

# Cambodia

## Street Vendors, Factories and Family Workers: Informalizing Labour in Cambodia

*Dennis Arnold*

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' as a result of a monitoring programme run by the International Labour Organization (ILO) initiated by a bilateral trade agreement with the US. While this chapter addresses some of the challenges for the informalizing women workers in the textile and garment industry, its main focus is the estimated 85 per cent of Cambodia's labour force who are officially employed in the informal economy.

Cambodia is an agrarian-based society and economy; estimates of the population living in rural areas range from 80 to 90 per cent. 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.

This chapter is divided into three main sections: a contemporary snapshot of socio-economic issues relating to the informal economy in Cambodia; a summary of labour law as it pertains to the informal economy; and an analysis of activists' initiatives that address the informalization of labour. The chapter 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.

### **1. Contemporary Snapshot**

#### **Socio-economic Overview**

In 1991, negotiations between factions fighting a civil war in Cambodia since 1979 led

to the Comprehensive Political Settlement for Cambodia. This called for the creation of the United Nations Transitional Authority in Cambodia (UNTAC)<sup>1</sup> a peacekeeping and transitional operation unprecedented in scale for the UN. This was part of a process ending decades of civil war, foreign military intervention and internal/regional strife. Bilateral aid and loans from governments including Japan, the US, China, Russia and Australia, in addition to funding and consultation from the World Bank, International Monetary Fund (IMF) and Asia Development Bank (ADB), have since increased dramatically. The structural adjustment programmes implemented from the early 1990s in conjunction with these governments and organizations 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.

In recent years, Cambodia has experienced significant economic growth. In 2007 GDP expanded by 9.6 per cent, which is below the average of about 11 per cent in the three previous years. GDP growth is projected to decline to 7.5 per cent in 2008 and to 7.0 per cent in 2009.<sup>2</sup> Growth is concentrated in garments, construction and tourism. Exports reached US\$2.9 billion in 2005, including garments, shoes, cigarettes, natural rubber, rice, pepper, wood and fish, with garments accounting for roughly 80 per cent of the total. Lower levels of growth in 2007 are due to decreases in garment exports and a decreased expansion in agriculture, forestry and fisheries.<sup>3</sup> Following the lifting of safeguard quotas on textiles and garments in 2008 imposed by the US on China, in addition to rapidly expanding garment exports from recent WTO member-state Vietnam, exports from Cambodia are expected to continue the decline in coming years.

On the demand side, consumption and private investment contributed to GDP growth. Inflation accelerated to an average of 5.9 per cent in 2007 mainly as a result of increases in food prices (see Table 1).<sup>4</sup> Inflation has become a major area of concern. Rice prices rose owing to domestic supply shortages, and prices of other food items also rose. Rising demand and limited supply caused imported food items, primarily from Thailand, to continue to increase. According to the Asia Development Bank's Asian Development Outlook 2008, 'The price of meat (pork and chicken) also increased, in part following a ban on meat imports from Vietnam to prevent the spread of animal diseases. Higher global fuel prices added to inflationary pressures, as did the weakening of the US dollar, which is widely used in Cambodia (its depreciation against the Thai baht contributed to imported inflation).'

Government estimates put the overall budget deficit in 2007 at 3.2 per cent. According to a debt-sustainability analysis conducted by the World Bank and IMF in mid-2007, external public debt is 'sustainable' and the risk of debt distress is moderate. At the end of 2007, external public debt was estimated at \$2.4 billion (30 per cent of GDP). Of this amount 54 per cent was owed to multilateral institutions and around 35 per cent to the Russian Federation and the US.

**Table 1: Inflation in Cambodia, 2002-2008 (per cent per year)**

2002	2003	2004	2005	2006	2007	2008*
3.3	1.2	3.9	5.8	4.7	5.9	5.5

\*Forecasted for 2008

Source: Author's compilation of Asia Development Bank, Asian Development Outlook, 2007 and 2008

## Labour Force and Employment Data

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) (see Table 2). 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 the contribution of the informal economy to the GDP has slowly declined in recent years (see Table 2), the 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 respectively 40 per cent and 44 per cent of the total workforce, or a total of 84 per cent, according to the Cambodian Labour Force Survey of 2001.<sup>5</sup> 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 (see Table 2).

