



**National Strategy on Labour
Dispute Prevention and
Settlement in Cambodia**

**Robert Heron
and
Hugo van Noord**

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NOTE BY H.E. NHEP BUNCHIN, MINISTER FOR LABOUR AND VOCATIONAL TRAINING

In August 2004 the Government of the Kingdom of Cambodia introduced a number of important changes in Ministerial portfolios, including the creation of the Ministry of Labour and Vocational Training to assume responsibility for the labour and vocational training functions previously undertaken by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation.

The new Ministry faces a number of challenges relating to both its functional responsibilities and structural arrangements, and intends to undertake a number of structural and operational adjustments to ensure that its mandate is fulfilled to the maximum possible extent.

In this context, it is pleasing to learn that the new Ministry has available to it a detailed strategy paper to guide its activities in the field of industrial relations, covering a wide range of labour dispute prevention and resolution interventions. This strategy document entitled *Labour Dispute Prevention and Settlement* is the outcome of close consultation and cooperation between Government, employers' associations, union federations and the ILO's Labour Dispute Resolution Project.

My Ministry is conscious of the need to improve employer-employee relations at national, industry and enterprise levels and, subject to resource availability, will do everything possible to implement the proposals outlined in the strategy document.

The Ministry of Labour and Vocational Training expresses its gratitude to the ILO's Labour Dispute Resolution Project for facilitating the preparation of the Strategy Document. My Ministry is committed to transforming the planned interventions, as outlined in the document, into action programmes leading to performance improvement in all areas of industrial relations. Accordingly, it will mobilize its resources to ensure that employer-employee relations at all levels focus on dispute prevention, and where prevention improves impossible, on approaches to dispute settlement that respect common interests and enhance Cambodia's economic and social development.

Phnom Penh,
5 October 2004

Nhep Bunchin
Minister for Labour and Vocational Training

PREFACE

Cambodia's transition to a market economy and its progressive integration into regional and international markets has created many opportunities for our country but, at the same time, has also left us with a number of challenges.


The growth created in Cambodia cannot be assumed to continue automatically. We must plan for the future and this includes seeking ways to maximize our potential for investment and economic development, balanced by a range of social protection measures.

Finding a suitable balance between economic development and social protection strikes at the very core of industrial relations in Cambodia, and requires on-going cooperation between the Ministry, government institutions, employers and their associations, and workers and their respective trade unions.

In recent years, the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation has issued various *Prakas* to regulate employer-employee interactions, has worked in partnership with the ILO to improve working conditions and productivity in the garment sector, and has established the Labour Advisory Committee and the Arbitration Council. These interventions have helped establish a solid foundation for industrial relations, but we cannot afford to be complacent. Much remains to be done.

This strategy paper on *Labour Dispute Prevention and Resolution* provides all parties in the industrial relations system with an important framework for the future development of employer-employee relations at all levels. The eleven *Strategic Interventions* outlined in the paper provide us with important guidelines to further strengthen and develop our industrial relations system to ensure that common interests prevail over conflict, and that harmony and cooperation dominate over disagreements and strikes.

The Ministry has welcomed the opportunity to be able to work together with employers' associations, trade unions and the ILO in developing the *Strategy Paper* and looks forward to further cooperation with all parties in implementing the strategic interventions it outlines.



The Ministry expresses its appreciation to Mr. Hugo van Noord, CTA of the ILO Labour Dispute Resolution Project and Robert Heron, ILO Consultant, for their creative efforts in drafting the *Strategy Paper* and for their facilitation of the consultations that have led to its finalization and endorsement by all social partners in Cambodia.

Phnom Penh
14 July 2004

Ith Sam Heng
Minister for Social Affairs, Labour, Vocational Training and Youth Rehabilitation

INTRODUCTION

The ILO Project on Labour Dispute Resolution in Cambodia aims to strengthen the country's labour dispute resolution system, thereby contributing to national development. One of the project's outputs calls for the preparation of a dispute prevention and resolution strategy to guide this component of Cambodia's labour relations system.

This strategy paper is presented by Cambodia's Ministry for Labour, and has been prepared with the assistance of the ILO Labour Dispute Resolution project, in consultation with representatives of Cambodia's trade unions and employer associations. It was discussed with government, employer and worker representatives in separate meetings during May 2004, and was endorsed at a tripartite meeting held in Phnom Penh on 26 May 2004.

The paper examines the current legal framework for dispute prevention and settlement in Cambodia, identifies some of the shortcomings in existing procedures and operations, and outlines a number of strategic interventions required for the development and improvement of the country's labour dispute mechanisms and operations, all directed to building improved employer-employee relations in the interest of national development.

The strategic interventions focus on building a sound foundation for dispute prevention, on the one hand, and dispute resolution and settlement, on the other.

Strategic interventions must be supported by appropriate action if planned intentions are to be transformed into actual improvements. A major component of the required action is human resource capacity building for all parties in Cambodia's labour relations system. Some action, however, includes a reconsideration of aspects of the legal framework itself.

Action strategies directed towards improving the performance of the country's dispute prevention and resolution procedures are both short and long-term. In the short-term, action should focus predominantly on human resource capacity building, in the longer-term policy, legal and related matters need to be addressed.

THE EXISTING SITUATION

The Context

During the last decade Cambodia's economy has progressively moved from one based on central planning, to one increasingly driven by market forces. This transition process has seen periods of significant growth. Market economies recognize the divergence of interests between workers and employers, and accept that the increased level of economic activity flowing from market forces, typically, is accompanied by increased conflict and disagreements between workers and their employers.

Cambodia's transition process has followed this general trend, with conflict and disagreements escalating into an increasing number of labour disputes.

The conflict and disagreement inevitable in a market system need not, however, escalate into full-blown, disruptive and damaging labour disputes. Provided the necessary dispute prevention and resolution institutions and processes are in place, conflict can be resolved fairly and quickly, and employer-employee harmony and cooperation restored.

Cambodia has taken steps to establish such dispute prevention and resolution institutions and arrangements through the introduction in 1997 of a comprehensive legal framework that includes various provisions relating to labour disputes. The laws and regulations are in place, but there remains a need to build and develop a solid operational foundation for the nation's industrial relations system if it is to contribute to rather than detract from national development efforts. Creating a sound operational framework calls for a major capacity building effort for all parties concerned with employer-employee interactions in Cambodia.

The Legal Framework

ILO Conventions

Cambodia has ratified seven of the *core* conventions referred to in the ILO Declaration on Fundamental Principles and Rights at Work, and is now discussing the remaining fundamental convention concerning the worst forms of child labour. The seven conventions include Convention 87 (Freedom of Association) and Convention 98 (Right to Organize and Collective Bargaining.)

Although not a fundamental convention, Cambodia has also ratified Convention 150 (Labour Administration), which sets standards on the role of government in labour inspection, labour relations, and employment.

Cambodia's Constitution

The Constitution of the Kingdom of Cambodia states that citizens have the right to form and be members of trade unions, and stipulates that the organization and operations of trade unions shall be determined by law (Article 36). The Constitution also gives workers the right to strike and to engage in non-violent demonstrations (Article 37). The right of employers to form employers' associations is guaranteed under Article 266, and the right to lock out under Article 319 of the Labour Law.

Legislation

In 1997, Cambodia introduced a new labour law to cover all situations where there is an employer-employee relation, with the exception of civil servants, judges, police and army, pilots and boat captains. Although only about 10% of the active population has a formal employer-employee relation, such persons are covered by a comprehensive law that includes aspects of labour protection, freedom of association, collective bargaining, and dispute resolution.

The Labour Law of 1997 is similar to the 1992 law it replaced, but with a number of important additions, including the right to strike, the expansion of collective bargaining rights of workers, and a detailed system for resolving disputes.

Since the introduction of the 1997 Labour Law, the Ministry responsible for labour matters, hereinafter referred to as the Ministry, has promulgated a series of implementing regulations, many of which relate directly to dispute prevention and resolution.

Regulations concerned with dispute prevention include the following.

- Prakas 277, Registration of Professional Organizations, 11 October, 2000
- Prakas 313, Role of Shop Stewards and Trade Unions, 27 November, 2000
- Prakas 237, Establishment of Labour Inspection Office at District Level, 27 September, 2001
- Prakas 286, Shop Stewards in Enterprises and Establishments, 5 November, 2001
- Prakas 305, The Representativeness of Professional Organizations of Workers at the Enterprise Level and the Right to Collective Bargaining for the Conclusion of Collective Agreements at that Level, 22 November, 2001
- Anukret 62, Labour Advisory Council, 4 September, 2000 (Amendment to Anukret 29 of 20 May, 1998 and Anukret 37 of 28 April, 1999 on Composition of the Labour Advisory Council)
- Notification 16, Registration of Professional Organizations and the Determination of the Representativeness of Professional Organizations of Workers, 26 September, 2002

Regulations concerning the resolution of disputes include the following.

- Prakas 318, Procedure for Settlement of Individual Labour Disputes, 29 November, 2001
- Prakas 317, Procedure for Settlement of Collective Labour Disputes, 29 November, 2001
- Prakas 099 , Arbitration Council, 21 April, 2004

In addition, the Ministry has also promulgated specific regulations for disputes arising in the garment, textiles and footwear sectors, for the appointment of liaison officers in enterprises (Circular 21, 22 September 1999), and for the establishment of a Joint Committee for the Garment, Textile and Footwear Industries (Inter-Ministerial Prakas 2588, 22 July 2000).

Labour Disputes

Chapter XII of the Labour law is concerned with the settlement of labour disputes. A distinction is made between individual disputes and collective disputes.

Individual Disputes

An individual dispute involves one employer and one or more employees. Individual disputes are rights disputes – they concern disagreements that relate to an **existing** legal right established by law or regulation, or by agreement.

Under Article 300 of the Labour Law a party to an individual dispute may seek to have it resolved through the court. Prior to such action, however, either party has the right to refer the dispute to a labour inspector for conciliation. The conciliation procedure is established by Article 301 of the Labour Law and Prakas 318, 29 November 2001 (Procedures for Settlement of Individual Labour Disputes) as follows.

- Either party can submit a complaint to a labour inspector. This is voluntary, but if one party initiates proceedings the other party is required to participate.
- The parties are required to attend meetings called by the conciliator and provide information the conciliator may request.
- In all conciliation cases, whether successfully conciliated or not, the conciliator is required to write and sign a conciliation report. The report is also signed by the parties, and each party receives a copy.

Under the conciliation of individual disputes – indeed, in all cases of conciliation – the third party conciliator has no power to make a decision. The conciliator's role is to facilitate discussions and encourage the parties to reach an agreement. The conciliator does not adjudicate the dispute – it is resolved and decided by the parties themselves.

Collective Disputes

A collective dispute involves one or more employers and a number of employees, as a group or trade union. Collective disputes may be **rights** disputes over **existing** terms and conditions established by law or agreement, or **interest** disputes concerning **future** benefits. Under Articles 303-317 of the Labour Law, the parties to a collective dispute are required to submit the dispute to a labour inspector. This is compulsory, unless there is a resolution procedure included in a collective bargaining agreement. The law also provides for a labour inspector to commence conciliation proceedings on learning of the dispute, even if he/she has not been officially notified.

Issues to consider concerning collective disputes are the need to clarify the definition of what constitutes a collective dispute. This is particularly important with regard to the operation of the Arbitration Council, the jurisdiction of which is confined to collective disputes.

Once a collective dispute is brought to the attention of the Ministry, a conciliator must be appointed within 48 hours (Article 304). The conciliation must be carried out within 15 days, but this can be extended if both parties agree. Attendance by the parties at conciliation meetings is compulsory, and they must not engage in any hostilities during the conciliation period, which is intended as a cooling off period in which the parties can reconsider their respective positions.

If the conciliation is successful and the parties reach agreement, the agreement is recorded, signed by the parties, and certified by the conciliator. The agreement, once certified, is binding on the parties to the dispute.

If the conciliation is unsuccessful, or leaves some issues unresolved, the conciliator must prepare a written report of non-conciliation and submit this to the Minister within 48 hours of the conclusion of the conciliation.

At this stage the collective dispute remains unresolved, and Article 309 of the Labour Law indicates that the parties can follow the arbitration procedure provided in the collective bargaining agreement, if any, follow any other procedure they agree to, or follow the arbitration procedure provided by Articles 309-317 of the Labour Law and Prakas 338, 11 December 2002. If there is no arbitration procedure in the collective bargaining agreement or no agreed procedure between the parties, the Minister is required (Article 310) to refer the case to the Arbitration Council within 3 days from receiving the report of non-conciliation.

