

Creating Precarity:Labour Law in Cambodia1

By *wkf*

Created 2008-10-15 15:08

Created: 2008-10-15

In recent years Cambodia's foothold in the global economy and the most prominent aspect of its labour movement has been the textile and garment industry. Cambodia's position in this global industry has been promoted as an 'ethical producer' due to a monitoring program of the International Labour Organization (ILO) initiated by a bilateral trade agreement with the US. The garment industry is one aspect of broader structural adjustment programmes implemented from the early 1990s that espouse an agenda of poverty reduction and economic progress. These policies are tied a priori to a model that regards economic growth led by foreign direct investment, industrial exports, privatization, liberalization and higher agricultural productivity, as the keys to development.² Socially constructing a dichotomy between the 'informal and formal' economy is part-and-parcel of this process. This article demonstrates that Cambodia's Labour Law contributes to creating a precarious labour force by adhering to the 'informal-formal' dichotomy.

This article focuses on two major groups of informalizing women workers in Cambodia: first, those technically engaged in the informal economy, including street vendors, unpaid family labour and others; and second, women employed in 'formal' or registered workplaces such as factories and restaurants where they either work on a short-term casual or flexible basis and/or lack a clearly defined employment relationship. The first group is quite clearly working in the informal economy in terms of the law since they do not have an employer-employee relationship or are specifically exempted from the labour law. The second group are part of the informalization process. Technically they are protected by the Labour Law but implementation is critically lacking.

Labour Force and Employment Data

Cambodia is an agrarian-based society and economy with estimates ranging from 80 to 90 per cent of the population living in rural areas. Many small to medium-scale landholders are sending their children, predominantly young women, to the cities to supplement the family income and/or ensure its survival. Additionally, millions of rural Cambodians have been pushed off the land into urban and other rural areas for work. This is largely due to debt, lack of title to the land and the interrelated consolidation of land in the hands of an increasingly polarized society. Hundreds of thousands of rural and urban poor have also migrated abroad for work, primarily to neighbouring Thailand for jobs in agriculture, fisheries and seafood processing among other industries. In Thailand they often work without registration or legal rights.

An overwhelming majority of Cambodia's labour force is not covered by the Labour Law. Implementation of the Labour Law for those workers technically covered is lacking. Informal economy workers are not recognized, not regulated and are not entitled to legal protection. In the informal economy workers are subject to a wider range of potential problems or abuses because they have no legal rights, no protection under occupational safety and health (OSH) regulations and no access to social security protection. They are often subject to extortion, bribery, repression and harassment—sometimes sexual—by authorities.³

In 2003 the informal economy accounted for 62 per cent of gross domestic product (GDP) and 85 per cent of the total workforce in Cambodia, according to estimates by the Economic Institute of Cambodia (EIC). In 2003 the remaining 15 per cent of the workforce was employed by formal sectors, especially in the garment industry (230,000 [increasing to 350,000 in 2008]), tourism sector (70,000), and public administration (350,000). Although contribution of the informal economy to the GDP has slowly declined in recent years, its contribution to the economy is still considerable, and its proportion of the labour force has remained constant.

The Cambodian informal economy is made up of a huge proportion of own-account workers and unpaid family workers. These two groups represent 40 per cent and 44 per cent of the total workforce respectively, or a total of 84 per cent, according to the Cambodian Labour Force Survey of 2001.⁴ Of this, 70 per cent is found in agriculture. Over half of them are women. The total proportion of employment in agriculture, forestry and fisheries is going down while persons employed in this sector are going up.

Wages

Articles 104,105,107,108, 109 and 111 of the Labour Law specifically deal with minimum wage. The minimum wage 'must ensure every worker of a decent standard of living compatible with human dignity'. There is not a general minimum wage in Cambodia; only the garment industry is covered. On 23 October 2006, the Ministry of Labour and Vocational Training issued a *Prakas* (decree) increasing the minimum wage of textile and garment worker to US\$45 a month for probationary workers and US\$50 a month for Undetermined Duration Contract (UDC) workers (i.e. 'regular workers') (from US\$40 and US\$45 respectively). According to the ILO the average wage of garment workers is roughly US\$70 per month. However, according to interviews conducted by Womyn's Agenda for Change from 2004 to 2006, in reality many workers do not even receive the minimum.

