do they protect the rights of the non-regular workers? In the absence of the either of two agreements, what does Singapore do to represent the non-regular workers?

Singapore responded that there was no difference between the regular and non-regular workers as long as the minimum conditions were set up by the Ministry.

Japan delegates said their country was trying hard to achieve equitable working conditions both for regular and non-regular workers and that, as far as possible, to encourage the transition from non-regular to regular work.

- A specific question for Singaporean delegates was who conducted preliminary inquiries, how they were carried out and what was its effect in the actual adjudication?

Delegates responded that preliminary inquiries were undertaken by an office of the Ministry and took place when the disputes occurred and that it was an opportunity for both employers and workers in a unionised establishment to explain their sides and possibly arrive at an early resolution. It was also an opportunity for individuals who were not covered by the union to try to settle a dispute with the employer.

- A question to all the presenters in the session requested information on laws being implemented to govern collective bargaining agreements (CBA) in their respective countries and how many CBAs had been achieved in the past year?

Thailand responded that about 20 per cent of workplaces have CBAs. **Japan** said that about 50 per cent of workplaces were covered by agreements.

-
- The Japanese panel was asked what was the percentage of non-regular to regular employees.

Japanese delegates said about 25 per cent of Japanese workers were classified as non-regular.

5. Social dialogue in the process of amending labour legislation

5.1 Social dialogue in the case of the Philippines

Presenters: Ms Violeta Ortiz-Bantug, Presiding Commissioner, National Labor Relations Commission, Philippines and Ms Lucila Tarriela, Vice President, Employers Confederation of the Philippines (ECOP) and Mr Alejandro Villaviza, Vice President, Trade Union Congress of the Philippines (TUCP)

Ms Ortiz-Bantug gave a presentation covering social dialogue in the process of amending labour legislation. The dialogue comprised three parts: Tripartism and Social Dialogue, Philippine Legislative Process and Social Dialogue in the Process of Amending Labor Legislation. The Philippines was committed to upholding its commitment to a tradition of social dialogue as a mechanism for resolving labour issues and as a process to promote inclusive labour market governance.

With tripartism in labour relations declared a state policy, workers and employers were represented in the decision and policy-making bodies of the government as provided in Article 275 of the Labor Code of the Philippines. In achieving this, she said that the Secretary of Labor and Employment or her authorised representatives could call a national, regional or industrial tripartite conference comprising representatives of government, workers and employers for the consideration and adoption of voluntary codes of designed to promote industrial peace based on social justice or to align labour movement relations with established priorities in economic and social development. She said that these tripartite dialogues and consultations which became an effective tool in addressing socio-economic issues and concerns faced by both employers and workers in the 1970s and 1980s was institutionalised in 1990 with the establishment of the Tripartite Industrial Peace Council (TIPC).

Ms Ortiz-Bantug explained that the establishment of the TIPC was also pursuant to the Philippines Government's commitment under Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) to institutionalise tripartism by providing for a continuing forum for tripartite advisement and consultation to help streamline the role of government, empower workers' and employers' organisations, enhance respective rights, attain industrial peace and improve productivity. She proceeded to discuss the creation and expansion of the TIPC. Ms Ortiz-Bantug then reported that efforts were being made by the tripartite partners to build partnerships along industry lines and to organise industry-based councils. She said that at present, there were Industry Tripartite Councils (ITCs) in six industries. Aside from creating partnerships, she said that the councils were envisioned to work towards influencing policy and sound industrial relations practices within each industry. She then showed the organisation of the TIPC as well as the tripartite bodies at the DOLE and other government agencies.

On the topic of the Philippine Legislative Process, she emphasised the importance of labour legislation in the economy and the achievement of balanced development. Legislation could be initiated by Members of Senate or House of Representatives, special interests groups, constituents and executive departments and agencies of governments.

Ms Ortiz-Bantug explained the procedure for a bill to become a law in the two legislative houses, the House of Representatives and the Senate. She also explained how the legislative process was engaged in the DOLE. She emphasised the crucial role of tripartism in legislation. The Department Orders of the DOLE were issued through the active participation of their social partners.

Ms Lucila Tarriela commented on the presentation that her organisation had always advocated the practices given by the DOLE. It was active in participating tripartite actions of the Department.