Once a dispute is presented to the Arbitration Council, a 3-member arbitration panel is appointed to hear and decide the case. One member of the panel is chosen from the Council by each of the parties to the dispute. These two panel members then choose from the list of Council members the third arbitrator.

The Arbitration Council is empowered to decide both rights and interest disputes and, unless both parties agree to an extension, the Council must make an award within 15 days of receiving the case. The final decision of an arbitration panel becomes an award of the Arbitration Council. Workers are not permitted to strike, and employers are not permitted to lock out, until the arbitration process has been exhausted, thereby providing an institutionalised cooling off period.

A party may file its opposition to an arbitral award within 8 calendar days after being notified of the award. This nullifies the award. If neither party opposes the award within the time permitted the award will be enforceable. An arbitral award can become immediately enforceable if the parties agree in writing to be bound by it or the parties have a collective agreement that provides for binding arbitration.

Individual v. Collective Disputes

The procedures for resolving individual and collective disputes differ in a number of ways.

- For individual disputes the procedures are voluntary, but compulsory for collective disputes.
- In individual disputes the procedures are initiated by the parties themselves. In collective disputes the parties may initiate the procedure themselves, or the procedure may be initiated by the labour inspector if he/she learns of the dispute.
- If an individual dispute is not resolved by conciliation, either party can take it to court, but submission to the Arbitration Council is not possible. If the parties are not able to resolve a collective dispute by conciliation, arbitration is compulsory (unless the parties agree to an alternative).

Implementation of the Law

Overall, Cambodia has a comprehensive legal framework for labour protection including minimum standards relating to general working conditions, collective labour agreements, work safety and health, trade union rights, the settlement of collective and individual disputes, and the formation of a tripartite Labour Advisory Committee.

Cambodia's legislation, however, is not effectively implemented. As an alternative to law enforcement some progress is being made through the introduction of a voluntary model grievance procedure to be adapted to the needs of each enterprise, thereby providing a foundation for dispute prevention at enterprise level that relies on enterprise-level institutional arrangements, without the need for government intervention. The recent establishment of the Arbitration Council is also a very important exercise in institution building. In addition, labour inspectors do undertake routine and follow-up inspections that, presumably, make some contribution to dispute prevention. Labour inspectors, in spite of not having the benefit of formal, longer-term training in conciliation, also conduct successful conciliation meetings.

But in spite of these achievements and the existence of a comprehensive legal framework, employer-employee interactions need further strengthening and development.

- The labour administration, centered in the Ministry, requires further capacity building to enable it to provide the leadership required for the development of effective labour relations, including dispute prevention and resolution.
- Employers, workers and their respective organizations frequently lack experience and capacity in the nature and operations of labour relations in a market economy.
- There is a need for more widespread knowledge of the content of labour laws and regulations, and a need for greater understanding of the intentions of underlying labour laws.
- The Ministry, employers and workers should be encouraged to give greater attention to dispute prevention within enterprises.
- Labour officials, particularly labour inspectors, would benefit from formal and higher-level as well as on-going training on the nature of labour relations in general and in dispute prevention and conciliation, in particular.
- Instead of first focusing on law enforcement, labour inspection visits should strive to secure compliance through other means including informing workers and employers on the content and meaning of labour laws, and advising them on what needs to be done to comply with specific articles of the law.
- The court system is generally ill-equipped to handle labour disputes.
- Only a few comprehensive collective bargaining agreements that include dispute resolution procedures as alternatives to those established under the Labour Law, have been negotiated.

DISPUTE PREVENTION AND RESOLUTION: THE ISSUES

Dispute Prevention

As outlined in Chapter 1, disagreement and conflict are considered normal in an economy in which market forces dominate the resource allocation process. This does not mean, however, that such disagreements, complaints and conflicts must escalate into major labour disputes. Creating circumstances and making arrangements where disagreements are resolved peacefully, quickly, and fairly, will prevent labour disputes, and are important elements of a mature labour relations system.

A few enterprises in Cambodia have taken the necessary steps to ensure that minor problems do not become major disputes but, in general, insufficient attention has been given to dispute prevention, compared with dispute resolution and settlement. Why do minor complaints escalate into disputes, often resulting in work stoppages?

- Workers and employers lack knowledge and understanding of their respective rights and obligations under the law.
- There are no arrangements at enterprise level to address complaints in a systematic manner. Grievance procedures are rare, workplace cooperation initiatives are undeveloped, and real collective bargaining leading to formal agreements barely exist.
- Even if the necessary institutional arrangements and frameworks are in place, workers and managers too often lack the required knowledge, skills and experience to work effectively within such frameworks.
- Labour inspection has insufficient capacity to give the required attention to prevention and improvement.

The prevention of labour disputes requires more than ensuring that key stakeholders are properly informed on the content and meaning of laws. Various institutional arrangements and processes must also be addressed. Three issues assume prime importance, namely,

- Workplace cooperation
- Collective bargaining
- Labour inspection

Workplace Cooperation

Workplace cooperation refers to the arrangements for establishing and improving relations between management and workers, **within an enterprise**. It involves both formal and informal interactions to enable workers and managers to meet, discuss their problems, and resolve them to the satisfaction of both parties.

Workplace cooperation seeks to prevent disputes by workers and managers within enterprises taking greater responsibility for their interactions, and to build sufficient trust and confidence to enable them to talk through their differences and resolve problems, without the intervention of government.

As well as preventing disputes, workplace cooperation initiatives can improve working conditions and the working environment, increase labour productivity and improve enterprise competitiveness, build trust between workers and managers, help bridge the cultural divide between Cambodian workers and foreign managers, promote common interests, and increase worker motivation through participation and involvement.

Workplace cooperation can take a variety of forms including information sharing, joint consultation committees, joint decision making committees, collective bargaining and a range of individual worker-manager interactions directly related to the immediate work processes.

The Ministry has no direct role in workplace cooperation. Essentially, workplace cooperation is a bi-partite process. But the Ministry has a potentially important role to play in **encouraging** workplace cooperation arrangements through interventions that focus on facilitation and advice.

Workplace cooperation initiatives in Cambodian enterprises are limited. Workplace interactions are based on doing what the law says, often resulting in conflict and disagreement because the parties have insufficient knowledge of the law. Cooperation tends to focus on the minimum required to meet legal requirements. Little attention has been given to using workplace cooperation as the means to step outside the legal framework, and start to make improvements for the benefit of both parties.

In some cases, the lack of workplace cooperation initiatives is due to fear by management that **any** form of power sharing with workers will somehow diminish management's authority. In other cases, workplace cooperation has not developed, more because of limited motivation rather than fear. 'Things are working as we want, so why change?' In other cases managers and workers may be willing to engage in workplace cooperation activities, but do not know how. They need assistance in 'how to do it' and need an issue to get them started. A relatively neutral issue that stresses common interests is the introduction of an enterprise grievance procedure. As well as building cooperation between workers and employers, a grievance procedure can play a major role in dispute prevention.

Grievance Procedure

The establishment and operation of an internal procedure to handle grievances at enterprise level is a key element of a labour dispute prevention strategy, and also represents a good starting point for workplace cooperation. A grievance procedure enables complaints to be handled within the enterprise and, provided the procedure is applied fairly and follows the required steps, many complaints can be resolved on-the-spot, without any need for third-party intervention.

The ILO Labour Dispute Resolution project has provided technical assistance for the preparation of a model grievance procedure to be introduced by enterprises either as part of their internal employer-employee procedures, or as a standard component of collective bargaining agreements. A few enterprises have introduced such a procedure as a means of improving employer-employee cooperation but, to date, only a few collective agreements have incorporated such a procedure.

The Ministry has a role to play in encouraging enterprises to introduce a voluntary grievance procedure, adapted to the particular needs of each enterprise. But as with all forms of workplace cooperation, the Ministry's role should be supportive and promotional, rather than based on legislative interventions and law enforcement.

Collective Bargaining

Collective bargaining is more than a process for establishing the terms and conditions of employment, above the minimum standards set by law. It is also a means for preventing and resolving disputes.

Collective bargaining agreements can be as narrow or wide as the parties want them to be. They can include a grievance procedure, agreed between workers and employer that indicate the steps to be taken to resolve workers' complaints, thereby preventing those complaints from escalating into labour disputes. Collective agreements can also include dispute settlement and resolution procedures as alternatives to those established by law.

Cambodia's collective bargaining institutions and processes remain weak. The Ministry is committed to the further development of collective bargaining, with a view to collective bargaining eventually becoming the foundation for the nation's labour relations system.

Labour Inspection

Labour inspection is concerned with the arrangements for ensuring employers and workers comply with labour laws and regulations. Compliance can be secured through informing and educating workers and enterprises on the content of laws and regulations, advising on ways of actually complying with legal requirements, enforcing laws as appropriate, and reporting on the various defects and shortcomings in the law and its application.

Increasingly, labour inspection is being promoted as a means to prevent disputes, to improve working conditions, and to protect workers. Labour inspection is placing increased emphasis on compliance and cooperation, rather than strict enforcement and penalties.

Cambodia's labour inspection system is traditional in approach with limited emphasis on issues of prevention, protection, and improvement.

The effectiveness of Cambodia's labour inspection system in so far as it relates to the prevention of disputes, the protection of workers, and improvements in working conditions, remains largely unknown. It is accepted, however, that the objectives of prevention, protection and improvement may be more readily achieved if the organization, structure, operations and management of the country's inspection system were considered afresh. (This is considered in a later section of this Chapter under the heading of **Integrated Labour Inspection**.)

Labour Inspectors and Dispute Resolution

As indicated in Chapter 1, individual disputes can be taken directly to court by the disputing parties or, as a first step, voluntarily referred to a labour inspector for conciliation. In practice, conciliation is handled by the Labour Disputes Office within the Department of Labour Inspection but not always by a specialist conciliator. The Department is in the process of restructuring to create a clear division between inspection, conciliation, and labour relations functions. Until the restructuring is fully implemented, however, and additional resources are mobilized, it is not possible to fully separate conciliation and labour inspection functions and thus labour inspectors will continue to be involved in conciliation cases.

The functions of labour inspection and conciliation have little in common. Conciliation is concerned with an independent third party encouraging the disputing parties to make compromises in order to resolve their problem. Inspection is primarily concerned with ensuring compliance with labour laws.

The practice of some conciliation cases being handled by a labour inspector taints the conciliation process and adds an element of confusion to the disputing parties who receive a mixture of conciliation and law enforcement. This confusion is compounded by the law which requires that individual rights disputes are to be conciliated before a 'labour inspector.'

Conciliation before a labour inspector is likely to be different from 'true' conciliation. In Cambodia, the labour inspector is more likely to provide the disputing parties with information on the content of the Labour Law, correct any legal misunderstandings between them, indicate to the parties what the outcome to their dispute should be, and then encourage them to reach an agreement.

The prevailing view is that the Ministry's inspectors-conciliators should determine what is right from wrong under the law, and direct the disputing parties to what is right. In many instances, this also appears to be the view of workers/unions and employers. In such cases, the process is more one of dispute **settlement** by a third party rather than conciliation that, by its nature, is a process of dispute **resolution** by the parties themselves.

This situation might be addressed by making a clear distinction between inspection and conciliation in both law and practice. Labour inspectors should not be engaged in conciliation. Their greatest contribution to dispute prevention rests with improved inspection work. Routine inspection visits focusing on 'at risk' enterprises where worker complaints are common, could solve many problems on the spot and prevent complaints arising in the first place, thereby obviating the need for conciliation.

There is also the larger issue of whether right disputes, individual or collective, are best addressed by conciliation in the first instance. This issue is addressed later in this chapter.

International Experience

In re-examining its approach to labour protection and labour inspection activities, Cambodia needs to be aware of international developments that are transforming the work of labour ministries in general and labour inspectorates in particular throughout the world. The following issues are pertinent to Cambodia.

1. **Globalization** and its related influence on enterprise competitiveness has seen more deregulation of labour markets and highlighted the need for interventions that find a new balance between enterprise efficiency and competitiveness, on the one hand, and worker protection, on the other.
2. **Competitive advantage** is seen as having a number of dimensions extending beyond price and quality of products and services, to embrace aspects of labour protection. Fair, safe and healthy working conditions can be used to obtain a competitive advantage.
3. **International buyers and final consumers** in western countries have an indirect influence on a nation's labour protection standards, implying that buyers are prepared to pay a premium for goods produced under conditions considered to be fair.
4. **Bi-lateral Trade Agreements** are being used as a vehicle to promote fair labour standards, requiring that suitable monitoring and inspection arrangements are in place as a condition for the export of goods to the recipient country. The inclusion of labour clauses in trade agreements is not a matter of theoretical debate – this is a practical reality in Cambodia that has placed external pressures on the nation to reform and improve its labour practices.
5. **Deregulation** does not mean the absence of regulations but, rather, the establishment of a protective framework that is different than before, but not necessarily diminished. This includes the preparation of framework-style legislation to establish minimum standards supported by regulations, enterprise rules, codes of conduct, workplace cooperation strategies, grievance procedures, collective bargaining, and other initiatives designed to bring flexibility in implementation, and agreement between management and workers on above-minimum labour standards.
6. **Labour protection** and related labour inspection interventions increasingly are being extended to **all** engaged in the world of work, and are no longer being confined to those engaged in formal, wage-sector activities. Labour protection is not a function of enterprise size applying only to large, formal sector enterprises. Labour protection is seen as important for all workers in a wide range of work situations, including the large number of workers engaged in non-formal sector activities.