The pay rate for night shift work has decreased. In March 2007 Prime Minister Hun Sen successfully lobbied the National Assembly to amend the Labour Law to cut the wage for night work from 200 per cent of the day wage to 130 per cent. He argued that the reduction was necessary to make Cambodia a more attractive place for foreign investors to set up large factories. On 20 July 2007 the amendment of the Article 139 and 144 of the Labour Law went into effect.

Labour Law Only for Those with Contracts

According to the Economic Institute of Cambodia and the ILO, the term 'informal economy' in Cambodia refers to very small-scale units producing and distributing goods and services. These units are composed of independent, self-employed producers, family labour, hired

workers or apprentices.

Cambodia has defined activities in its informal economy as: those without a firm, identifiable postal address; those that have self-employed workers and utilize part-time or full-time workers; those that have a lot of labour-intensive operations and quick turnover; those that use energy input from human or animal sources; those about which data is unavailable through census surveys; those that are not legally recognized; those that take place in non-structured premises; those that do not come under any regulations, licence, or insurance, and do not pay any tax.⁵ Jobs in the informal economy are ‘informal’ in the sense that they are mostly:⁶

- unregistered and unrecorded in official statistics and thus not recognized, supported or regulated by the government;
- have little or no access to organized markets, credit institutions, formal education and training institutions, or to many public services and amenities;
- are compelled to operate outside the legal framework and beyond the pale of social protection, labour legislation and protective measures, even if they are registered and respect certain aspects of the law.
- The informal economy also includes employment to the extent that workers are undeclared (by both informal and formal enterprises) and do not enjoy social benefits mandated under the law.

In Phnom Penh, work in the informal economy includes vendors, shoe-shiners, *motodops*, cyclos and *tuk-tuk* drivers⁷, sex workers, mechanics, garbage collectors, small-scale gasoline sellers, road-side/sidewalk vendors, construction workers and all domestic workers. In rural areas they include farmers and workers in non-farm activities such as fishing, fish processing, mining, spinning and weaving, food processing, handicraft-making and vending. In short, these are activities that are not legally recognized largely due to the lack of a clearly defined employer-employee relationship (see below), where work takes place in non-structured premises, where work is conducted without any regulations, licence, or insurance, and where taxes are not paid.

Many people in the formal economy, including tens of thousands of civil servants are also engaged in the informal economy to supplement their insufficient income. For example many work as *motodops* in their time off. Other workers employed in the formal economy such as small-scale textile and garment factories/workshops and service sector jobs in restaurants and massage parlours are outside of legal protection for reasons including lack of registration of the workplace, employers who do not declare their employees to the Ministry of Labour and Vocational Training, and a myriad of other technicalities.

The most important aspect of Cambodia’s Labour Law regarding the informal economy is employment contracts. Specifically, Articles 2 and 3 define terms of employment contracts as an agreement in which one person (the employee) agrees to work for wages for another person or company (the employer). These contracts can be written or oral. In summary, the Cambodian Labour Law only provides for the protection of workers and employers having employer-employee relationships. This means that many occupations are excluded from the Cambodian labour legislation, such as self-employed workers (absence of employer-employee relationships), unpaid family workers (absence of remuneration), and some home workers or outsourced workers (without clear employer-employee relationships).

Despite restrictions of the Cambodian labour legislation’s application to the employer-

employee relationship, Sieng and Nuth⁸ contend it is quite progressive. 'First, it applies to enterprises employing just one or more workers, even on a discontinuous basis. In other words, notwithstanding the scale of enterprise or establishment, workers in the enterprise or establishment are subject to the labour protection enshrined in the legislation. This is meant to extend the labour protection to a wider array of enterprises and people including sweatshop production. It recognizes that the Cambodian private sector is comprised of a large number of micro, small and medium enterprises (MSMEs)'.

Informalizing Labour in the Garment Industry

The first factories producing textiles and garments for export opened in Cambodia around 1994, with foreign investors from Hong Kong, Taiwan, Malaysia and Singapore. The industry is still dominated by foreign investors. Cambodians currently account for only 5 per cent of ownership, while management is also generally imported from mainland China or the investors' home country, meaning Cambodians are employed in the lowest wage, deskilled aspects of the production process.⁹ These initial investors were attracted to Cambodia for several reasons. Primarily, Cambodia's lack of quota restrictions to the US market from the mid-1990s until 1999, combined with quota-constraints other producing nations in the region experienced, led to significant expansion of the industry. Since Cambodia was not a party to the quota system under the World Trade Organization's (WTO) Multi-fibre Arrangement it was free to sell into the US and EU markets, but those countries were free to limit or cut off market access at will. Of course, investors were also attracted to the abundance of cheap, unregulated labour and low cost land. Employment has increased dramatically from about 100,000 workers in the industry in 2000 to roughly 350,000 in 2008. The garment industry has been subject to relatively thorough factory inspections under ILO monitoring and its Better Factories Cambodia Programme (initiated in 2001). The benefits of this programme for workers and the sustainability of any gains are debatable. ILO Programmes have been quite successful in regularizing terms of employment in the industry, yet that is currently being eroded.