**Table 2: Employment by Sector of Activity, Even Years, 2002-2006**

	(in thousands)			(as per cent of total)		
	2002	2004	2006	2002	2004	2006
Total employment	6,571	7,496	8,053	100	100	100
Agriculture, forestry and fisheries	4,426	4,520	4,619	67.4	60.3	57.4
Industry	741	947	1,169	11.3	12.6	14.5
Services	1,404	2,028	2,265	21.4	27.1	28.1
Agriculture, forestry and fisheries	4,426	4,520	4,619	67.4	60.3	57.4
Agriculture	4,080	4,103	4,183	62.1	54.7	51.9
Forestry	56	57	60	0.8	0.8	0.7
Fisheries	291	360	376	4.4	4.8	4.7
Industry	741	947	1,169	11.3	12.6	14.5
Mining and quarrying	15	17	20	0.2	0.2	0.3
Manufacturing	601	720	870	9.1	9.6	10.8
Utilities	6	16	19	0.1	0.2	0.2
Construction	120	195	260	1.8	2.6	3.2
Services	1,404	2,028	2,265	21.4	27.1	28.1
Trade	756	1,042	1,140	11.5	13.9	14.2
Hotels and restaurants	24	30	61	0.4	0.4	0.8
Transport and communications	178	196	217	2.7	2.6	2.7
Financial intermediation	9	16	32	0.1	0.2	0.4
Real estate, renting	16	15	184	0.2	0.2	2.3
Public administration and defence	159	180	18	2.4	2.4	0.2
Education	94	106	120	1.4	1.4	1.5
Health and social work	28	37	49	0.4	0.5	0.6
Other social services	59	78	108	0.9	1.0	1.3
Other	81	327	336	1.2	4.4	4.2

Source: International Monetary Fund Country Report No. 07/291, August 2007, citing National Institute of Statistics

## 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 \$45 a month for probationary workers and \$50 a month for Undetermined Duration Contract (UDC) workers (i.e. 'regular workers') (from \$40 and \$45 respectively). According to the ILO the average wage of garment workers is roughly \$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 Articles 139 and 144 of the Labour Law went into effect.

## Informal Women Workers: Problems and Gender Issues

Roughly 85 per cent 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 women 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 regulations (OSH) and no access to social security protection. They are often subject to extortion, bribery, repression and harassment – sometimes sexual – by authorities.<sup>6</sup>

HIV/AIDS disproportionately threatens women in the informal economy. Cambodia has the highest HIV infection rate in Asia. Despite numerous programmes that promote the use of condoms, many men refuse to use them. Cambodia's sex industry is unregulated, despite the efforts of certain women's organizations and NGOs, increasing exposure to HIV/AIDS and increasing the risk of violence.<sup>7</sup>

According to the National Institute of Statistics, 35 per cent of the Cambodian population is made up of migrants. In general males are more prone to rural-rural migration (and international migration), while women are migrating primarily to urban areas. The urban labour market is highly gender-specific, with textile and garment, service sector (small scale hotels, bars, markets, street vendors, massage parlours and restaurants) and sex work all favouring women. In certain sectors such as garments, young, unmarried women are favoured. This is largely due to stereotypes and gendered roles that influence the kind of jobs men and women do in Cambodia. These practices largely determine the choice of work among men and women. For example, nearly every moto-taxi driver (motodop) is a man, while market stall vending is dominated by women. Women represent a large proportion of the informal economy, yet due to a lack of research by sector comprehensive figures are not yet available.

Following the three decades of conflict in Cambodia lasting through the early 1990s, Ledgerwood<sup>8</sup> contends that Cambodians have experienced a loss of their social order to such an extent that images or stories of proper behaviour of women are being re-articulated

as an idealization in reaction to that loss of social order.<sup>9</sup> This pressures women to maintain 'traditional' roles in the household, but economic hardships and social change are transforming this idealization of women's responsibilities. Culturally Cambodia is organized hierarchically, with notions of power and status conditioning social relations. In this social order women are considered to be of lower status relative to men, though the status of an individual is also determined by their age, wealth and other characteristics.<sup>10</sup> The roles of men and women in family life differ along gender lines: young women are more likely to quit school early and are expected to provide supplemental income to their families in the provinces. The primary focus of women in the informal economy is often basic reproduction of their lives and their families. Women living on their own in the cities are helping to support their families, yet they are regularly stigmatized for living away from home. This is largely because women's idealized role in society is as the household manager.