7. **Labour inspection** initiatives are being restructured based on 'integrated inspection' in which **one** inspector undertakes most interventions designed to protect workers including inspection related to wages and working conditions, safety, health, social security, and the employment of non-nationals. Where special technical expertise is required, the general inspector has access to specialists in a range of fields.
8. **Labour inspection** is placing increased emphasis on compliance and cooperation, rather than enforcement and penalties. Self-inspection, systems inspection, self-reporting, and workplace cooperation are becoming increasingly important, based on a culture of 'service to clients' rather than a culture of 'authority and power.' Progressively, labour inspection is moving away from negative interference to positive intervention, with an emphasis on prevention and improvement to complement the traditional emphasis on protection.
9. **Labour protection and labour inspection** initiatives are being undertaken in close cooperation with the private sector. The private sector is not just a client of the labour inspection system; it is now an active provider of labour protection services in such fields as work safety, dispute resolution, and social security.
10. **Labour protection** in the form of social assistance is being replaced by social security and social insurance schemes in which beneficiaries make a contribution to their future benefits in such fields as old age pensions, unemployment benefits, work injuries and disease compensation, medical benefits, maternity arrangements, and survivor benefits.

Integrated Labour Inspection

Labour inspection interventions typically cover five main areas, as follows.

- Wages and working conditions
- Work safety
- Occupational health
- Social security/social insurance
- Employment of non-nationals and issuance of work permits.

In some countries these five responsibilities are undertaken by five different inspectors. In Cambodia's case three different inspection agencies are involved – wages/working conditions, safety and health, and employment permits. Once a social security scheme is introduced a fourth inspection system will be required. This could mean that within the Ministry there may be four separate inspectorates with separate management, separate inspectors, separate information and reporting systems, and separate logistic support, particularly concerning transport.

As indicated in the above section on **International Experience**, under an integrated inspection approach, **one** inspector undertakes most of the interventions in all of the above five areas. Integrated inspection operates on the basis of 'one inspector-one enterprise' in which one **general inspector** undertakes inspection work in all areas.

The **main advantages of integrated inspection** are as follows.

- Enterprises feel more confident with the government inspection system because they now deal with one inspector rather than three or four.
- More inspection visits can be undertaken because inspectors work as individuals rather than in teams. More routine inspection visits provide greater opportunities for identifying and resolving problems on the spot, thereby contributing to dispute prevention.
- The system is more efficient in the use of resources. There is one administrative system instead of three or four, one data-base, one transport system, and one reporting system.

The introduction of an integrated inspection system requires that two key issues be addressed. Firstly, there **may** be some initial reduction in the quality of inspection work because inspectors will lack the detailed technical knowledge in all areas of their work. This problem is addressed by creating technical support teams to assist and advise inspectors on specific technical issues, particularly in the areas of work safety, occupational health, and the working environment.

Secondly, integrated inspection requires a major training effort for both existing and new inspectors. For example, labour inspectors concerned with wages and working conditions have to be trained on various aspects of work safety and health. This requires the preparation of a detailed training plan, the training of instructors, the preparation of training materials, and the design and implementation of various induction and up-grading training courses for all inspectors throughout the country.

Technical Support

It is not possible for one inspector to know all the technical details of all areas of inspection work, particularly concerning occupational diseases, chemical hazards, and aspects of machine safety. It is clear, however, that the basic aspects of safety and health can be undertaken by a properly trained general inspector. The general inspector requires the support of a back-up team of specialists, including engineers, medical personnel, and chemists, to assist with problems beyond the immediate competence of the individual inspector. The members of this team need not be government officials, and all do not have to have the legal powers and responsibilities of inspectors. The main purpose of such a team is to ensure that the general inspector has access to the best available technical information, advice and assistance.

The introduction of an integrated inspection system is sometimes seen as a way of reducing the number of civil servants. This is not normally the case in that the existing working conditions inspectors are retrained to handle the bulk of safety and health inspection, and the existing technical inspectors (engineers, medical personnel) become part of the technical back-up team, performing a range of new but equally important functions.

Resistance to integrated inspection is sometimes based on the fear that the integration will involve the disappearance of some departments and sections. However, integration is primarily aimed at the **integration of the inspection function**, rather than the integration of structures.

Any consideration of the introduction of integrated inspection in Cambodia might take the opportunity to consider other aspects of inspection reform including focusing resources on 'at risk' enterprises, the involvement of the private sector in the actual provision of inspection services through licensing and accreditation arrangements, self-inspection and self-reporting systems for enterprises considered to be 'low risk', the extension of labour protection services to the informal economy, and the revitalization of the actual process of inspection to ensure that employers' and workers' are consulted and more involved in each inspection visit. The first of these is more a matter for the managers responsible for the effective operation of the inspection system and requires that criteria be established for determining 'at risk' or 'high risk' enterprises. Issues concerning the involvement of the private sector, self-reporting arrangements, and the extension of services to the informal economy have policy implications and, in some cases, may require changes in the law. The revitalization of the process of inspection relates more to the 'culture' of inspection and can be addressed immediately through training and the introduction of new procedures.

In future, Cambodia's labour inspection system would benefit by considering the following.

- Over the next 3-5 years the system should move progressively towards an integrated system, including the creation of a technical support system to assist in those cases beyond the competence of general inspectors.
- The system should focus its resources on 'at risk' enterprises with 'at risk' including enterprises known to be hazardous (e.g. construction, forestry, those using chemical processes, and those having a history of complaints and disputes.)
- The system should consider the introduction of a system of self-reporting for those enterprises considered to be 'low risk'. This would mean that enterprises complete a questionnaire designed by the labour inspectorate, and this is used as the basis for determining whether the enterprise is in compliance with the law or not. Such enterprises would be visited by an inspector if the self-reporting document is incomplete or highlights a cause for concern. In such cases, the inspector would undertake a follow-up visit to the enterprise.
- The system should consider the introduction of a system of accredited agents whereby individuals and enterprises in the private sector are licensed to undertake some aspects of inspection work including boilers, cranes, hoists, and other items of specialized equipment. Under such arrangements the labour inspectorate remains responsible and accountable, but the actual work is undertaken by other persons, under the broad supervision of labour inspectors. Accredited agents charge a fee for services rendered, paid by the enterprise.
- The system should consider ways of reaching out to the vast majority of workers/self-employed persons in the non-formal sector. Such workers are not in an employer-employee relation and are thus not covered by the labour law. But this does not preclude inspectors providing advisory services to these workers in such areas as the safe use of machinery, the handling of chemicals, and the use of child labour.
- The actual process of inspection visits should be standardized to ensure that the initial contact with managers and workers, the tour of the enterprise and the checking of records, the exit meeting with employer and worker representatives, and the completion of the inspection report form, conforms to a standard procedure that is known and followed by all inspectors.

Whatever system of labour inspection Cambodia seeks to follow, it must be guided by the following.

- There must be a clear indication of the number of enterprises, large and small, that are legally liable to inspection.
- There must be some system to assess the degree of risk for each enterprise.
- There must be a standard for the frequency of routine visits by an inspector to each enterprise. Should enterprises on average be visited once every six-months, once every year, or once every two-years?
- There must also be a standard for the number of routine visits by inspectors to enterprises per month or per year. How many visits on average should each inspector conduct per month or per year?
- There must be a clear indication of the number of 'active' labour inspectors nation-wide, meaning the actual number of officers available to undertake full-time inspection work.

With this information, the managers of the inspection system can draw realistic inspection plans, and thus have a valuable tool for monitoring the overall efficiency and effectiveness of the nation's labour inspection system.

Resolving Labour Disputes

Increased attention to the prevention of labour disputes will not totally eliminate disputes. Inevitably, some disputes will arise and thus it is necessary to determine how these might best be handled.

Conciliation

In Cambodia, the Labour Law indicates that the conciliation process is applicable to both individual rights disputes, and to collective rights and interest disputes.

Conciliation is a process in which a third party brings the disputing parties together to assist them in resolving **their** problems. Conciliation is not concerned with law enforcement but, rather, is a process of assisted bargaining – the third party conciliator attempts to bring the parties closer together and encourages them to reach a solution that they are both satisfied with, and is consistent with the requirements of the law.

Conciliation can be either **voluntary** or **compulsory**. Voluntary conciliation means that the disputing parties have a choice whether or not they wish to submit to the conciliation process. This is the case, for example, concerning individual disputes in Cambodia – the parties have a choice between conciliation, or taking their dispute to court.

Alternatively, the conciliation process may be compulsory. This means that the disputing parties **must** submit to the conciliation process, but does not mean they must reach agreement. Compulsory conciliation has the advantage of ensuring that the parties are at least exposed to a dispute resolution process that stresses cooperation rather than conflict, and that encourages them to take more responsibility for resolving problems that are, essentially, their problems.

Conciliation services can be provided by government officials, or private persons. The essential requirement is the impartiality of the conciliator. Conciliation can be a full or part-time job or, indeed, done on an ad hoc basis. For example, government officials may be appointed as full-time, dedicated conciliators who have no other responsibilities. Or, alternatively, some government officials, including labour inspectors, may undertake conciliation work on a part-time basis, thereby involving them in the dual and sometimes incompatible functions of labour inspection and labour relations. Some private persons may work as conciliators, operating on a fee-for-service basis, with the fee paid by the disputing parties. Other private conciliators, for example University professors or retired labour relations officers, may be 'occasional' conciliators, providing services on an ad hoc basis.

In some countries, conciliation takes place through conciliation boards in which case the main task of the board is deciding whom to appoint from a panel of approved conciliators, to handle each dispute.

It is not necessary that a conciliator hold formal qualifications in law, economics, psychology, finance, or, indeed, any particular academic field. It is important, however, that a conciliator be trained in the actual processes of conciliation, have a good knowledge of the legal and economic framework within which the dispute is taking place, have a good knowledge of the industry situation, have detailed background information on the dispute itself, and possess a range of personal qualities including impartiality, integrity, sincerity and patience.

An important issue in many countries, including Cambodia, is to decide whether **all** disputes should pass through a conciliation process. Some countries make a distinction between rights and interest disputes in this regard. **Rights disputes** are concerned with **existing** benefits conferred by law or agreement, and some observers consider such disputes do not normally lend themselves to a process based on compromises and concessions. Essentially, such observers adopt the view that such disputes involve matters of legal interpretation, and are more amenable to arbitration and adjudication.

Other observers, however, see merit in **all** disputes, whether over rights or interests, benefiting from a conciliation process. For rights disputes, conciliation offers an opportunity to clarify facts and discuss different interpretations of those facts, to discuss interpretations of the law, and to reach a compromise on possible outcomes as, for example, in cases where there is some discretion under the law as to the amount of compensation payable. In such a case, the right to compensation is not disputed but the parties may prefer to agree on the amount through conciliation, rather than leave this to a third party.

Interest disputes, on the other hand, are concerned with **future** benefits, and are not a matter for legal interpretation. They are generally well suited to the conciliation process in that a conciliator, through a process of 'assisted bargaining', can encourage the disputing parties to make concessions and accept compromises and reach a mutually acceptable agreement.

As indicated in Chapter 1, the situation concerning conciliation in Cambodia is relatively simple.

- Individual rights disputes are subject to voluntary conciliation. The principles and processes of conciliation, with their emphasis on concessions and compromises, may be applied in some of these cases but this requires well-trained and experienced conciliators. The Ministry resolves a very high proportion of individual disputes through conciliation, but it is not clear whether this is the result of true conciliation and compromise, or whether it is more in the nature of guided settlement rather than true conciliation. Where the approach to conciliation is for the 'conciliator' to explain the law to the disputing parties, indicate what is right and wrong under the law, and guide the parties to accept what is 'right', many disputes may be settled, but this approach does not qualify as real conciliation.

It must be stressed, however, that where both workers and employers feel comfortable with the conciliation process and see it as independent and impartial, the fact that they may be guided to a settlement is of secondary importance.