Under Cambodian Labour Law there are two main categories of employment contract. Workers may be employed on Undetermined Duration Contracts (UDCs) or Fixed Duration Contracts (FDCs).¹⁰ As their names suggest, a UDC is valid for an unlimited time, while an FDC is valid for a specific period of time. The Coalition of Cambodia Apparel Workers Democratic Union (C.CAWDU) stated in an interview that from 2001 (when the federation was formed) until 2005, a majority of workers in registered textile and garment factories were employed as regular workers (UDC) with associated benefits such as sick leave and maternity leave, regular wages, holidays and the like. Since 2005 with the end of the quota regime under the WTO there have been numerous changes in the factories: the piece-wage rate has gone down, and the use of flexible labour (in the form of FDCs, mentioned above) has increased. Also, outsourcing of production to home-based workers or smaller, unregistered 'sweatshop' facilities has increased. These trends indicate that workers' time in the factory is pushed both in length (hours of work) and intensity (amount of work accomplished).

A prominent means to increase productivity for often stagnant or decreasing wages is use of the piece-rate system. Currently there is no minimum wage for piece rate work. Article 108 stipulates that an average piece rate worker must be able to earn the minimum monthly wage by working the same hours as a worker on a contract of service.¹¹ Implementation of this stipulation has been a constant point of conflict over the past several years. The increased use and intensity of this system in Cambodia coincides with numerous shifts of the textile and garment industry at the global level. Steep competition puts factories under greater strain to

produce more goods at low prices. Numerous workers interviewed by Womyn's Agenda for Change (WAC) said that the piece rate declined over the course of 2006. At a Mean Chey area factory the rate is now just US\$0.02 per dozen pieces (in the quality control section), so that take-home pay for regular workers is well below the legal minimum wage of US\$45.¹² Piece rate wage systems give low-wage workers an incentive to maximize time at their work station, at the expense of rest time or even their bathroom breaks, which negatively impacts their health.¹³

While the rate of piece wages is a major point of contention in Cambodia, the use of flexible labour is another. Employers are increasingly using informal/flexible labour employed on a day-to-day or short-term period as part of efforts to maintain or increase profits and avoid demands of organized workers. Ms Anne Ziebarth, legal advisor for the ILO's Better Factories Cambodia stated, 'An increasing number of garment factories have started to use FDCs for all workers, which is troubling because it may indicate that they misunderstand the appropriate use of the different types of contracts, or that they are using FDCs to undermine workers' employment security' (Better Factories Cambodia 2006). According to C.CAWDU, the use of flexible labour began in larger knitting factories which employ from 3,000 to 10,000 workers, primarily in Kandal Province where unionization rates are highest. Over the past year C.CAWDU has found that use of flexible labour has spread to both smaller knitting factories and garment assembly factories of all sizes. Flexible labour can be employed on a day-to-day basis, where pay is daily, or on short-term two-month contracts, which can legally extend for up to a year. C.CAWDU reports that if these workers are hired as regular employees their time as temporary workers is not factored into their seniority and benefits. These workers work side by side with regular employees, with different coloured name-tags or uniforms as a form of separation in lines and work units.

Many factories exploit loopholes and keep workers on short-term contracts well beyond the one year limit. Others will not allow male workers to become regular, out of fear that they will become union leaders, as men are perceived to be more likely to be union activists. Some only allow workers to become regular if they fulfil certain requirements, such as not asking for leave during their first three months of work, or being unmarried.

The ILO confirms that employers prefer flexible labour (FDCs) to regular workers (UDCs) '...because they believe that it is easier to terminate workers.'¹⁴ Employers are under no obligation to renew a flexible worker's contract after it has expired, but they are prohibited from firing flexible workers for illegitimate reasons, including anti-union discrimination. Cambodia's Labour Law is clear that all workers have the right to join and form a union, regardless of the type of contract. Employers are expected to have a valid business reason or justification based on the worker's aptitude in deciding whether to terminate a flexible worker's contract. Without a valid reason an employer is liable to pay damages to the worker in addition to legally mandated 5 per cent lay-off compensation.