### **Land and Informal Economy Workers**

Fifty per cent of Cambodia's population is under 20 years of age, so high numbers of workers enter the labour market every year. The formal economy does not have the absorptive capacity to deal with this young and increasingly urbanized population. This is leading to calls for intensification of engagement with the regional and global economy, including attracting foreign direct investment (FDI), which provides a significant proportion of jobs in the formal economy.<sup>11</sup> However, this process is creating surplus labour in rural areas.

As more rural Cambodians are pushed off the land due to debt, lack of land titles, increasing prevalence of agro-industry, real-estate development and numerous other reasons, the needs of marginalised populations in both rural and urban areas will only become more pressing. The issue of access and rights to land are critical. Land and labour (much less labour law) are too seldom considered together. This is unfortunate as the case in Cambodia demonstrates; in the course of the flows of women through various sectors of the informal economy, a vast majority of them begin because of disruptions in rural-agricultural livelihoods.

The passage of the Land Law (formally entitled the 'Immovable Property Law') by Cambodia's National Assembly on 20 July 2001 is a major step toward commodified land reform. The law aims to overhaul the way land is managed and distributed, and to protect property rights. According to Mr. Urooj Malik, the Asian Development Bank's (ADB) Resident Representative in Cambodia, 'This marks the achievement of a major milestone in the sustainable development and management of Cambodia's natural resources, given the gravity of governance issues in relation to landlessness, as well as the need to establish private property rights and facilitate private sector development in the country'.<sup>12</sup>

Some key features of the law, are the recognition of rights to land of persons who have had peaceful, uncontested possession of the land for a certain period before the date of proclamation of the law, and the recognition of communal rights to immovable property for pagoda's and indigenous communities. In general, the law clarifies the immovable property regime which was unclear and contradictory under the existing 1992 Land Law.<sup>13</sup>

According to Yeng Virak, executive director of Community Legal Education Centre, 'The 2001 Land Law is progressive. It recognises the right of people who have lived on a piece of land for over five years to be entitled to the land's title. There has been a systematic effort to register land over the past six years.' But, Yeng Virak goes on to say that the poor who have been targeted for evictions are among the millions who have not received the 'paper work' to lay claim to the

land they are living on. Consequently, they have become victims of the manner in which the Cambodian government is interpreting the two types of state land in the country – for public use that needs protection, such as forests,<sup>14</sup> and for private use, which can be sold for development.<sup>15</sup> Since 2001, the scale of land grabs by the wealthy and connected has risen steadily and has become one of the major concerns in Cambodia. Few of the millions evicted have received compensation. In summary, this is a key factor in creating an informalized and proletarianized population.

## 2. Summary of Labour Laws and Implementation

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; and those that do not come under any regulations, licence, or insurance, and do not pay any tax.<sup>16</sup>

Jobs in the informal economy are ‘informal’ in the sense that they are mostly:<sup>17</sup>

- 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.

These units:<sup>18</sup>

- operate with very little capital or none at all;
- utilize a low level of technology and skills;
- operate at a low level of productivity;
- generally provide very low and irregular income, and highly unstable employment for those who work in them.

In Phnom Penh, work in the informal economy includes vendors, shoe-shiners, *motodops*, cyclos and *tuk-tuk* drivers, 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 following sections outline some of these issues.

## Labour Laws and Administration

Cambodia's labour law is comprehensive for formal economy workers, relatively progressive, and has been described for both formal and informal economy workers in numerous publications.<sup>19</sup> Rather than provide another review of Cambodia's Labour Law, this section highlights a few key points most relevant for workers in the informal economy, and for informalizing labour in the formal economy.

### *International Standards*

Cambodia joined the ILO in 1969 and has ratified 13 ILO Conventions, including all eight of the Core Conventions (see Table 4). It has also ratified numerous UN Human Rights Conventions and Treaties including the Universal Declaration of Human Rights. This is due in part to the prominent role played by the UN and ILO in Cambodia's democratic transition from the early 1990s to the present, and the ILO's Better Factories Cambodia Programme, respectively. As stipulated in its Article 31, the Constitution recognizes human rights as stated in the UN Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights, and women's and children's rights.