- Collective disputes, whether interest or rights disputes, are subject to a mandatory conciliation process. The parties have no choice in the actual process, but still control the outcome in that conciliation by its very nature is a non-binding process. As with individual disputes, the conciliation of collective disputes must be seen by the parties as independent and impartial. Provided these elements are present, the fact that the conciliator guides the settlement to a particular outcome is not a major concern.
- Conciliation is undertaken by government officials who perform both conciliation and inspection functions. Although the Ministry intends to separate its conciliation and inspection functions, currently, currently its labour inspectors are still associated with conciliation because of the dual function of officials on the Department of Labour Inspection. In such circumstances the disputing parties justifiably associate conciliation with law enforcement, rather than see it as an independent and facilitating process.
- There is no provision for the appointment of private conciliators under the Labour Law, but this does not preclude employers and workers agreeing to such an arrangement either on an ad hoc basis or as part of a dispute resolution procedure as part of a collective agreement. Government conciliation services are provided free of charge, whereas private conciliators normally charge a fee for service, with the parties arranging for payment of such services.
- Conciliators in Cambodia need training. Some labour inspectors and conciliators have participated in ad hoc training courses on conciliation skills and techniques, but this is no substitute for a systematic and on-going approach to training, involving inter-active methodologies supported by self-learning packages making use of information technology, as appropriate.

Arbitration

Under arbitration, an independent third person, or group of persons, considers the arguments of both sides under the dispute and then takes a decision that is normally, but not always, binding on the parties. The arbitrator hears evidence from the disputing parties and although he/she may ask questions and seek clarifications, the arbitrator's role is 'to arbitrate, not advocate.' In other words, the arbitrator does not help either party make or present its case, but simply gives a decision or makes an award on the basis of the evidence presented.

Arbitration can be either compulsory or voluntary. Voluntary arbitration exists where the parties agree to submit a dispute after it has arisen to arbitration for settlement. Alternatively, the parties may agree under a collective agreement to submit any disputes that may arise to arbitration for settlement. In this case, the parties have voluntarily agreed to use arbitration and, in the event of a dispute arising are **obliged** to use it.

It is possible for arbitration to be done by government officials or private individuals. If the disputing parties agree, there is no reason why they cannot appoint a private individual if they wish.

Arbitration can be done through a single arbitrator, or through a board or council. A single arbitrator offers the advantage of being more expeditious. This applies to both conducting the hearing itself and also with regard to reaching a decision.

An arbitration board or council can be either tripartite in composition or made up of neutral and independent parties, based on their standing and reputation in society and/or their special technical expertise. A tripartite arbitration body enables workers' and employers' representatives to be appointed as panel members, thereby enabling them to provide important background information on the overall industrial relations situation, as well as the particular circumstances relating to the dispute in question.

An arbitrator does not need any particular or formal qualifications, although many tend to have a legal background. The main requirements, however, are a good knowledge of the national industrial relations system, knowledge of the laws and regulations governing labour disputes, and knowledge of the rules and procedures to be followed in an arbitration hearing. Knowledge of the particular industry in which the dispute has arisen is also a distinct advantage.

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The main personal requirements for a successful arbitrator are open-mindedness (particularly for the employer and worker members of the arbitration body), good analytical abilities, and good writing skills for the drafting of awards.

Against this general background, Cambodia has developed its own system of arbitration. If a collective dispute is not resolved by the compulsory conciliation procedure provided under Cambodia's Labour Law, the dispute must then be handled by the arbitration procedure as agreed through collective bargaining, or any other procedure agreed by the parties, or the arbitration procedure set out in Articles 309-317 of the Labour Law. Arbitration in Cambodia applies solely to collective disputes. Individual disputes are subject to conciliation and if conciliation fails, the parties may take the dispute to court for adjudication.

On receipt of a conciliator's report of non-conciliation, the Minister is obliged to refer the case within 3 days to the Arbitration Council. This marks the commencement of the arbitration process. Arbitration is normally seen as a form of dispute **settlement** rather than dispute **resolution** in that 'settlement' conveys the idea that a third party imposes a solution to the dispute, rather than the two parties resolving it by themselves or with the assistance of a conciliator.

Cambodia has opted for the creation of an Arbitration Council. With the assistance of the ILO, the Arbitration Council was established by Prakas 338 of December 2002. The Prakas provides for a council of at least 15 members with one-third nominated by MOSALVY, one-third nominated by employer associations that are members of the Labour Advisory Committee, and one-third nominated by union federations that are members of the Labour Advisory Committee. The first 21 members of the Council commenced their term of office on 1 May 2003.

Prakas 338 sets out the requirements and qualifications for membership of the Council. These are different for the Ministry nominated members, as compared with the employer and union nominated members. Once a case is referred to the Arbitration Council, the Council establishes an arbitration panel comprised of three of the Council's members to hear the case. The panel consists of one employer and one union member of the Council, chosen by each of the parties to the dispute. The third arbitrator is chosen from the Ministry nominated members, by the first two panel members.

The Arbitration Panel's powers are set out in the Labour Law and limit the panel to two types of issues, namely,

- those specified in the conciliator's report
- those arising after the report that are a direct consequence of the dispute.

Arbitration panels have power to hear and decide both rights and interest disputes. For rights disputes the panel's decisions are based on interpretations of the law, regulations, employment contracts or collective bargaining agreements. Interest disputes will be decided in accordance with the principles of fairness.

A decision of an Arbitration Panel becomes an **award** of the Arbitration Council. This award becomes immediately enforceable if the parties agree in writing to be bound by it, or the parties are bound by a collective agreement in which they have agreed to binding arbitration.

The award, however, will not be binding if one party files a written opposition to an award within 8 days of receiving notification of the award. If the award is unenforceable and relates to a rights dispute, the aggrieved party **may** take the matter to court or resort to industrial action (strike or lockout) to resolve the dispute. It is not possible for an unenforceable award concerning an interest dispute to be taken to court. In such a case, the disputing parties must find their own solution, including resort to a strike or lockout.

An annex to Prakas 338 establishes a secretariat to the Arbitration Council, as the body to administer and facilitate the settlement of disputes by the Arbitration Council. The Department of Labour Inspection in the Ministry has responsibility for the organization and functioning of the Secretariat.

The Annex to Prakas 338 also sets out the **procedural rules** for the operation of the Arbitration Council. These rules state the procedures to be followed in initiating arbitration, the selection of arbitrators, the actual arbitration proceedings, the award, documents and communications relating to arbitration proceedings, and amendment to the procedural rules.

The creation of the Arbitration Council together with the procedural arrangements in support of its operations represents a significant development in Cambodia's dispute resolution processes. The Council's independence brings a measure of confidence to the nation's industrial relations system and its operations and decisions will generate much interest from all parties. It is too early, of course, to determine the strengths and limitations of the Arbitration Council system but two issues are expected to draw attention. Firstly, the non-enforceability of the award in cases where either party formally notifies its opposition, is a potential cause for concern. If notices of opposition become the norm the Arbitration Council could be seen as a powerless and ineffective institution contributing little to the settlement of labour disputes. On the other hand, non-binding awards do not detract from the credibility of the arbitration process – they still set standards based on sound reasoning, and draw public attention to industrial relations issues in Cambodia.

Secondly, the Arbitration Council is the logical body to hear and decide **individual** rights disputes that, at present, fall outside its jurisdiction. If such disputes were to fall within its responsibility, its operational arrangements might need to be reconsidered in order to handle a potentially much larger case-load. One such approach to this could be the appointment of **individual arbitrators** rather than a three-person panel as required for existing cases. This would probably require an increase in the number of arbitrators and, obviously would require amendments to the law.

The future development of the arbitration system will require that financial resources be made available for its long-term sustainability. Arbitration services are provided free of charge to the parties, with this being possible by the ILO providing financial as well as technical support to the system. This support is not open-ended, and government must consider how the arbitration system will be funded in future years.

Labour Court

Although Cambodia's Labour Law provides for the establishment of a separate labour court, the actual establishment of any such court must be considered in the context of the overall judicial reforms to which the government is committed.

A number of key issues need to be addressed. Does Cambodia need a specialized labour court at this time? If the answer is yes, what institutional and operational arrangements are required to ensure that it integrates well with the overall judicial reform process? Should it take the form of a separate institution or, for example, of specialized Chambers in the common courts? If the answer is no, what other arrangements might be considered for the adjudication of labour disputes? For example, it may be possible to assign specially trained judges in the existing common court system to handle labour cases.

These issues require detailed consideration and discussion before decisions on the establishment of a labour court are made. Such issues are further addressed under **Strategic Intervention 10** in Chapter 3.

Capacity Building

Dispute prevention through improved workplace cooperation, stronger collective bargaining and new approaches to labour inspection, and improved dispute resolution and settlement through different approaches to conciliation, arbitration and adjudication, will require that the Ministry build its overall technical, managerial, information, and logistic capacity. Staff training for both headquarter and field officers is required in all technical areas, and performance management training for key officers will encourage the Ministry to be more strategic in its interventions.

Staff training must be properly planned and coordinated and include language and computer skill development in addition to improved skills in inspection, conciliation, communication and reporting.

Improving the Ministry's statistical and information base is an essential component of capacity building. Improved data collection and reporting on inspection, conciliation, and arbitration, together with increased capacity to analyze and interpret the information collected, will contribute to improved policy formulation and better decision-making by government officials, employers and workers, and their various representatives.

Capacity building also relates to the legal framework in which the Ministry operates and to the actual content of the legislation it is required to administer. Some aspects of the labour law itself require review. For example, the definition of collective dispute, the fact that individual disputes cannot be heard by the Arbitration Council, and the legal requirement that conciliation be undertaken by labour inspectors, are three of several matters that might be reconsidered to improve the country's dispute resolution arrangements.

A range of interventions directed to improving the Ministry's overall performance as well as the performance of employers and workers and their respective organizations are outlined in Chapter 3.

Any changes to the law should be accompanied by a review of the institutional and structural arrangements for the effective implementation of the law. This would involve a review of the role of the Department of Labour Inspection within the Ministry, with a view to establishing labour relations as a functional responsibility separate and distinct from labour inspection.

STRATEGIC INTERVENTIONS AND SUPPORTING ACTION

Based on the foregoing, the Ministry, with the endorsement of the social partners, as expressed during stakeholder consultations conducted in May, 2004, considers that the overall strategy for the prevention of labour disputes, and the more effective resolution and settlement of those disputes that cannot be prevented, comprises eleven (11) strategic interventions. Each intervention must be supported by specific activities. Each activity, in turn, will require a specific and detailed action plan indicating each step of the plan, a realistic time frame, the parties/persons responsible for each step, and the overall resources requirements for each activity.

It is stressed that these strategic interventions focus on a range of initiatives more directly within the Ministry's control, and do not extend to other matters of concern to government as a whole. For example, the overall performance of the Ministry is affected by the overall low salary levels of civil servants and by the civil service recruitment procedures that are not always transparent. These are extremely important issues, but are matters of concern for the government as a whole rather than an individual Ministry.

Accordingly, such issues are not addressed in the eleven (11) Strategic Interventions outlined below.

The *eleven* strategic interventions are as follows.

- Strategic Intervention 1:** Awareness Raising
- Strategic Intervention 2:** Workplace Cooperation
- Strategic Intervention 3:** Collective Bargaining
- Strategic Intervention 4:** Institution Strengthening and Capacity Building for the Social Partners and other Stakeholders
- Strategic Intervention 5:** Institution Strengthening and Capacity Building for the Ministry
- Strategic Intervention 6:** Statistical Information
- Strategic Intervention 7:** Labour Inspection
- Strategic Intervention 8:** Conciliation
- Strategic Intervention 9:** Arbitration
- Strategic Intervention 10:** Adjudication
- Strategic Intervention 11:** Labour Law Review

Strategic Intervention 1: Awareness Raising

All workers and employers, and their representatives, that falls under the jurisdiction of the Labour Law need to be aware of its content and related regulations. This extends beyond knowing what the law actually means, to include an understanding of the fundamental purpose and intent of its main articles. In addition to workers and employers, other parties must be informed on the content of labour legislation including judges, lawyers, potential investors, and school leavers. As well as information on labour legislation, information must also be made available to all interested parties concerning judicial decisions and arbitral awards.

Prime responsibility for raising awareness on labour legislation rests with the Ministry but employers' organizations, trade unions, individual enterprises, NGO's and the media all have an important role to play.

Improved knowledge and understanding of the law and related matters will reduce many disagreements between workers and employers that arise simply because one, the other, or both parties, do not know the laws that govern their interactions.

Objective

To prevent labour disputes by ensuring that all stakeholders in labour relations have increased knowledge and understanding of all laws and regulations, arbitral awards and judicial decisions affecting employer-employee relations.