The piece rate and use of flexible labour have been major factors in the sharp increase in plant level strikes in Cambodia since 2006. In 2006 the ILO stated, 'We are seeing more disputes arising over the type of contract used to employ permanent workers, with workers in some factories complaining that they lack security of employment because they are working under repeating short-term FDCs'.¹⁵ Other issues leading to industrial disputes include unjustly dismissed union activists, sexual harassment and demands over benefits. Regularly strikes and agitation from plant level activists have resulted in regular workers being sacked and replaced with flexible labour.

Workers' Responses, Initiatives and Struggles

Since the transition to democracy began in Cambodia in 1991 there has been a dramatic increase in both the number and extent of activities of trade unions and NGOs contending for space in civil society.¹⁶ Since the founding of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) in 1997 there has been a major spike in the number of trade union federations and plant level unions in garments, particularly in the years since ILO monitoring began in 2001. In mid-2006 there were 892 trade unions in 270 garment factories, according to the Garment Manufacturers Association of Cambodia. Nearly 60 per cent of the workers in the industry are members of trade unions. But, only about one per cent of the total labour force is unionized, and outside the garment and tourism/hospitality sectors, the trade union movement remains quite weak.¹⁷

New Forms of Organizing

Currently in Cambodia there is not a clearly identifiable informal/precarious workers movement. Registered trade unions most relevant to the informal economy are the Cambodian Union Federation of Building and Wood Workers and the Cambodian Construction Federation of Trade Union. Informal economy workers associations are registered under a more complex set of rules with the Ministry of Interior. An example of this kind of association is the Cambodian Association for Informal Development. In 2006 another association of informal workers was formed, the Independent Democratic Informal Economy Association (IDEA).

IDEA joined C.CAWDU, a progressive/independent trade union federation with over 30,000 members, the Cambodian Food and Service Workers Federation (CFSWF) and the Cambodia Independent Civil Servant Association (CICA) to form the Cambodia Labour Confederation (CLC).¹⁸ The vast majority of CLC members are from textile and garment factories and the food and service sector. CLC has not yet developed a centralized strategy in terms of their organizing in the informal economy or informalizing labour.

C.CAWDU, IDEA and other CLC members do not organize a significant proportion of these workers with the immediate intent to negotiate a collective bargaining agreement or pursue other tripartite functions. Many trade unionists may think it is pointless to organize if there is no employer with whom the workers can negotiate. This is, obviously, impossible for a number of informal economy or informalized workers. The underlying objectives for CLC members are primarily social and to an extent political and correspond to the immediate concerns of their members. Social organizing and legal advocacy is an underlying aspect of their organizing strategy. Rather than consider a narrow economic functionality to trade unions these organizations are, to an extent, pushing beyond the conceptualization of trade unions prevalent throughout much of the post-war period.

Conclusions

Cambodia's Labour Law is comprehensive and relatively progressive but coverage and implementation is critically lacking. A salient example is Cambodia's high profile garment industry. Competition in the global garment industry is intensifying and the ILO is in the process of handing over the Better Factories Programme to local stakeholders. The government has not rigorously implemented the law at any stage, leading to concerns that flexible labour may take on the competitive advantage over 'ethical production' in the coming years.

For those in the informal economy the situation is even more critical. 85 per cent of the labour force is not covered by the Labour Law. One potential way to overcome the problems facing informal economy workers is to extend the labour law to include all workers.

However, as the ILO has noted, extending the labour law is complex and contradictory. A

point of concern is that enforcing contracts and registration of business establishments may drive workers into more precarious situations. The business registration process has been simplified since 2004, but the registration fee is as high as US\$250 to US\$300.¹⁹ For street vendors and other small-scale enterprises in the informal economy where incomes are very low, this fee is well beyond reach. Furthermore, the benefits associated with registration do not outweigh the costs, given the low level of social security and other benefits such as retirement, health care and the like. Despite the fact that a social security law exists in Cambodia, a system to implement it has not yet been put into place. Given these circumstances, the revenue for social security and other benefits should not come from small-scale employers. Rather, it should be a government provision.