**Table 4: ILO Convention Ratification**

	<b>Convention</b>	<b>Ratification date</b>
C4	Night Work (Women) Convention, 1919	24:02:1969
C6	Night Work of Young Persons (Industry) Convention, 1919	24:02:1969
C13	White Lead (Painting) Convention, 1921	24:02:1969
<b>C29</b>	<b>Forced Labour Convention, 1930</b>	<b>24:02:1969</b>
<b>C87</b>	<b>Freedom of Association and Protection of the Right to Organize Convention, 1948</b>	<b>23:08:1999</b>
<b>C98</b>	<b>Right to Organize and Collective Bargaining Convention, 1949</b>	<b>23:08:1999</b>
<b>C100</b>	<b>Equal Remuneration Convention, 1951</b>	<b>23:08:1999</b>
<b>C105</b>	<b>Abolition of Forced Labour Convention, 1957</b>	<b>23:08:1999</b>
<b>C111</b>	<b>Discrimination (Employment and Occupation) Convention, 1958</b>	<b>23:08:1999</b>
C122	Employment Policy Convention, 1964	28:09:1971
<b>C138</b>	<b>Minimum Age Convention, 1973</b>	<b>23:08:1999</b>
C150	Labour Administration Convention, 1978	23:08:1999
<b>C182</b>	<b>Worst Forms of Child Labour Convention, 1999</b>	<b>14:03:2006</b>

Source: ILOLEX, Database of International Labour Standards

Note: Core Conventions are highlighted in bold

### *The Constitution*

After the adoption of the Paris Peace Agreement on 23 October 1991, and the formation of a democratic government in 1993, the government of Cambodia has made significant effort in terms of labour-related laws, legislation and building institutions mandated to implement the laws. The 1993 Constitution recognizes fundamental principles relevant to international labour law and a market economy. A series of employment conventions and covenants has been ratified, and a large number of laws and regulations promulgated.<sup>20</sup>

Cambodia's Constitution recognizes:

- the equality of *Khmer citizens* [author's italics] before the law regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status (Article 31);
- the right to choose any employment, the right to enjoy equal pay for equal work, equality of work inside and outside the home, the right to obtain social security and other social benefits as determined by law and the right to form and to be a member of trade unions (Article 36);
- the right to strike and non-violent demonstration (Article 37);
- the right to establish association and political parties (Article 42);
- the abolition of all forms of discrimination against women and the prohibition of the exploitation of women in employment (Article 45);
- the guarantee of women's job security during pregnancy and their right to maternity leave (Article 46);
- the protection of children from acts that are injurious to their educational opportunities, health and welfare (Article 48);
- the obligation of the state to provide free primary and secondary education to all citizens in public schools (Articles 66 and 68); and
- the establishment of a social security system for workers and employees (Article 751).

### *The Labour Law*

In 1997, the Cambodian National Assembly adopted a Labour Law to cover all kinds of work where there is an employer-employee relationship. It is based upon the 1992 Labour Law, but contains a number of additional provisions and exemptions. Apart from the Labour Law, other legislation also directly or indirectly affects labour relations. The main relevant texts are: *Law on the Export of Cambodian Labour to Foreign Countries*; *Law on Social Security Regime for Those Set under the Provisions of the Labour Law* (15 August 2002); *Law on Commercial Registrations and the Commercial Register* (26 June, 1995), some provisions of which are amended by *Law of 18 November 1999*; *Law on the Press Regime* (18 July 1995); *Law on Demonstration* (27 December 1991); and, more generally, *Decree-Law No. 38 on Contract and Other Liabilities*.<sup>21</sup>

In theory Cambodia's Labour Law covers all employees, regardless of nationality, gender, creed, political opinion etc. (see Article 12 of the Labour Law). It broadly includes:

the labour contract, collective labour agreements, general working conditions (including wages, hours of work, holidays and leave, and provisions for children and women), health and safety (occupational health and safety, the rights of the labour inspectorate, and accident compensation), trade union freedom, settlement of labour disputes, provisions on strikes and lockouts, the labour advisory committee and labour courts.<sup>22</sup>

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. The articles state:

### **Article 2**

All natural persons or legal entities, public or private, can be considered to be employers who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously.

Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.

A given establishment shall be always under the auspices of an enterprise. The establishment may employ just one person. If this establishment is unique and independent, it is both considered as an enterprise and an establishment.

### **Article 3**

‘Workers’, within the meaning of this law, means every person of all sexes and nationalities, who has signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private. To clearly determine the characteristics of a worker, one shall not take into account either the jurisdictional status of the employer or that of the worker, as well as the amount of remuneration.