Actions

- Conduct surveys to determine the specific information and awareness gaps of various target groups and design the content and methodologies of awareness programmes to meet identified needs.
- Design, organize and conduct training courses, seminars, and workshops on labour legislation and related matters for trade unions, shop stewards, managers, employers' organizations, and other concerned parties, with special emphasis on programmes to meet the particular needs of illiterate workers. (See Strategic Interventions 4 and 5 concerning Institution Strengthening and Capacity Building.)
- Arrange regular newspaper columns on particular aspects of labour legislation with an emphasis on factual and objective information.
- Arrange regular radio broadcast on particular aspects of labour legislation, with an emphasis on factual and objective information.

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- Prepare and distribute leaflets and pamphlets providing factual and objective information on the most important parts of the labour law.
 - Prepare and distribute posters providing factual and objective information to explain key aspects of labour law.
 - Arrange short TV time slots, sponsored as necessary, to encourage cooperation between workers and employers and promote compliance with the law.
 - Develop a proper procedure for ensuring that all Prakas and Ministerial Orders are disseminated to key stakeholders as soon as they are issued, and that a centralized and up-to-date collection of all labour laws and regulations, duly translated, be developed and maintained.
 - Arrange a web page with relevant information, including all Prakas, arbitration awards and relevant judicial decisions, and training materials.
 - Issue press releases to indicate the factual content and explain objectively the meaning of new regulations and circulars under the labour law.
 - Arrange for senior school students and those attending colleges and higher education institutions to be exposed to the key elements of labour law before entering employment.
 - Enlist the support of other government departments and agencies to promote awareness on labour laws and various labour issues.
 - Prepare special information packages on labour laws and related matters for the benefit of potential investors, to be made available before they commence operations in Cambodia.
 - Provide clear information for the benefit of all stakeholders on the precise steps and procedures to be taken prior to legal strike action, including information on the rights and obligations of workers and employers at each stage of the procedure.
 - Prepare a comprehensive and regularly up-dated compilation of Cambodia's labour legislation including laws, Prakas, Ministerial Circulars and other documents related to labour law.
 - Arrange for information on labour legislation to be made available through an information center or telephone hotline to all parties, with consideration being given to such services being provided by a Ministry Training, Research and Information Unit.

Strategic Intervention 2: Workplace Cooperation

Workplace cooperation initiatives in which management and workers undertake to assume greater responsibility for their interactions, without government interventions, remain largely undeveloped in Cambodia. Some enterprises through their own initiative have taken specific steps to improve workplace cooperation at enterprise level with a view to preventing disputes and, in the longer-term, to contribute to increased productivity and improved competitiveness.

It is necessary, however, for these positive experiences to be replicated as widely as possible. This requires that the Ministry in cooperation and consultation with employers' organizations and trade unions, and other interested parties play a role in encouraging improved workplace cooperation, not through legal interventions but, rather, through information, advice, encouragement, and the demonstration of successful cases.

This will require a new approach to employer-employee relations, with an emphasis on dispute prevention rather than dispute resolution and settlement. This requires that Ministry officers, and employer and worker representatives be trained to enable them to promote the benefits of workplace cooperation.

Improved workplace cooperation requires a clear understanding by workers and employers of the cultural environment in which their interactions take place. As well as disagreements and conflict over legal and economic issues, cultural differences between managers and workers must also be considered. Workplace cooperation initiatives provide an opportunity to identify and accommodate cultural differences and prevent small incidents from escalating into major conflict.

Objective

To prevent labour disputes by encouraging workers and managers at enterprise level to engage in a range of voluntary workplace cooperation activities, both formal and informal, involving information sharing, consultation and other forms of cooperation.

Actions

- Design and implement training courses for labour officials, employers, and worker representatives and other concerned parties on the nature of workplace cooperation.
- Assess the overall 'readiness' of Cambodian enterprises to engage in workplace cooperation initiatives.

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- Identify enterprises 'ready' and committed to improved workplace cooperation.
 - Arrange training within enterprises for managers and worker representatives on specific approaches to workplace cooperation.
 - Assist managers and workers to identify key issues that will lead to improved work place cooperation (e.g. safety, productivity improvement, cultural awareness, improved worker-worker cooperation, codes of conduct, grievance handling).
 - Implement workplace cooperation initiatives in individual enterprises.
 - Monitor progress and evaluate the outcomes of workplace cooperation activities.
 - Advertise positive outcomes with a view to encouraging other enterprises to engage in workplace cooperation activities.
 - Issue certificates/plaques to enterprises operating successful workplace cooperation programs.
 - Encourage the introduction of a step-by-step voluntary grievance procedure in enterprises, agreed by workers and managers.
 - Encourage a 'community culture' at enterprise level through social activities and more worker-worker interaction, with a view to promoting the common interest amongst all workers and managers.
 - Ensure that the provisions required by law concerning internal regulations, including those relating to consultation and dissemination, are complied with.

Strategic Intervention 3: Collective Bargaining

Collective bargaining is concerned with negotiations between groups of workers and an individual employer or group of employers over the terms and conditions of employment and, indeed, over a wide range of issues arising out of the work situation, with a view to the parties reaching a mutually binding and legally enforceable agreement. Collective bargaining is not only a means for setting above-minimum terms of employment. It is also important for settling disputes where the parties have included a dispute settlement procedure as part of their collective agreement, for establishing and maintaining peace and harmony in the workplace, and for enhancing enterprise productivity and competitiveness.

Most collective interactions in Cambodia are between unions and individual employers at enterprise level, and tend to focus on **existing** rights established by law concerning wages, overtime, leave and related matters. Collective bargaining over future benefits in which workers' representatives and the employer bargain in good faith with regard to future benefits is very limited and only a few comprehensive agreements have been negotiated to date

Effective and responsible collective bargaining requires a level of maturity that is currently lacking in Cambodia's industrial relations system. Trade unions and employers have very limited capacity to handle the **process** of collective bargaining and employers in particular are concerned that it could lead to excessive and unrealistic demands that far exceed the financial capacity of enterprises.

Cambodia's Labour Law is supportive of collective bargaining processes and interactions. The right to bargain collectively clearly exists, but it is equally apparent that the capacity to bargain effectively does not. Accordingly, the challenge to Cambodia's industrial relations system is to progressively build the capacity of all concerned parties to enable collective bargaining to develop over time. Although the Ministry must play a role in encouraging collective bargaining not only as a means for improving the terms and conditions of employment above those established by law, but also as a means of preventing disputes by encouraging unions and employers to include grievance and dispute resolution procedures as part of the collective bargaining process, it cannot and should not do this alone. Employers' organizations, individual employers, trade unions, and trade union federations, have an even more important role and must be provided with the necessary motivation, knowledge and skills to pursue collective bargaining in a responsible and effective manner.

Objective

To progressively encourage the process of collective bargaining as a vital component of the nation's industrial relations system by informing and advising unions and employers, and their respective organizations, on the benefits of collective bargaining, and strengthening their capacity to negotiate meaningful, responsible and legally binding collective agreements.

Actions

- Assess the existing capacity concerning both ability and motivation/willingness, of trade unions and employers to undertake effective and responsible collective bargaining.
- Provide training to Ministry officials, employer and union representatives on the nature, purpose, process and outcomes of collective bargaining.
- Strengthen existing labour inspection activities to ensure compliance with the law to enable trade unions to focus more on future interests rather than existing rights.
- Demonstrate to both trade unions and employers that the Ministry's role in collective bargaining is facilitative and promotional rather than one of interference.
- Encourage and assist as appropriate employers' and workers' representatives to plan, organize and conduct training workshops on the nature, purpose and skills required for effective and responsible collective bargaining.
- Encourage and assist as appropriate employers' and workers' organizations to prepare training materials on all aspects of collective bargaining.
- With a view to establishing a foundation for collective bargaining over wage issues, consideration should be given to undertaking a detailed study to outline various alternative institutional and operational arrangements for the determination and adjustment of minimum wages and, if appropriate, the establishment of guidelines for the determination of above minimum wages. Such a study should proceed on the basis of terms of reference and a time frame discussed at length and agreed by government, employers and workers.

Strategic Intervention 4: Institution Strengthening and Capacity Building for the Social Partners and other Stakeholders

The effective operation of Cambodia's industrial relations system requires the existence of competent and responsible institutions, supported by the necessary capacity to enable them to operate efficiently and effectively. The Ministry, employers and their employers' associations, and trade unions, are the key actors in Cambodia's industrial relations system. All three require strengthening and development if they are to play the role expected of them in a market-oriented industrial relations system and make their expected contribution to national economic and social progress. (Institution strengthening and capacity building for the Ministry is considered in Strategic Intervention 5.)

The mission, objectives, structures, and organizational arrangements of employer' associations and trade unions, and the services they seek to provide to their members in relation to their role in a market-oriented industrial relations system, deserves detailed consideration, as does the articulation of strategies for their cooperation at all levels.

Institution strengthening without the support of capacity building activities is unlikely to contribute to sustained performance improvement. Accordingly, employers' associations and trade unions need to consider their 'capacity gaps' and plan accordingly. Of particular concern is the training of employers' association staff and union officials engaged in the day-to-day aspects of industrial relations. Training is not the sole factor in improving employer-employee relations, but without it good intentions and 'paper' arrangements will have limited impact.

In addition to training, employers' associations and trade unions need access to relevant, up-to-date and reliable information to assist them in formulating new policies and plans, and to support their day-to-day decision making processes. In addition, trade unions in particular need logistic support to enable them to take full advantage of information communication technology.

In addition to strengthening and capacity building for employers' associations and trade unions, other stakeholders in Cambodia's industrial relations system including judges, lawyers, and NGO's all require assistance and support to enable them to contribute more effectively to the operation of the system.

Objective

To contribute to the improved performance of Cambodia's industrial relations system through institution strengthening and capacity building activities directed to the needs of employers' associations and trade unions, and through specific capacity building activities for the benefit of other stakeholders including judges, lawyers, and NGO's.

Activities

- Prepare a 'Future Directions' document for employers' associations in Cambodia with specific reference to their mission, objectives, structure and organizational arrangements concerning their role in industrial relations.
- Conduct a human resource audit for CAMFEBA staff and staff of its member organizations engaged in industrial relations, to take stock of their strengths and limitations in relation to their current and future tasks and responsibilities.
- Conduct a training needs analysis to identify the specific knowledge and skill gaps for employers' organization staff engaged in industrial relations.
- Prepare an annual training plan directed to meeting identified needs for employers' organization staff.
- Prepare training materials and plan, organize, implement and evaluate individual training courses for employers' organization staff as indicated in the training plan.
- Assess the information and logistic requirements of employers' organizations with a view to identifying the information and logistic gaps that impede their effective operation as part of the industrial relations system.
- Prepare a 'Future Directions' document for Cambodia's trade union movement (Federations and Confederations) with specific reference to its mission, objectives, structure and organizational arrangements concerning its role in industrial relations.

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- Conduct a human resource audit for all trade union officers engaged in industrial relations, to take stock of their strengths and limitations in relation to their current and future tasks and responsibilities.
 - Conduct a training needs analysis to identify the specific knowledge and skill gaps for trade union officers.
 - Prepare an annual training plan directed to meeting identified needs for trade union officers.
 - Prepare training materials and plan, organize, implement and evaluate individual training courses for trade union officials as indicated in the training plan.
 - Assess the information and logistic requirements of trade unions with a view to identifying the information and logistic gaps that impede their effective operation as part of the industrial relations system.
 - Assess the training needs of judges, lawyers and other parties engaged in the industrial relations system, and plan and implement training activities to meet their identified needs.
 - Assess the information requirements of judges, lawyers and other parties engaged in the industrial relations system with a view to identifying the information gaps that impede their effective operation as part of the industrial relations system.

Strategic Intervention 5: Institution Strengthening and Capacity Building for the Ministry

Cambodia's labour administration system in general, and the Ministry as the focal point of that system, in particular, needs strengthening and development to meet the challenges that emanate from an economic system increasingly driven by market forces. The legal framework is comprehensive but the implementation of laws and regulations needs improvement, and the ability to draft new policies and laws to meet changing circumstances needs to be strengthened.

The Ministry needs to consider whether its structures and organizational arrangements are appropriate to its purpose and mandate. The Ministry's institutional strengthening needs to commence with a clear mission statement, which must then be supported by specific objectives that reflect its functional responsibilities. The Ministry also needs to determine the necessary operational and procedural arrangements to ensure that the achievement of its objectives is maximized, and the overall mission is achieved.