Mr Alejandro Villaviza commented on the part of the workers' sector, saying that two good things came from social dialogue and tripartism. These were the strengthening of ITCs and their ability to create a tripartite monitoring body so that complaints could be addressed, monitored and processed. This way they were able to discover if those cases were labour-related. As for legislation, he said that tripartism was working because bills were being deliberated then endorsed by the Congress. He gave the example of the proposed exemption of minimum wage earners from income tax. Regarding labour laws, he said that the party-list system allowed the election to Congress of candidates from the workers' ranks. These legislators were able to bring the workers' agenda directly into the legislative process. Mr Villaviza further added that after a series of consultations and hearings regarding industry wage adjustment, workers realised that industry-based wage adjustment required more time and work to come up with recommendations to be presented to the wage boards.

5.2 Social dialogue in the process of ongoing labour code amendments of Viet Nam

Presenters: Ms Nguyen Thuy Linh, Expert, Ministry of Labour, Invalids and Social Affairs (MOLISA), Mr Nguyen Duy Vy, Viet Nam General Confederation of Labour (VGCL) and Ms Le Thanh Thuy, Viet Nam Chamber of Commerce and Industry (VCCI)

Ms Nguyen Thuy Linh expressed gratitude for the opportunity to attend the seminar and introduce some of Viet Nam's practices on social dialogue in the process of ongoing Labour Code amendments, in pursuance of promoting and strengthening social dialogue.

The presentation was composed of three parts: the legal context; ongoing labour code reform; and social dialogue in the process of amending the Labour Code. She explained Viet Nam's *doi moi*, an economic reform carried out since 1986, under which the country transitioned from a centrally planned to a market economy. The shift required the development of legislation. Almost all legal documents today were promulgated in the early 1990s or later. The Labour Code was first passed in 1994 and came into effect in 1995. She added that promulgating the Labour Code was an important advance in institutionalising the 1992 Constitution providing for basic human rights in the labour sector, using and managing labour, protecting legal rights and benefits of employees and employers and contributing to social and economic development of the country in the renovation periods. During the implementation, the National Assembly promulgated a revised Labour Code three times in order to adapt to real life situations. Through amendments, the Labour Code today has 223 articles, an increase of 25 articles from the initial code.

Apart from the advantages noted above, after 14 years execution, the Labour Code showed some disadvantages. The regulations still hinge on a central planning mechanism; previous amendments concentrated on raising issues such as the amendment of rest time and dispute solutions; some contents in the Labour Code were separated into specific law. Ms Nguyen then proceeded to discuss the efforts to amend the existing Labour Code, citing current policies and practices on social dialogue and tripartism as bases for the process of amendments. She cited, for example, how meetings are held by a tripartite-plus task force for labour reform to discuss a working draft which is uploaded to a government website where more comments are solicited and analysed.

Mr Nguyen Duy Vy added that the roles that his organisation was assuming in labour law reforms were: to serve as active members of the Law Reform Commission; to hold meetings at both a central and provincial level to get inputs and ideas from trade unions at provincial, sectoral and enterprise level and then to put forward those views to the MOLISA; and finally, to protect the rights of the workers.

Ms Le Thanh Thuy also put forward that the employers' group, meanwhile, contributes to the effort of labour law reform as a member of Law Reform Commission, to organise regular dialogues between enterprises and business associations with official authorities and partner organisations (such as MOLISA, Department of Labour, Invalids and Social Affairs (DOLISA), VGCL, VCCI) to collect their comments and exchange their views on the labour issues; to establish different channels and dialogue meetings to collect opinions from the business community and reflect to the Law Reform Commission those opinions in an effort to improve legal regulation that protects the lawful and legitimate rights and interests of the employers.

5.3 Social dialogue of Cambodia

Presenters: Mr Prom Heang, Deputy Chief of Office, Department of Labour Disputes, Ministry of Labour and Vocational Training, and Ms Alessandra D'Amico, Vice President, Cambodian Federation of Employers and Business Associations

Ms D'Amico explained that Cambodia is a relatively small country with a population of 14 million. In 2008, before the financial crisis, the country experienced two-digit economic growth. Key industries that contributed to Cambodia's growth were those which brought foreign investment to the country and employment for the people. These industries were: garments, construction, hotel and restaurant and agriculture. Sectors having a medium impact in Cambodia were banking and finance and telecommunications. Her association had no record of the contribution of SMEs so could not project the sector's impact on the economy. However, SMEs should be taken into account because they provided the most employment and would receive the biggest impact of the law reform.