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). According to Article 1 of the Labour Law, the following are explicitly excluded:

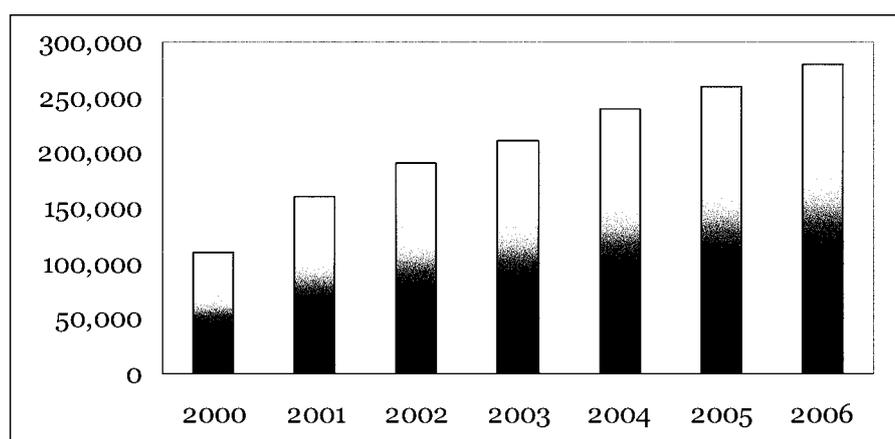
- a) Judges of the Judiciary.
- b) Persons appointed to a permanent post in the public service.
- c) Personnel of the Police, the Army, the Military Police, who are governed by a separate statute.
- d) Personnel serving in air and maritime transportation, who are governed by a special legislation. These workers are entitled to apply the provisions on freedom of union under this law.
- e) Domestic workers or household servants, unless otherwise expressly specified under this law. These domestic workers or household servants are entitled to apply the provisions on freedom of union under this law.<sup>23</sup>

Despite restrictions of the Cambodian labour legislation’s application to the employer-employee relationship, Sieng and Nuth (2006) 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, de-skilled aspects of the production process.<sup>24</sup> 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. Contributing to the industry's boom was the granting of Most-Favoured Nation status by the US, and the framework for cooperation with the EU under the Generalised System of Preferences, both in 1997. 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 (see Figure 1).

**Figure 1: Workforce Evolution: 2000-2006**



Source: Better Factories Cambodia, 2006.

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).<sup>25</sup> As their names suggest, a UDC is valid for an unlimited time, while a FDC is valid for a specific period of time. The Coalition of Cambodia Apparel Workers Democratic Union (CCAWDU) 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.<sup>26</sup> 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 \$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 \$45. The same factory in Mean Chey summarily fired 70 workers who demanded that the piece rate be restored to its previous higher rate. The workers were compensated by the factory, which determined that the profits from the lower piece wage were greater than the cost of compensating 70 workers. 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.<sup>27</sup>

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'.<sup>28</sup> According to CCAWDU, 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 CCAWDU 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 be extended for up to a year. 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, such as one in Tuol Sangke, 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'.<sup>29</sup> 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.'<sup>30</sup> 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.

**Table 5: Number of lost days caused by strikes affecting Garment Manufacturers Association of Cambodia (GMAC) members**

**January 2003-May 2006**

Year	Total
2003	130,284
2004	107,112
2005	52,419
2006 (Jan-May)	181,556

Source: GMAC Labour Support Office 2006

**Table 6: Number of disputes (strikes and conciliations) affecting GMAC members Jan 2002-May 2006**

Year	Strikes	Conciliations
2002	80	-
2003	55	78
2004	84	38
2005	66	54
2006	37	30

Source: GMAC Labour Support Office 2006

Thus far CCAWDU is organizing flexible labour in garment factories to become members of plant level unions. They support demands to become regular workers with benefits accorded to this status such as maternity leave, sick leave, bonuses, etc., while demanding that their time as flexible workers be included in their employment package.