Institutional strengthening also requires a review of the Ministry's decision-making processes to determine how they might be improved to contribute to organizational effectiveness. The Ministry's institutional strengthening process must also consider the linkages and coordination arrangements between headquarters and Provincial Labour Offices.

In addition to its strengthening as an institution, the Ministry's operational capacity requires strengthening and development in four main fields, namely, technical knowledge, information for performance monitoring and improvement, logistics, and management.

A key factor in improving the overall performance of the Ministry rests with staff training. Training alone, of course, will not overcome all of the problems facing the Ministry, but without training all other performance improvement initiatives will have very little impact.

At present, staff training in the Ministry is ad hoc in nature and a response to resource availability rather than directed to systematically identified needs, in accordance with a well formulated Ministry-wide training plan. A comprehensive plan should encompass induction, refresher and up-grading courses related to particular technical skills, as well as training of relevance to all staff, particularly with regard to computer and language skills. Management training for officers in leadership and supervisory positions should also be part of a comprehensive training plan for the Ministry as a whole.

The establishment of a training, research and information unit within the Ministry could play an important role in improving the performance of all staff, as well as providing new and better services to enterprises and workers. Such a unit requires adequate resource support as well as a core of trainers able to assess **real** training needs, and able to design and implement training activities to meet assessed needs.

Capacity building initiatives should also address the Ministry's need for logistic support, particularly with regard to equipment, information technology, office space, improved communications, and access to transportation.

Objective

To improve the Ministry's overall performance through a systematic and coordinated approach to institution strengthening and capacity building, with a particular emphasis on staff training for the benefit of all staff, both technical and support staff, at all levels and in all locations.

Actions

- Prepare a 'Future Directions' document incorporating a new vision and mission statement for the Ministry, including operational strategies and decision-making processes for the Ministry as a whole, its departments, and provincial units, with a view to its restructuring and revitalization. The Future Directions document should include a strategy for the establishment and operation of a Training, Research and Information Unit for the Ministry.
- Prepare up-dated job descriptions for all staff, based on the *Future Directions* document.
- Plan and implement a Ministry-wide human resource audit to take stock of the strengths and limitations of all staff in relation to the new job descriptions.
- Based on the human resource audit and the new job descriptions, conduct a detailed training needs analysis to identify knowledge and skill gaps of existing staff.

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- Prepare an annual training program that reflects the priorities of the Ministry as a whole, and that is directed to meeting the real needs of staff. This program would consist of a series of training courses and activities covering induction, refresher, up-grading training, trainer-training, management training and including self-learning activities taking advantage of information communication technology.
 - Plan, organize, implement and evaluate the individual training courses as indicated in the annual training program.
 - Prepare and implement an annual training plan for the benefit of workers, employers and other stakeholders, on the content and application of Cambodia's labour laws and regulations, and prepare training materials in support of such activities.
 - Develop the Ministry's capacity to adopt a more proactive approach to industrial relations by establishing 'early warning systems' to identify flashpoints and bring the parties together before problems are compounded.

Strategic Intervention 6: Statistical Information

Statistical information is essential for the Ministry to enable it to monitor performance and formulate new policy interventions. This requires that relevant data be collected, collated and analyzed, and then disseminated in a form that is readily understood by users.

The Ministry can generate statistical information by research and surveys, but it also has a valuable source of information from its administrative records. This requires that administrative processes and procedures be organized in such a way as to ensure that information is collected, not as an objective in itself but as a by-product of the Ministry's day-to-day work activities.

The ILO has assisted the Ministry to develop a system to gather statistical information as an outcome of its conciliation and arbitration processes. This will collect information on the enterprises involved, by sector and size, causes and reasons for disputes and, in the event of a dispute leading to a work stoppage, information will be collected on the number of workers involved and the number of working days lost.

This system will collect important information concerning formal disputes and ones that lead to legal strikes. Information, however, is also required on illegal strikes (number, sector, causes, workers involved, working time lost) if a comprehensive picture of Cambodia's labour disputes is to be provided.

In addition, information is required on aspects of dispute prevention, obtainable from administrative records emanating from inspection reports. Reports and records of inspection visits, as well as indicating the number and type of visit, should also be able to provide information on the outcomes of visits in the form of the number of non-compliance orders issued, and their dis-aggregation into various categories.

The development and operation of a comprehensive information system concerning dispute prevention and dispute resolution, requires the cooperation of Provincial Labour Departments. The Ministry has responsibility for developing the information system but much of the operational work rests with the Provinces. It is essential, therefore, that provincial labour officials be made fully aware of the importance of their role in the effective operation of the Ministry's statistical information system.

In time, the Ministry needs to develop a comprehensive labour market information system covering key labour market indicators, in addition to information directly related to industrial relations.

Objective

To improve the Ministry's information collection from administrative records with regard to both dispute prevention and dispute resolution, improve the collation process, strengthen capacity to analyze and interpret statistical information, and develop an effective system for the dissemination of such information in a user-friendly and timely manner.

Actions

- Plan and implement an information system covering dispute prevention and dispute resolution (in effect, encompassing all of the Ministry's labour inspection and labour relations functions), based on day-to-day administrative processes, and building on the arrangements that have already commenced concerning conciliation and arbitration processes.
- Design and implement a system for collating and presenting information collected on dispute prevention and dispute resolution, in a form that is readily understood by users.
- Encourage Provincial Labour Departments to actively contribute to the development and operation of the Ministry's statistical information system.
- Plan and implement a training program for selected headquarter and provincial officials on the analysis and interpretation of statistical information.
- Prepare and distribute a quarterly labour information bulletin, including information on labour inspection and labour relations activities, incorporating both point-in-time data as well as relevant time series information, supported by appropriate analysis, making full use of the Ministry's website, electronic communications, and print media.

Strategic Intervention 7: Labour Inspection

Labour inspection is concerned with the protection of the nation's labour resource with regard to working conditions (wages, hours of work, allowances, leave, and other entitlements) and the working environment (particularly the safety and health of workers with regard to machine safety, the safe handling of materials, the safe use of equipment, fire safety, and the general working environment including temperature, humidity, noise, light and dust levels.)

Generally, minimum standards for both working conditions and the working environment are established by laws and regulations. Labour inspection is concerned with ensuring compliance with the law through educating employers and workers on the content of laws, advising employers and workers how to comply with the provisions of the law, and enforcing laws and regulations by imposing sanctions and penalties in cases of non-compliance.

The traditional approach to labour inspection focuses on enforcement. The modern approach to labour inspection, and the one suggested for Cambodia, is based on prevention and improvement, rather than enforcement and punishment. This transformation will take time but progressively would see inspectors securing compliance by means other than enforcement. Their work, increasingly, would focus on encouraging self-compliance, self-reporting, and improved cooperation between management and workers.

This approach places much more responsibility for the protection of workers on management and workers within the actual enterprise. Accordingly, an approach to labour inspection that stresses prevention and improvement requires that labour inspectors be trained to enable them to work closely with workers and managers within the enterprise, and play more of a supportive and facilitating role than at present.

In addition to the change in emphasis from enforcement and punishment to prevention and improvement, modern labour inspectorates are also changing their structures and operational arrangements. Increasingly, labour inspectorates are adopting an integrated approach to inspection work on the basis of 'one inspector, one enterprise'. This means that all inspection work including working conditions, safety, occupational health, work permits, and social security matters are undertaken by one **general** inspector working alone. An integrated inspection system includes a team of technical specialists (e.g. medical personnel, engineers, chemists, and other technical experts) to assist and advise the general inspector in handling problems beyond his/her immediate technical expertise.

Integrated inspection may result in some initial reduction in the quality of inspection work, but as inspectors become retrained and a team of technical specialists created, the quality of inspection work can be maintained but with the added benefit of an increase in the number of inspection visits to enterprises.

In Cambodia, the integration of labour inspection would focus on the training of general inspectors in the Department of Labour Inspection. Officers in the Department of Occupational Health and Safety would form the basis of the technical support team, augmented by other specialists on a retainer or part-time arrangement, as required. The integration of inspection functions is a long term process and will require careful planning, detailed consultations with all concerned parties, and a major training effort extending over several years. In addition, training materials will have to be prepared, new inspection reporting forms designed and tested, and desk manuals prepared to guide the work of inspectors.

The introduction of an integrated inspection system in Cambodia will also require the complete separation of labour inspection and conciliation functions to ensure that inspectors devote themselves exclusively to inspection work.

Objective

To progressively strengthen and improve Cambodia's labour protection system through the standardization of existing inspection arrangements, the establishment and operation of an integrated inspection system, and the adoption of new operational arrangements for the effective and efficient operation of that system.

Actions

- Identify the number and location of **all** enterprises required by law to be inspected and establish and update a register on a regular basis.
- Prepare and apply a 'risk assessment' tool to identify the sectors and enterprises to be targeted for concentrated attention by labour inspectors.
- Identify the number of active labour inspectors (meaning those available to undertake regular visits to enterprises).
- Establish an acceptable target for the number of inspection visits per inspector per month/per year.

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- Establish the frequency and regularity of visits to enterprises both for those enterprises considered to be at risk, and for those where risk is less apparent.
 - Establish a system of self-reporting and follow-up for enterprises considered to be low risk.
 - Prepare a detailed labour inspection work plan for each province and *each* inspector.
 - Draft an operational strategy for the development and implementation of an integrated labour inspection system, including an examination of the changes required, if any, to existing laws and regulations.
 - Consult with all stakeholders on the draft operational strategy for integrated labour inspection and prepare a final document.
 - Submit the final version of the integrated labour inspection strategy for ministerial approval.
 - Design and implement a training program on integrated labour inspection for general inspectors.
 - Establish a technical support team/unit to provide specialist services to general inspectors.
 - Prepare information materials to inform and advise workers, employers and their respective organizations and government officials on the nature and operation of the integrated labour inspection system.
 - Standardize the process of routine inspection visits to ensure that initial contact with managers and workers, the tour of the enterprise and the checking of records, the exit meeting with employer and worker representatives, and the completion of the inspection report form, conforms to a standard procedure that is known and followed by inspectors.

Strategic Intervention 8: Conciliation

Cambodia's Labour Law provides for the voluntary conciliation of individual labour disputes and the compulsory conciliation of collective disputes. There is a clear commitment in the law to resolve disputes through conciliation wherever possible, but it is equally clear that the provisions of the law have not been well implemented. This is due in the main to insufficient trained staff within the Ministry to plan and implement an effective system of conciliation. In Cambodia, all conciliation is handled by Ministry officials, who frequently play the dual role of labour inspector and conciliator. Once the separation of conciliation and inspection functions is implemented, labour inspectors will no longer handle conciliation cases.

Private conciliators do not exist in Cambodia at present. In future, however, different arrangements for the provision of conciliation services might be considered, including the appointment of private conciliators and, possibly, the establishment of a Conciliation Council on lines similar to the Arbitration Council, thereby paving the way for conciliation to be done by non-Ministry officials.

The vast majority of disputes in Cambodia are **individual rights disputes**, and thus most conciliation efforts are directed towards resolving legal disputes – disputes that in many cases might be better settled by other means, particularly through arbitration. (In some cases, however, conciliation may have a role to play in the resolution of rights disputes as, for example, through clarifying the facts of a dispute, and discussing alternative interpretations of the law.) In Cambodia's case, however, even if individual rights disputes are seen to be better handled by arbitration, this is not permitted in that the jurisdiction of the Arbitration Council is restricted to collective disputes.

In short, conciliation in Cambodia focuses on 'rights conciliation' with very little, if any, 'interests conciliation.' This is largely a reflection of an industrial relations system that lacks maturity in that all parties are predominantly concerned with ensuring that rights (and corresponding obligations) under the law are safe-guarded. This leads to an approach to dispute settlement that is more in the nature of ensuring laws are applied rather than true conciliation. The problem is exacerbated in Cambodia because conciliators have not had the advantage of systematic and on-going training to fully equip them with the necessary knowledge and skills normally expected of specialist conciliators

Objective

To strengthen and improve Cambodia's conciliation system through a restructuring of existing arrangements, the training of conciliators, and revisions as appropriate of the Labour Law.

Actions

- Undertake a detailed evaluation of the existing system of conciliation, in accordance with terms of reference drafted by the Ministry and agreed by key stakeholders.
- Prepare a strategy for the restructuring of conciliation services with a view to conciliation being fully separated from labour inspection activities, and undertake a study to consider the establishment of a Conciliation Council on lines similar to the existing Arbitration Council, and the possibility of conciliation being undertaken by private conciliators.
- Examine the need for individual rights disputes to be resolved by conciliation, with a view to proposing alternative arrangements, including a consideration of their settlement by arbitration.
- Prepare a detailed and long-term strategy for the training of conciliators encompassing all aspects and all stages of the conciliation process, including the preparation of training materials for use in both self-learning and group training situations.