Ms D'Amico explained the challenges faced by Cambodia. The first was the existence of multiple workers in an enterprise and how to manage them effectively to benefit workers and employers. She noted that there was the problem of the clarity of laws resulting from translation from French to Cambodian that had led to different interpretations and also a problem regarding the enforcement of laws on all parties. She added that strikes posed a problem which had impacted significantly on the garment industry, including public perceptions of the sector. There was also a problem of the capacity of all institutions involved in building new laws since a trade union law was new to Cambodia.

As for social dialogue, she said that the issue was not one of talking and consulting among the traditional parties but rather discussing constructively within the broader context in which dialogue was being pursued. Therefore the business, economic, social, physical and political environments were important. She further discussed the construction of Cambodian social dialogue which included the government, the unions, the employers and other stakeholders such as civil society and the ILO. She also mentioned the tools and the formal and informal mechanisms used by Cambodia to promote and enhance social dialogue. The tools included the very recent Labour Law, the Labour Advisory Committee (which uses a tripartite approach), the Labour Arbitration Council, Better Work Cambodia and private working groups. Trade union law was being developed to provide formal mechanisms, she said. She also reported that there are attempts to formulate a labour court to review labour laws and benefits; however, it had not been successful because it was developed too quickly.

As for informal mechanisms, Ms D'Amico noted the importance of creating good social dialogue. It should be pro-active to help build a better relationship to employers and unions for them to understand each other. She also mentioned the power of information sharing

capacity to determine what people want from each other and discussed Cambodia's Joint Research Projects such as the Youth Employment Project.

Ms D'Amico explained that these tools and mechanisms would not be successful without the fundamentals of a dialogue. These are: the ability to access each other effectively; the ability to organize; the ability to be proactive rather than reactive; the ability to be prepared and share information; sufficient time for discussions; trust; an understanding of a broader environment; the ability to work towards a win-win situation and the ability to respect decisions and work towards its implementation.

She proceeded to discuss Cambodia's tripartite partners. The Cambodian Government's main ministries were the Ministry of Labour and Vocational Training and the Ministry of Social Affairs, Veterans and Youth Rehabilitation. As for unions and employers, most unions are in the garment industry while there was also a Cambodian Federation of Employers and Business Administrations. She said that there was a Labour Advisory Committee in Cambodia which was the most prominent body in discussion of national policies related to labour. There were other committees mentioned by Ms D'Amico that focused on Industrial Relations issues such as the benefits and wages committee and committees under the National Training Board which focused on closing the gap between industry and education systems

Ms D'Amico also explained that Cambodia has bipartite committees of unions and employers only. She also discussed Cambodia's Labour Arbitration Council, a quasi-judicial authority which addresses labour disputes by inviting parties to voice their grievances in a safe, neutral environment. The Council also helped parties resolve their disputes through mediated agreements or by issuing written, reasoned arbitral decisions based on the law. She also reported that it takes 41 days to resolve a case and there were plans to shorten the process to 21 days. Ms D'Amico then proceeded to discuss Better Work Cambodia, established in 2005 partnered by the ILO, Garment Manufacturers Association in Cambodia (GMAC) and trade unions, which focused on the garments sector.

Ms D'Amico reported several amendments to Cambodia's laws on night shift wages and minimum wages. She added that the Trade Union Law is in the process of development. She proceeded with a discussion of the process of amending the law. Ms D'Amico explained that meetings of the workshops and negotiations were closed and strictly limited to government, employers and unions.

Mr Heang shared additional information and further explained that the background to the problem was the mindset of people. He said that for some of his countrymen, social dialogue and collective bargaining was not "Cambodian" so there was no motivation for the parties to enter into negotiations. He recommended higher quality and a more complete approach to strengthen all parties. There was also a need to make the Cambodian law more comprehensive for the people. Mr Heang concluded that there was a need for greater understanding between workers and employers.

Plenary discussion

- The **Philippines** was asked why a Bill went from one House to another and back again.