### **3. 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.<sup>31</sup> 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 1 per cent of the total labour force is unionized, and outside the garment and tourism/hospitality sectors, the trade union movement remains quite weak.<sup>32</sup>

It is a competitive environment, particularly in the garment industry, in terms of organizational politics, objectives and access for unions to resources.<sup>33</sup> These organizations range from pro-ruling party, pro-opposition, independent/radical positions, to corrupt pro-capital unions. At times this is apparent in terms of the staff at the federation level of trade unions. Some unions such as the Coalition of Cambodia Apparel Workers Democratic Union (CCAWDU) are led by current and former rank and file workers. On the other end of the spectrum, the Cambodia Labour Union Federation's former leader was an investor in garment factories and had acted as advisor to Prime Minister Hun Sen.<sup>34</sup>

### **New Forms of Organizing**

Currently in Cambodia there is not a clearly identifiable informal 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 Trade Union Federation. 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 CCAWDU, 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).<sup>35</sup> 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. The activities of several members overlap. For instance, CCAWDU (primarily a garment union) is organizing workers in gas stations and women in service sectors<sup>36</sup> – both IDEA and CFSWF are focusing on the same or similar sectors. Thus, as a confederation they maintain a degree of flexibility in terms of the member activities and have not established neatly defined 'territories' for each of the members. This can be viewed as a potential strength as it allows organizers to utilize their particular strengths and share strategies. By not narrowly focusing on one sector it allows organizers to access a broader range of workers across sectors, which more accurately reflects workers' mobility in the urban labour market.<sup>37</sup>

CLC members focus on organizing the following sectors or forms of informal and informalizing labour:

- flexible labour in textile and garment factories (85 to 90 per cent women)
- casual labour in service industries such as food and beverage services (nearly 50/50 men and women)
- beer promotion women (100 per cent women)
- motodop drivers (nearly 100 per cent men)
- street vendors (nearly 100 per cent women)

CCAWDU, 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.

### *Case study*

Since the formation of CLC, CCAWDU and IDEA have successfully organized two unions for women working to promote particular brands of beer in bars and restaurants. This is a very difficult sector to organize in Cambodia. In Cambodia and internationally, both industry and civil society representatives refer to these workers as 'promotion girls' or 'beer girls' but this language is belittling, so we use the term 'beer promotion women'. Beer promotion women are ubiquitous in Cambodia's bars, beer gardens, restaurants and nightclubs. CARE (2005) estimates that there are 4,000 beer promotion women nationwide, though this is surely a conservative estimate for Phnom Penh alone. Normally each establishment will have women promoting at least three different brands of beer on a commission basis, in addition to 'regular' staff. Based on the size of the establishment there may be numerous women promoting the same brand. The women usually wear provocative dresses with the name of the beer they are promoting emblazoned on them. This is, of course, an example of the commodification of women by beer corporations including Heineken, Carlsberg, Tiger, Anchor, Ankor and others.

Male customers regularly choose the woman rather than the beer brand, as customers are approached by several women selling different brands upon taking a seat. The woman (or beer brand) chosen is expected to closely service the customers throughout the night, ensuring glasses are never empty, and ice is regularly added to the glass, etc. In many cases the women are expected to sit with and and/or drink beer with the customer and provide 'entertainment'. Workers on commission are more likely to drink beer with customers both due to pressure from the customers and the interrelated need to sell more beer. According to a study by CARE (2005) cases of harassment and abuse are rife within beer promotion. In their survey of 640 beer promotion women, 83 per cent reported having experienced derogatory behaviour (verbal/non-verbal), 80 per cent unwanted sexual touching, 54 per cent physical abuse, 60 per cent have been threatened or forced (verbal, physical and at gun point) and 38 per cent have had to perform a coerced sexual act in the workplace.<sup>38</sup> These issues are considered 'on the job hazards' for these workers. The survey found that one quarter of beer promoters are paid a monthly salary (plus bonuses), and 73 per cent work on a commission-only basis. Many of these women do 'after-hours' sex work voluntarily, while others are forced or coerced into it.

Most beer promotion women in Phnom Penh are rural-urban migrants who are working to support extended families. For the 'successful' ones, beer promotion can offer a higher income than working in a garment factory. But in exchange they must deal with an ever-present threat to their personal safety. Beer promotion women are normally employed by distributors for the beer brands. This makes it difficult to organize as women working for any one distributor are scattered throughout the city. Women can shift location regularly, meaning workplace-specific organizing strategies are not always effective. According to CCAWDU, many beer promotion women are only concerned with day-to-day survival and are not interested in talking about longer-term efforts to improve their work environment through collective action. Many do not expect to be employed in these jobs for long, so they do not see the point of organizing. The CARE (2005)

survey found that 67.5 per cent of respondents had been working in beer promotion for less than one year. Only 15 per cent had worked on the job for more than two years.