This article has suggested that individualized negotiation with government and employers is not feasible in Cambodia. Furthermore, the formal economy accounts for a very low proportion of Cambodia's labour market, meaning collective bargaining in tripartite models is difficult if not irrelevant in this context. Accordingly, new and creative forms of social organizing and empowerment are necessary to address the social and economic precarity facing a vast majority of Cambodians. The resolution of this may include macro-economic policy reform that would generate a budgetary provision for workers in small scale industries and sectors. Pressure to implement this kind of reform is not likely to come from the World Bank, IMF, Asia Development Bank and garment corporations prominent in Cambodia's socio-economic transition to date. Rather, grassroots social-worker activism and progressive/radical organizational activists are essential in opening the debate, dialogue and action on these issues.

One of the primary advantages for organizing informal and informalizing labour in Cambodia is that it has a quite young and vibrant labour movement with many committed activists. Numerous activists working with trade unions and NGOs are thinking of new ways to address the many challenges confronting the labour movement. Through this we find much needed conceptualizations and practices that are transforming 'passive victims' of history and the global economy into agents of change in Cambodia.

Notes

1. A longer version of this article appears in the forthcoming AMRC publication, *Asian Labour Law Review 2008: Rights for Two-thirds of Asia*, forthcoming. (See back cover for more information).
2. Hughes, C. (2007) 'Transnational Networks, International Organizations and Political Participation in Cambodia: Human Rights, Labour Rights and Common Rights,' *Democratization*, Vol. 14 No. 5, pp. 834-852
3. Economic Institute of Cambodia (EIC) (2006a) *Handbook on Decent Work in the Informal Economy in Cambodia*. Informal Economy, Poverty and Employment, Cambodia Series, No. 1. Bangkok: International Labour Office. Economic Institute of Cambodia (EIC) (2006b) *Decent Work in the Informal Economy in Cambodia: A Literature Review*, Informal Economy, Poverty and Employment: Cambodia Series, No. 2. Bangkok: International Labour Office.
4. EIC 2006b
5. EIC 2006a
6. Motodops are motorcycle taxis, tuk-tuks are carriages pulled by a motorcycle. Fares generally range from US\$0.25 cents to US\$2 and \$1 to \$4 respectively.
7. Sieng, D. and M. Nuth (2006) 'Extending Labour Protection to the Informal Economy in Cambodia', in S. Tajman, Ed., *Extending Labour Law to All Workers: Promoting*

- Decent Work in the Informal Economy in Cambodia, Thailand and Mongolia.*
Bangkok: International Labour Office.
8. Yamagata, T. (2006) 'The Garment Industry in Cambodia: Its Role in Poverty Reduction through Export-Oriented Development', *Institute of Developing Economies, Discussion Paper No. 62*.
 9. Better Factories Cambodia (2006) *Better Factories Concerned about Labour Contracts*, Quarterly Newsletter, No. 6, October.
 10. Falkus, M. and S. Frost (2003) 'Labour Law and Workers' Rights in Cambodia', *Asia Pacific Labour Law Review: Workers' Rights for the New Century*, Hong Kong: Asia Monitor Resource Centre, pp. 91-104.
 11. See extended version of this article in AMRC's *Asian Labour Law Review 2008: Rights for Two-Thirds of Asia*, forthcoming.
 12. Womyn's Agenda for Change (WAC) (2005) 'Current Situation of Labour Flexibilization in Cambodia,' available at www.womynsagenda.org.
 13. Better Factories Cambodia 2006
 14. Better Factories Cambodia 2006
 15. This is an issue far too complex to address in this chapter; numerous articles and books have been written on the subject. See Hughes, C. (2007); Hughes, C. (2003) *The Political Economy of Cambodia's Transition, 1991-2001*. London: RoutledgeCurzon; Landau, I. (2008) 'Law and Civil Society in Cambodia and Vietnam: A Gramscian Perspective', *Journal of Contemporary Asia*, Vol. 38, No. 2, May, pp. 244-258; and Arnold, D. and Toh H. S. (forthcoming, 2009) 'Success Story or Barely Surviving? Cambodia in the Global Textile and Garment Industry', *Journal of Contemporary Asia*.
 16. International Trade Union Confederation, 2007 *Annual Survey of Violations of Trade Union Rights*
 17. The CLC is not able to formally register since two of its members, IDEA and CICA are not yet 'legal'; regulations require at least three registered federations to form a confederation.
 18. EIC 2006b