The response was that being under a bicameral system of legislation, a counterpart bill passed in both Houses would still need to go through the Bicameral Committee where the bills were harmonised then signed. If the Senate concurred on what the House Bill contained, the legislative proposal would be passed to the President. In one instance, bills are parallel but in the process there might be differences. Hence, the Bicameral Committee existed to harmonise the bills.

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- The **Philippines** was further asked what kind of consultation was carried out with social partners when there are modifications that need to be done in the legislature.

The response was that, party list representatives with direct links to sectors made it a part of their process to consult the sectors they represent. However there are only party list representatives in the House of Representatives. After the draft bill has been calendared for consideration, public hearings take place where stakeholders are called to present their positions. All stakeholders, meanwhile, consult their constituencies when trying to come up with a position on Bills.

Still directed toward the Philippine panel, the following question was asked: “If a draft legislation comes to the TIPC and there is a consensus to endorse such a Bill, to what extent does the legislature change the proposal or introduce its own ideas?”

The response was that “some of the legislators will not agree on the output of the tripartite so there are a series of debate.”

The final question was directed towards all countries that presented in Session 3. The question raised concerns over what is done by government when there is no consensus formed on a given legislative bill.

- The **Philippines** responded that if there was a proposed legislation and there was no tripartite consensus, partners would pick out where there was consensus or common interests. Undoubtedly, there would be debates and arguments throughout the process but ultimately, partners let Congress deliberate and decide.
- **Viet Nam** responded that the first step was for a task force to be established, such as the Legal Reform Commission. Subjecting the legislative process through the Commission was like building tripartite consensus because its members are from different sectors.
- **Cambodia** replied that in its labour ministry, there was little informality in the development of the law. In the case of the trade union law there was a task force formed and some drafters put provisions together. The composition of the task force was diverse so there was a sense of bringing in the opposing positions of the different sectors. If members of the task force did not agree, the ministry would make the final decision.
- **Japan** offered that tripartism is institutionalised and when government meets to discuss a bill, social partners need to have tripartite agreement. Once there was tripartite agreement there was very little change made in the Diet. When compromises needed to be made in the Diet, legislators changed small parts for future review but not parts that related to workers rights or management duties.
- A question was asked: “When working drafts of a proposed law to be commented on by social partners how the countries do solicit such comments? Does the consultation take place in the whole country?”
- For **Viet Nam**, publishing the draft is compulsory. The proposed law would have to be uploaded to an official government website so everyone could enter their opinions and send their comments. The government also invited all the associations (local and foreign) to disseminate the draft and explain and listen to their opinions. The government cooperated with the ILO and other countries in the implementation of new laws.

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- In the **Philippines**, although the process is called tripartite consultation, in actual practice, the Non-governmental Organization (NGO) and others were also involved in the consultations. In the final analysis it would be the tripartite that would draft and send the bill to Congress. Once a bill is passed into law, normally there is a provision in the law that allows for the issuance of implementing rules of the law. Such rules could not go beyond the provisions of the law.
 - In **Cambodia**, proposed legislation is disseminated to the NGO for input so that issues can be resolved early in the process of law-making.

6. Improving industrial relations: Identifying provisions in labour law that leads to disputes

6.1 Labour disputes in Lao People's Democratic Republic

Presenters: Mr Bounpone Mountivong, Deputy Director, Policy and Planning Division, Ministry of Labour and Social Welfare (MLSW) and Ms Boutsaba Vilack, Technical Staff, Employers' Bureau Activities, Lao National Chamber of Commerce and Industry (LNCCI) and Ms Pathoumthong Luangvilay, Coordinator, International Relation Division, Lao Federation of Trade Unions (LFTU)

Mr Bounpone reported the increasing number of labour disputes in Lao People's Democratic Republic, which had reached more than 1,000 during the past five years. He cited the following as among the major reasons: unclear provisions in the Labour Law; absence of labour contracts due to preference of employees for non-contractual work arrangement; lack of education of many workers; and ignorance/indifference of both employers and workers of their responsibilities and rights. Mr Mountivong further said that labour disputes in Lao People's Democratic Republic were being resolved through bipartite negotiations in Labour Units present in districts and provinces (local). If not resolved, the dispute would be elevated to Labour Dispute Resolution Committee, which is a tripartite body under the MLSW. If resolution were not possible, the last resort would be the People's Court.