Bearing these challenges in mind it is quite a success to have organized unions for beer promotion women. It is, however, too early to write of an outcome since it is quite recent and the unions are in initial phases of their activities. What is lacking from this case study is research and insight into the lives of the women who have chosen to organize, and the personal-social context that has led to this association and their perceptions of empowerment.

## 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. Eighty-five 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 uncertain situations. The business registration process has been simplified since 2004, but the registration fee is as high as \$250 to \$300.<sup>39</sup> 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 difficulties 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, ADB or garment corporations prominent in Cambodia's socio-economic transition to date. Rather, grass-roots 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.

## ENDNOTES

1. On 3 January 1992, the US lifted its embargo against Cambodia, thus normalizing economic relations with the country. The United States also ended blanket opposition to lending to Cambodia by international financial institutions (Department of State 2006).
2. Asia Development Bank (ADB) (2008) *Asian Development Outlook*.
3. Ibid.
4. Ibid.
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7. It is worth noting that the US Government and any US funding through such agencies as USAID do not support any organization or programme that promotes the regulation or legalization of sex work.
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9. Gorman, S., D. Pon and K. Sok (1999) *Gender and Development in Cambodia: An Overview*, Working Paper 10, Phnom Penh: Cambodia Development Resource Institute, June.
10. Gorman et al. 1999.
11. To this end, the Cambodian government has approved 15 special economic zones in border and rural areas since 2005.
12. Asia Development Bank (ADB), *ADB Congratulates Cambodia on Passage of Land Law*, <http://www.adb.org/Documents/News/CARM/2001/carm200101.asp> [Accessed 15-4-08]
13. Asia Development Bank (ADB) (2001)
14. See Global Witness (2007) *Cambodia's Family Trees: Illegal Logging and the Stripping of Public Assets*, June.
15. Macan-Markar, M. (2008) *Rights-Cambodia: Land Grabbing-A Serious Concern*, Bangkok: IPS, Jan 28.
16. EIC 2006a
17. EIC 2006b
18. Ibid.
19. See 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.
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21. Sieng and Nuth 2006
22. Falkus and Frost 2003
23. See Brown, E (2007) *Out of Sight, Out of Mind? Child Domestic Workers and Patterns of Trafficking in Cambodia*, International Organization for Migration, January.
24. 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*.
25. Better Factories Cambodia (2006) *Better Factories Concerned about Labour Contracts*, Quarterly Newsletter, No. 6 October.
26. Falkus and Frost 2003
27. Womyn's Agenda for Change (WAC) (2005) 'Current Situation of Labour Flexibilization in Cambodia,' available at [www.womynsagenda.org](http://www.womynsagenda.org).
28. Better Factories Cambodia 2006
29. Ibid.
30. Ibid.

31. On a general level 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. (2003) *The Political Economy of Cambodia's Transition, 1991-2001*. London: RoutledgeCurzon; 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; 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 H.S. Toh (forthcoming, 2009) 'Success Story or Barely Surviving? Cambodia in the Global Textile and Garment Industry', *Journal of Contemporary Asia*.
32. International Trade Union Confederation, *2007 Annual Survey of Violations of Trade Union Rights*.
33. As a brief summary, there are 20 trade union federations in the garment industry, two federations in construction, two federations in food, beverage and services, one workers' association for sex workers, a civil servants' union, three informal workers' associations in addition to numerous non-government organizations (NGOs) focusing on the informal economy in wide-ranging capacities, up to ten NGOs working on labour-related issues (in a wide range of programmes and capacities), several trade unions and NGOs working in plantations, and scores of NGOs working in rural areas with farmers and peasants.
34. Falkus and Frost 2003
35. 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.
36. This is, partially, a survival strategy for CCAWDU given the uncertain future of the garment industry in Cambodia.
37. One drawback of organizing in these sectors is that several CLC members have secured funding from external donors such as international NGOs and trade unions, since they do not have surplus budgets from work in other sectors to support work with informal/izing workers. This entails project reporting, writing proposals and other tasks that are time consuming and distract the union activists from their core work of interacting with their members. Thus, they run the risk of becoming like an NGO in certain functions and capacities.
38. CARE (2005) *A Report on the Situation of Beer Promotion Women in the Workplace, Cambodia*.
39. EIC 2006a