Strategic Intervention 9: Arbitration

Cambodia's recently established Arbitration Council has responsibility for the arbitration of collective disputes, whether over rights or interests. The Council is not empowered to hear individual disputes but this requires that a clear distinction be made as to the difference between an individual and a collective dispute. This distinction should not be decided by the Ministry on an ad hoc basis but rather through legislation, such as Prakas or Ministerial Circular. The Arbitration Council is tripartite in composition, and for each dispute notified to the council a tripartite panel is formed to hear the case. The parties to the dispute each nominate an employer and worker representative from the employer and worker members of the Council, and these two then select the third representative.

The decision of the Arbitration Panel becomes an award of the Arbitration Council. The award settles the dispute and becomes binding on the parties unless a party to the dispute makes an objection to the decision in writing. In the case of an objection the award of the Arbitration Council becomes unenforceable.

The Arbitration Council is supported by a secretariat, which operates in accordance with the rules and procedures established under Prakas 338 of December 2002. The Ministry's Department of Labour Inspection has responsibility for the operations of the secretariat. The ILO Labour Dispute Resolution Project has played a key role in establishing and supporting the Council, both technically and financially. The ILO project will end in due course and it is important that arrangements be in place for the work of the Arbitration Council to continue without interruption. This requires that a strategy be prepared in consultation with all stakeholders to ensure that the arbitration system is sustained and, if considered necessary, expanded to include the arbitration of individual disputes currently excluded by law from the Council's jurisdiction.

Consideration should also be given to the legal status of the Council's awards. At present these are unenforceable if either party objects.

Objective

To ensure the sustainability, consolidation and possible extension of Cambodia's arbitration system, with a view to ensuring that all disputes within the current and future jurisdiction of the Arbitration Council are handled fairly and with minimum delay, thereby contributing to the overall strengthening of Cambodia's labour relations system.

Actions

- Undertake a systematic and comprehensive review of Cambodia's arbitration system, such review to address the successes and achievements of the system as well as its shortcomings and problems. This review might include the legal status of arbitral awards, and also consider the definition of collective dispute to ensure that cases coming before the Arbitration Council are based on legal parameters rather than the administrative decisions of the Ministry. This review should also consider specific issues such as the need for training for trade unions and employers on how to prepare and present a case before the Arbitration Council, and advise on the arrangements required to ensure that Ministry conciliators and labour inspectors are informed on the Arbitration Council's awards.
- Prepare a detailed strategy for the longer-term sustainability of the Arbitration Council and its secretariat to ensure its viability after the ILO Labour Dispute Resolution Project ends.
- Prepare a long-term strategy for the training of arbitrators and stakeholders, encompassing all aspects and stages of the arbitration process, and including the preparation of training materials for use in both individual and group learning situations.
- Over a period of time examine and discuss with all stakeholders the desirability and feasibility of individual rights disputes coming under the jurisdiction of the Arbitration Council, examine the desirability and feasibility of arbitration by a single arbitrator, and examine the legal implications and resource requirements of such initiatives.

Strategic Intervention 10: Adjudication

Cambodia's Labour Law provides for the establishment of a Labour Court but, to date, no such court has been established. This does not mean, however, that access to the adjudication of a labour dispute is denied to the disputing parties. In individual disputes, for example, either party can take the dispute to a mainstream court. The same applies to a collective rights dispute that has passed through the arbitration process but in which the arbitral award has been opposed. In such cases, the aggrieved party has the right to proceed to a court.

A key issue is whether a Labour Court should take the form of a separate institution or, for example, of specialized Chambers in the common courts.

As Cambodia's conciliation process strengthens and improves, and the disputing parties gain more trust and confidence in the system, the need for the adjudication of disputes can be expected to diminish. Accordingly, the number of disputes likely to be referred to adjudication could be small, suggesting that establishing a separate institution may not justify the allocation of resources, clearly, it would require.

As the arbitration of collective disputes gains momentum and the system gains the confidence and respect of the disputing parties, it can be expected that more and more disputes will be settled through arbitration. Successful arbitration will also reduce the number of cases proceeding to adjudication. As with collective disputes, the number of collective rights disputes proceeding beyond arbitration may well be small, thereby not justifying the creation of a separate institution. (In this context, attention should be given to the interpretation of Art. 387 of the Labour Law, which mentions that the Labour Court shall have 'jurisdiction over individual disputes' and to whether amendment of this Article is required and desirable as to include collective rights disputes under the jurisdiction of the Labour Court).

It might also be possible to achieve most of the advantages of a special Labour Court by assigning specially trained judges from the common court system to handle labour cases, but sitting in the common court system. This arrangement may be a prelude to the establishment of a Labour Court, either in the form of a separate institution or of special Chambers in the common courts.

Finally, attention also needs to be given to the overall judicial reforms to which the Government has committed. It should be ensured that the structure and organization of a Labour Court fits in with the overall judicial system after the reforms take place. The possible establishment of a Labour Court and the timing of such possible establishment therefore should be put in the context of and made dependent on these overall reforms.

Objective

To provide the Ministry with sufficient information to enable it to decide how to proceed with the establishment of a specialized Labour Court.

Actions

- Undertake a systematic study and prepare a detailed position paper on the establishment of a Labour Court, including an objective analysis of alternative approaches to the adjudication of labour disputes. Particular attention should be given to the need for the adjudication process to be both efficient and speedy to ensure that the experience of other countries, where it may take years before a case is heard, is avoided. Such a study should proceed on the basis of terms of reference and a time frame discussed at length and agreed by government, employers and workers, and be endorsed by the Labour Advisory Committee.
- Plan and conduct a number of tripartite workshops to discuss the position paper and make recommendations to the Ministry.
- Prepare a final paper with firm recommendations for the consideration of the Ministry.
- In the immediate term and without waiting for the completion of the study referred to above, design and implement a training programme for judges of the common courts on the adjudication of labour cases and ensure that training is also provided for judges at the Royal School for Judges and Prosecutors.

Strategic Intervention 11: Labour Law Review

Cambodia's current Labour Law has now been applied for some 7 years. Some employers and workers, and their respective organizations, report that the law is not widely known and understood, and that this has been the cause of complaints and disputes. In addition, the law itself may be the cause of some problems as, for example, with the definition of a collective dispute, with the law preventing individual disputes from being heard by the Arbitration Council, and with conciliation being undertaken by labour inspectors.

Accordingly, there would be advantage in reviewing those articles of the Labour Law concerning dispute resolution and dispute prevention, either as one component of an overall review of the law or, alternatively, as a self-contained issue. It is possible to identify a number of areas within the law that deserve priority consideration, but it is also important that any review be comprehensive and systematic rather than ad hoc and piece meal. Accordingly, any review of priority areas must be consistent with the labour law as a whole, and not be undertaken as a self-contained exercise.

Any changes to the law should be accompanied by a review of the institutional and structural arrangements for its effective implementation.

Objective

To review and amend as appropriate the Labour Law 1997, and its related regulations, with a particular focus on dispute prevention and resolution, and re-examine the structures and institutional arrangements within the Ministry for the effective implementation of the proposed changes.

Actions

- Form a representative task force to prepare a position paper identifying existing shortcomings in the Labour Law, with particular reference to labour dispute resolution.
- Plan and implement consultation meetings and a series of tripartite workshops to discuss the position paper and propose firm recommendations.
- Present the proposed changes to the law for the consideration of the tripartite Labour Advisory Committee.
- Present the proposed amendments for the consideration of the Minister.

APPENDIX A (I)

**Labour Dispute Resolution Project
Consultation Meetings on
Labour Prevention and Settlement in Cambodia**

List of Participants

No.	Name	Position	Organization
A. Government Representatives (Wed. & Thu. 19-20th, May 2004 at Hotel InterContinental)			
1	H.E. Thach Sem	Ministry's Advisor	MOSALVY
2	Mr. Haing Sitha	Deputy Director General of General Directorate of Labour and Vocational Training,	MOSALVY
3	Mr. In Khemara	Deputy Director of Department of Labour Inspection	MOSALVY
4	Mr. Un Botha	Deputy Director of Department of Labour Inspection	MOSALVY
5	Mr. Chen Yansotha	Chief of Labour Inspection Office I	MOSALVY
6	Mr. Ouk Chanthou	Deputy Chief of Labour Inspection Office II	MOSALVY
7	Mr. Theng Puthearith	Chief of Labour Relations Office	MOSALVY
8	Mr. So Nymul	Official of Department of Labour Inspection	MOSALVY
9	Mr. Chourn Annida	Official of Department of Labour Inspection	MOSALVY
10	Mr. Khiev Savuth	Chief of Labour Dispute Office	MOSALVY
11	Mr. Prom Sovannak	Official of Department of Labour Inspection	MOSALVY
12	Mr. Prum Veasna	Official of Department of Labour Inspection	MOSALVY
13	Mr. Pol Chandara	Chief of Labour Inspection Office II	MOSALVY
14	Mr. Huon Soeur	Deputy Chief of Labour Dispute Office	MOSALVY
15	Mr. Khem Bunchhean	Chief of Labour Inspection Post	MOSALVY
16	Mr. Ou Rattana	Official of Department of Labour Inspection	MOSALVY
17	Ms. Chan Sotheavy	Director of Department of Civil Affairs Judge	MOJ
18	Mr. Prak Savuth	Deputy Director of Department of Civil Affairs	MOJ
19	Mr. Hugo van Noord	Chief Technical Advisor	ILO/LDRP
20	Mr. Leon R. Heron	International Consultant	ILO/LDRP

21	Mr. Chhieu Veyara	Programme Assistant	ILO/LDRP
22	Mr. Tep Neth	National Consultant	ILO/LDRP
B Employer Representatives (Tuesday 18th, May 2004 at ILO Conference Room)			
1	Mr. Teh Sing	Vice President	CAMFEBA
2	Mr. Michel Horn	Council Member	CAMFEBA
		Managing Director in Hotel Sector, Member	PPHA
3	Ms. Meas Sokunthea	Secretary	CAMFEBA
4	Mr. John Lu	General Manager	GMAC
5	Mr. Cheat Khemara	Senior Labour Officer	GMAC
6	Mr. Long Heang	Labour Officer	GMAC
7	Ms. Chang Sok Hung	Administrator Garment Factory, Member	GMAC
8	Ms. Nadine Laycock	Human Resource and Training Manager in Hotel Sector, Member	PPHA
9	Mr. Roger Lim Seng Wah	Director of Human Resources in Hotel Sector, Member	MBCC
10	Mr. Hugo van Noord	Chief Technical Advisor	ILO/LDRP
11	Mr. Leon R. Heron	International Consultant	ILO/LDRP
12	Mr. Chhieu Veyara	Programme Assistant	ILO/LDRP
13	Mr. Tep Neth	National Consultant	ILO/LDRP
C Union Representatives & NGOs (Friday 21st, May 2004 at ILO Conference Room)			
1	Mr. Chork Yorn	Secretary General	CUF
2	Ms. Chhorn Sokha	President	CCAWDU
3	Mr. Heng Bun Chun	President	CIFUF
4	Mr. Lou Sak	Secretary General	NIFTUC
5	Mr. Kim Chansamnang	President	TUWFPD
6	Mr. Ly Korm	President	CTSWF
7	Mr. Nou Chantha	President	DTFU
8	Mr. Nay Veasna	President	FUS
9	Mr. Ros Sok	President	CFITU
10	Mr. Ry Rithyneth	Educator	FTUWKC
11	Mr. Say Sam Onn	President	CUFBWW
12	Mr. Vong Sovann	President	CWLFU
13	Mr. Alonzo Suson	Field Representative	ACILS
14	Mr. Keir Jorgensen	Senior Programme Officer	ACILS
15	Mr. Kong Pharith	Lawyer	ACILS
16	Mr. Son Kaksan	Lawyer	ACILS
17	Mr. Seng Phally	Executive Director	CLO
18	Ms. Seang Boravy	Labour Lawyer	LAC