Ms Boutsaba said that the majority of labour disputes were caused by the absence of labour contract, unclear articles on redundancy, employee resignation, termination and expiration of employment contract. She expressed the need to review, revise or amend their Labour Law through a National Tripartite Committee.

Ms Pathoumthong clarified that most workers, particularly those who engaged in seasonal jobs, refused labour contracts because contracts restricted their mobility; most of the workers come from the provincial or rural areas and travel to the city to find work. They did not want to enter into contractual arrangements so that they could always go back to their hometown whenever there was a lull in work or so they could always find another job with better pay without being restricted by a labour contract.

6.2 Disputes settlement or resolution in Malaysia

Presenters: Mr Awang Raduan Awang Omar, Director, Department of Industrial Relations, Malaysia Ministry of Human Resources (MOHR) and Mr Gopal Kishnam, Committee Secretary, Malaysian Trade Union Congress (MTUC) and Mr Shamsuddin Bardan, Executive Director, Malaysian Employers Federation (MEF)

Mr Omar stated that the system of dispute settlement or resolution in Malaysia conformed to the principles embodied in the relevant ILO Conventions and Recommendations, particularly pertaining to Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92). He cited provisions that had been identified as leading to disputes, which had been

addressed with the positive outcome of the steady increase in unionism over the years. On the issues raised by both worker and employer representatives, Mr Omar said that worker and employer representatives both have views which he respected and that discussions were ongoing.

Mr Kishnam criticised some labour policies that appeared to hinder the promotion of ILO's Decent Work Campaign by the Human Resources Ministry. He singled out those policies related to membership of trade unions, protection from loss or reduction of income due to unemployment, job/income security, foreign workers, discrimination, rest days and night work for women. Similarly, he emphasised that while trade unions were allowed to participate in tripartite discussions, more often than not, their suggestions were ignored.

Mr Bardan showcased the improvements in the settlement of claims for reinstatement since the Industrial Relations Act was amended in 2007. However, he expressed his disappointment over the World Bank report that Malaysia ranks second to the US and first in Asia when it came to restrictive business practices due to high pay/awards relating to the dismissal of cases by the Industrial Court. Nevertheless, he mentioned that the court, together with the Employment (Part Time Employees) Regulations 2010, was aimed at harnessing human resources in Malaysia.

Malaysia wanted to encourage more than 6.5 million workforce in the country to join the labour market to reduce its reliance on foreign workers. In response to the issue raised by the representative from the workers sector, Mr Bardan said that employers were still paying wages, that workers can declare strikes as long as they follow the rules and that employers were trying to maintain jobs. He also said that social dialogue was very much alive in Malaysia. On the issue of proposed amendments to Malaysia's labour laws, he said that it was still in the discussion stage.

6.3 Labour dispute settlement in Indonesia

Presenters: Mr Mochamad Alimuddin, Head of Sub Directorate Division of Labour Dispute, Ministry of Manpower and Transmigration (MOMT), Indonesia, Ms Endang Susilowati, Employers' Association of Indonesia (APINDO) and Mr Dedi Hardianto, Chairperson, Confederation of Indonesian Prosperity Trade Union (KSBSI)

Mr Alimuddin presented a comprehensive Indonesian human resource profile. This was followed by a situationer on the current trend on labour dispute settlement and the challenges encountered. The basic principles in the field of labour relations that had been observed since 1998 were the respect for human rights in the workplace and the democratisation of work. The demand for a simple and fair dispute settlement process had prevailed. Similarly, there was a standing public request that the government should not interfere in the settlement process of labour disputes. His matrix presentation on the trends in labour cases caught most of the participants' attention due to the remarkable reduction in the number of cases from 2009 to 2010.

Plenary discussion

- **Viet Nam**, commenting on Indonesia's presentation, noted the dramatic drop in the number of labour disputes in 2010 compared to 2009 and inquired as to its cause. The question was seconded by Japan. However, Mr Mochamad Alimuddin could only cite the source of their data.
- **Cambodia** supported Malaysia's statement that decent work should come with productivity improvement, saying decent work was not just about jobs.

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- **Japan** aired its view that individual disputes should be separated from collective disputes and that conciliation-mediation (in resolving labour disputes) was most welcome.
 - Commenting on the presentations of Lao People's Democratic Republic, Malaysia and Indonesia, Mr Tony Asper of the **Philippines** noted that in Lao People's Democratic Republic, the apparent lack of clarity in labour laws was the leading cause of disputes in that country and in Indonesia, it takes too long for the justice system to resolve cases, which amounted to "justice delayed, justice denied".
 - He also commented on the position of Mr Nakamura of Japan on the need to balance external and internal dispute settlement mechanisms. External mechanisms referred to judicial or legal proceedings (in government offices) while internal dispute resolution mechanisms were those at plant level to which the parties could resort to resolve their differences without government or third party interference.
 - Mr Asper said that the problem with internal mechanisms was the reality that very few workers were unionised, and this being so, internal mechanisms may be of no use (inutile, ineffective). He said that we should address the problem of the low union membership. He said that most labour laws were neither congruent nor compliant with international labour standards which ASEAN governments have ratified. He said that this had to be looked at when trying to find needs, systems and procedures to establish our cooperative industrial relations for the purposes of productivity, global competitiveness and decent work. He suggested that productivity and global competitiveness alone were not valid goals if decent work were not included among such the goals.

7. Industrial Relations Project in ASEAN framework

Presenters: Mr John Ritchotte, ILO DWT-Bangkok and Mr Kenichi Kamae, RO-Asia and the Pacific

Mr Ritchotte demonstrated the features of the ASEAN-Japan IR website which was in its early stage of development. The project was conceived to bring together in a common internet-based platform the actors in the region specialising in industrial relations with an aim of creating more efficient sharing of knowledge and opinions on projects, policies or other various initiatives. It is planned to eventually be incorporated into ILO/Japan East Asian IR Website.

Mr Kamae explained the steps for the following three-year phase of the project. He said the project had been requested to have visible and tangible outcomes. It was hoped that the discussions and meetings conducted under the project would be very helpful to all tripartite participants and involved organisations. He highlighted the importance of sharing or disseminating this knowledge and information "outside" to include central government officials, local officials, enterprise-level workers of each country and multinational enterprises in ASEAN countries.

As to the proposed outputs, Mr Kamae stated that the ILO would be preparing the draft materials, which would include a summary brochure of industrial relations in ASEAN and a compilation of the three-year report. As an added value, Mr Kamae mentioned that good practices and case studies would also be included to help disseminate the ASEAN Guidelines recently established, making it more understandable.

He said that the rough draft of the material would be shared with all involved organisations through the ASEAN focal points, Mr Kamae said. Comments would be elicited for one

month. Once compiled and processed the draft would again be circulated for final consensus before the Project Cooperation Committee to be held in Malaysia. The finalised draft would be published and uploaded to the ILO website once officially endorsed.

Mr Ritchotte further explained that to be able to share knowledge in a more efficient way, the ILO Regional Office in Thailand had been trying to move a lot of its work on to its website also known as the knowledge sharing platform, where several “communities” for different issue areas had been built. The communities of practice included youth employment, skills, green jobs and industrial relations. The industrial relations community was on track and would be launched in the first quarter of 2011.

He added that the purpose of the industrial relations platform was to address the demand expressed by ASEAN senior labour officers and the ILO constituents for easy access to information. While still in its experimental and development phase, pages of the probable contents of the platform were shown including tabs or sections such as News, Events, Discussions (Online forum), Resources (Policy Papers, Training materials, etc.), Member Profile and Media.

The idea of moving forward with the project had benefited from much discussion among the participants and a suggestion to study further the potentials of the project before bringing it into full operations was put forward.

8. Summary and ways forward

8.1 Closing remarks

The Seminar closed with a recap of the the activities and the salient issues and points raised during the two days.

Undersecretary Hans Leo J. Caddac of the Department of Labor and Employment, Philippines, provided the final remarks for the occasion saying that much know-how and experience had been shared among the practitioners and experts in the ASEAN and from Japan. He noted that despite the varied levels of economic integration within the ASEAN region and its neighbours, and with the different levels of application of the principles of freedom of association in each country, he was optimistic that the ASEAN way of building consensus and arriving at common decisions to achieve a more harmonious industrial relations system in the area could be an approach by which future collaborative steps would be taken.

He then thanked all the participants for their active participation, the Government of Japan, the ILO and ASEAN for their valuable contribution and bid each a one a safe trip back home.

Annex I. Seminar agenda

Third Regional Seminar on Industrial Relations in the ASEAN Region on Legal Framework and Practice for Labour Dispute and Settlement

Sofitel Philippine Plaza Hotel, Philippines, 25–26 November 2010

Time	25 November 2010	26 November 2010
08.00 – 08.30	Registration	
08.30 – 09.15	<p>Opening Remarks</p> <p>Ms Alcestis Abrera Mangahas Deputy Regional Director, Policy and Programme, ILO Regional Office for Asia and the Pacific</p> <p>Ms Chihoko Asada Deputy Assistant Minister, Ministry of Health, Labour and Welfare, Japan</p> <p>H.E. Rosalinda Dimapilis Baldoz Secretary, Department of Labor and Employment, the Philippines</p> <p>Press Conference H.E. Rosalinda Dimapilis Baldoz Ms Chihoko Asada Mr Lawrence Jeff Johnson</p>	<p>Meeting time for workers' and employers' group</p> <p>Recap of the previous discussion Mr John Ritchotte, Industrial Relations Specialist, ILO Bangkok</p> <p>Session 4: Improving industrial relations: Identifying provisions in labour law that leads to disputes</p> <p>Presentation by tripartite delegates (Lao People's Democratic Republic, Malaysia, Indonesia)</p>
09.15 – 09.40	<i>Tea/Coffee Break</i>	<i>Tea/Coffee Break</i>
09.40 – 10.10	<p>Session 1: Laos national workshop results and follow-up Presentation by Lao tripartite delegate Moderator: DOLE, the Philippines</p> <p>Session 2: Legal framework and practice for dispute resolution Presentation by tripartite delegates (Singapore, Thailand, Japan)</p>	<p>Discussion Moderator: Employers' group</p>
10.10 – 11.30		
11.30 – 12.30	<p>Discussion Moderator: Workers' group</p>	
12.30 – 14.00	Lunch	Lunch
14.00 – 15.00	<p>Session 3: Social dialogue in the process of amending labour legislation Presentation by tripartite delegates (Philippines, Vietnam, Cambodia)</p>	<p>Session 5: Industrial relations project in ASEAN framework Draft materials of the project and knowledge sharing Future collaborations</p>
15.00 – 15.20	<i>Tea/Coffee Break</i>	<i>Tea/coffee break</i>
15.20 – 16.20	<p>Discussion Moderator: MHLW, Japan</p>	<p>Closing session Summary of the two-day discussion Final remarks by Mr Hans Leo Cacdac, Undersecretary, Department of Labor and Employment</p>
19.00 -	Dinner hosted by Secretary H.E. Rosalinda Dimapilis Baldoz Seawall Garden, Sofitel	

Annex II. List of participants

Third Regional Seminar on Industrial Relations in the ASEAN Region on Legal Framework and Practice for Labour Dispute and Settlement

Softel Philippine Plaza Hotel, Philippines, 25–26 November 2010

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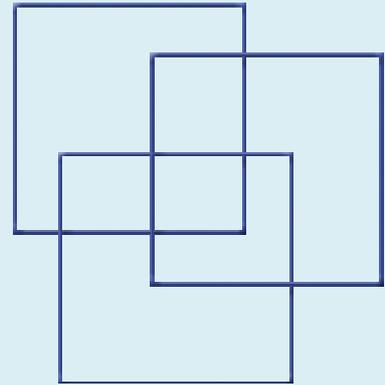
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Report of the Third Regional Seminar on Industrial Relations in the ASEAN Region

This volume contains the report of the Third Regional Seminar on Industrial Relations in the ASEAN Region, under the ASEAN-ILO/Japan Industrial Relations Project. The theme for this seminar was “Legal Framework and Practice for Labour Dispute and Settlement”. The seminar was attended by tripartite representatives from the ASEAN Member Countries and Japan. It took place in Manila, Philippines on 25 and 26 November 2010.

The Regional Seminar on Industrial Relations is one of the project's main activities. It is held annually. The project spreads over a three-year period, with the overarching theme “Building Better Industrial Relations towards ASEAN Integration”. The project seeks to promote constructive industrial relations among ASEAN countries based on the uniformity of basic norms and good practices, social partnership, tripartism and social dialogue.



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