19	Mr. Hugo van Noord	Chief Technical Advisor	ILO/LDRP
20	Mr. Leon R. Heron	International Consultant	ILO/LDRP
21	Mr. Chhieu Veyara	Programme Assistant	ILO/LDRP
22	Mr. Tep Neth	National Consultant	ILO/LDRP
D Members of the Arbitration Council (Saturday 22nd, May 2004 at ILO Conference Room)			
1	Mr. Ang Eng Thong	Arbitrator	Arbitration Council
		Director	Lawyer Training Center
2	Mr. An Nan	Arbitrator	Arbitration Council
		Project Officer	CLO
3	Dr. Kong Phallack	Arbitrator	Arbitration Council
		Professor of Law	Faculty of Law and Economics, Pannasastra University of Cambodia
4	Mr. Koy Neam	Arbitrator	Arbitration Council
		Programme Officer	The Asia Foundation
5	Mr. Kol Vathna	Arbitrator	Arbitration Council
		Deputy Director of Department of Nature Conservation and Protection	MOE
6	Mr. Ly Tayseng	Arbitrator	Arbitration Council
		Legal Advisor	DFDL, Legal and Tax Advisers
7	Mr. Liv Sovanna	Arbitrator	Arbitration Council
		Lawyer	CDP
8	Mr. Mar Samborana	Arbitrator	Arbitration Council
		Business and Investment Consultant	Tilleke & Gibbins and Associates Ltd. Advocates & Solicitors
9	Mr. Men Nimmith	Arbitrator	Arbitration Council
		Legal Consultant	BNG Advocates & Solicitors

10	Mr. Run Saray	Arbitrator	Arbitration Council
		Programme Consultant	The Asia Foundation
11	Dr. Sok Mathoeung	Arbitrator	Arbitration Council
		Lecturer of Law	Faculty of Law and Economics; Pannasastra University of Cambodia
12	Mr. Toun Siphann	Arbitrator	Arbitration Council
		Programme Coordinator	CLEC
13	Mr. Vong Vanna	Arbitrator	Arbitration Council
		Professor of Law	Faculty of Law and Economics
14	Mr. Ven Pov	Arbitrator	Arbitration Council
		Head of Child Protection Unit	BAKC
15	Mr. Tho Bunthan	Head of Secretariat	Arbitration Council
16	Mr. Hugo van Noord	Chief Technical Advisor	ILO/LDRP
17	Mr. Leon R. Heron	International Consultant	ILO/LDRP
18	Mr. Chhieu Veyara	Programme Assistant	ILO/LDRP
19	Mr. Tep Neth	National Consultant	ILO/LDRP

APPENDIX: A (II)

**Labour Dispute Resolution Project
Tripartite Workshop on
Labour Prevention and Settlement in Cambodia
Hotel InterContinental, Wednesday 26th May, 2004**

List of Participants

No.	Name	Position	Organization
Government Representatives			
1	H.E. Ith Sam Heng	Minister	MOSALVY
2	H.E. Thach Sem	Ministry's Advisor in charge of Labour and Vocational Training	MOSALVY
3	H.E. Oum Mean	Director General of General Directorate of Labour and Vocational Training,	MOSALVY
4	Mr. Haing Sitha	Deputy Director General of General Directorate of Labour and Vocational Training,	MOSALVY
5	Mr. Touch Chhay	Assistant to Minister	MOSALVY
6	Mr. Un Botha	Deputy Director of Department of Labour Inspection	MOSALVY
7	Mr. Chen Yansotha	Chief of Labour Inspection Office I	MOSALVY
8	Mr. Ouk Chanthou	Deputy Chief of Labour Inspection Office II	MOSALVY
9	Mr. So Nymul	Official of Department of Labour Inspection	MOSALVY
10	Mr. Chourn Annida	Official of Department of Labour Inspection	MOSALVY
11	Mr. Khiev Savuth	Chief of Labour Dispute Office	MOSALVY
12	Mr. Prom Sovannak	Official of Department of Labour Inspection	MOSALVY
13	Mr. Prum Veasna	Official of Department of Labour Inspection	MOSALVY
14	Mr. Pol Chandara	Chief of Labour Inspection Office II	MOSALVY
15	Mr. Houn Soeur	Deputy Chief of Labour Dispute Office	MOSALVY
16	Mr. Khem Bunchhean	Chief of Labour Inspection Post	MOSALVY
17	Mr. Ou Rattana	Official of Department of Labour Inspection	MOSALVY
18	Ms. Chan Sotheavy	Director of Department of Civil Affairs Judge	MOJ
19	Mr. Mak Pich Rith	Director of GSP Department	MOC
20	Mr. Sat Samoth	Director of Industrial Technical Department	MIME

Employer Representatives			
21	Mr. Teh Sing	Vice President	CAMFEBA
22	Mr. Michel Horn	Council Member	CAMFEBA
		Managing Director in Hotel Sector, Member	PPHA
23	Ms. Meas Sokunthea	Secretary	CAMFEBA
24	Mr. John Lu	General Manager	GMAC
25	Mr. Cheat Khemara	Senior Labour Officer	GMAC
26	Mr. Long Heang	Labour Officer	GMAC
27	Mr. Narath Veasna	Human Resource Superintendent	GMAC
28	Ms. Nadine Laycock	Human Resource and Training Manager in Hotel Sector, Member	PPHA
29	Mr. Roger Lim Seng Wah	Director of Human Resources in Hotel Sector, Member	MBCC
30	Mr. Alan Shi	Human Resource Manager Garment Factory, Member	GMAC
31	Ms. Sandra D'Amico	Manager, HR Consulting & Recruitment, Member	ABAC
32	Mr. Sar Siphinn	HR Executive in Food and Beverage Sector, Member	IBC
Union Representatives & NGOs			
33	Mr. Chuon Mom Thol	President	CCTU
34	Ms. Chhorn Sokha	President	CCAWDU
35	Mr. Heng Bun Chun	President	CIFUF
36	Ms. Om Pheary	Educator	CIFUF
37	Mr. Leang Sun Heang	Vice President	CLUF
38	Mr. Lou Sak	Secretary General	NIFTUC
39	Mr. Ly Korm	President	CTSWF
40	Ms. Khim Linda	Secretary General	CTSWF
41	Mr. Kim Chansamnang	President	TUWFPD
42	Mr. Nou Chantha	President	DTFU
43	Mr. Nay Veasna	President	FUS
44	Mr. Neak Heang	Law Advisor	FUS
45	Mr. Ros Sok	President	CFITU
46	Mr. Ry Rithyneth	Educator	FTUWKC
47	Mr. Chin Sony	Vice President	CWLFU
48	Mr. Alonzo Suson	Field Representative	ACILS
49	Mr. Kong Pharith	Lawyer	ACILS
50	Mr. Son Kaksan	Lawyer	ACILS
51	Ms. Pat Vannaran	Trainer	CLO

Members of the Arbitration Council			
52	Mr. Ang Eng Thong	Arbitrator	Arbitration Council
		Director	Lawyer Training Center
53	Mr. An Nan	Arbitrator	Arbitration Council
		Project Officer	CLO
54	Mr. Hem H. Narith	Arbitrator	Arbitration Council
		Attorney-at-law	BNG Advocates & Solicitors
55	Dr. Kong Phallack	Arbitrator	Arbitration Council
		Professor of Law	Faculty of Law and Economics, Pannasastra University of Cambodia
56	Mr. Kol Vathna	Arbitrator	Arbitration Council
		Deputy Director of Department of Nature Conservation and Protection	MOE
57	Mr. Ly Tayseng	Arbitrator	Arbitration Council
		Legal Advisor	DFDL, Legal and Tax Advisers
58	Mr. Men Nimmith	Arbitrator,	Arbitration Council
		Legal Consultant	BNG Advocates & Solicitors
59	Mr. Vong Vanna	Arbitrator	Arbitration Council
		Professor of Law	Faculty of Law and Economics
60	Mr. Ven Pov	Arbitrator	Arbitration Council
		Head of Child Protection Unit	BAKC
61	Mr. Tho Bunthan	Head of Secretariat	Arbitration Council



62	Mr. Hugo van Noord	Chief Technical Advisor	ILO/LDRP
63	Mr. Leon R. Heron	International Consultant	ILO/LDRP
64	Mr. Chhieu Veyara	Programme Assistant	ILO/LDRP
65	Mr. Tep Neth	National Consultant	ILO/LDRP

APPENDIX: A (III)

Abbreviations

ABAC	- Australian Business Association of Cambodia
ACILS	- American Center for International Labour Solidarity
BAKC	- Bar Association of the Kingdom of Cambodia
CAMFEBA	- Cambodian Federation of Employers and Business Associations
CCTU	- Cambodia Confederation of Trade Unions
CCAWDU	- Coalition of Cambodian Apparel Workers Democratic Union
CDP	- Cambodian Defenders Project
CFITU	- Cambodia Federation of Independent Trade Union
CIFUF	- Cambodia Industrial Food Unions Federation
CLEC	- Community Legal Education Center
CLO	- Cambodian Labour Organization
CLUF	- Cambodia Labour Union Federation
CTSWF	- Cambodian Tourism and Service Workers Federation
CUF	- Cambodian Union Federation
CUFBWW	- Cambodian Union Federation of Building and Wood Workers
CWLFU	- Cambodia Workers Labour Federation of Trade Union
DTFU	- Democratic Thoamear Unions Federation
FTUWKC	- Free Trade Union of Workers of the Kingdom of Cambodia
FUS	- Federal Unions of Solidarity
GMAC	- Garment Manufacturers Association of Cambodia
IBC	- International Business Club
ILO	- International Labour Organization
LAC	- Legal Aid of Cambodia
LDRP	- Labour Dispute Resolution Project
MBCC	- Malaysian Business Council of Cambodia
MIME	- Ministry of Industry, Mines and Energy
MOC	- Ministry of Commerce
MOE	- Ministry of Environment
MOJ	- Ministry of Justice
MOSALVY	- Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation
NIFTUC	- National Independent Federation Textile Union of Cambodia
PPHA	- Phnom Penh Hotel Association
TUWFPD	- Trade Union Workers Federation of Progress Democracy

APPENDIX B (I)

Speech by Mr. Hugo van Noord, Chief Technical Advisor
ILO Labour Dispute Resolution Project

Workshop on
Strategy Paper for Labour Dispute Prevention and Settlement


Hotel InterContinental, Wednesday 26th May, 2004

Your Excellencies,
Representatives of the Ministry of Labour, Employers Associations and Union
Federations,
Distinguished Guests,

Over the last ten years, Cambodia has become increasingly integrated into the global economy. As a result the industrial workforce of the country has grown rapidly, particularly in the garment sector. The figures are quite astounding. In 1995, there were fewer than 20,000 workers in the sector. By 2002 there were more than 200,000 garment sector workers in Cambodia. In other words the garment sector workforce has increased more than 10 times since the mid- nineties. The country's tourism industry too, has re-emerged. The industry has grown by almost 30% in each of the past few years.

However, this spectacular growth has been shadowed by rising levels of labour disputes. In 1997, 17 collective labour disputes were reported to the Ministry of Labour. By 2002, this figure had risen to 118 – a sevenfold increase in as many years. These disputes, often accompanied by strikes, jeopardise the productivity and profitability of enterprises. They also jeopardise the employment and living conditions of workers, and eventually they jeopardise the climate for investment in Cambodia.

To help its transition from a centrally planned to a market economy, Cambodia needed a new culture of industrial relations. It needed credible ways to prevent and resolve disputes at the earliest possible stage. Cambodia has taken important steps towards this goal. These steps include ratifying seven of the ILO's eight fundamental Conventions, and revising the national labour code.




The ILO Labour Dispute Resolution Project is working together with the Ministry of Labour and with the social partners (the employers and the union movement) to further develop Cambodia's industrial relations system. It is doing this by building capacity as well as the machinery for the prevention and the resolution of labour disputes. Part of this co-operation between the ILO, the Ministry and the social partners is the establishment of the country's first independent Arbitration Council for collective labour disputes.

The Arbitration Council has now been in operation for more than a year. It has achieved remarkable success since it commenced its work. Of the 28 industrial disputes that had been processed by the end of January, over 85% were resolved through the arbitration process. And significantly, during the same period, the number of strikes in the garment sector has dropped by an impressive 46%.

The recent dispute in the luxury hotel sector, however, shows that challenges to an effective system of industrial relations still exist. The hotel dispute shows that more knowledge and understanding of the Labour Law is needed, and that capacity needs to be built in negotiation, in workplace co-operation, in collective bargaining and eventually in dispute resolution.

In this context, it is apt that the Ministry, together with ILO, is developing a strategy on labour dispute prevention and resolution. This strategy aims to help guide Cambodia's industrial relations system into the future. At the request of the Ministry, the ILO has drafted a strategy paper based on consultations with the labour stakeholders. The strategy paper outlines 11 strategic interventions aimed at both the prevention of labour disputes, as well as the efficient and effective resolution of disputes that for various reasons cannot be prevented.

These interventions are intended to provide MOSALVY with a framework for action. They should enable the Ministry to adopt a systematic and integrated approach to the introduction of better ways to prevent and resolve disputes. Further, the eleven strategic interventions also form a basis for the preparation of a number of project proposals for presentation to international donors, with a view to obtaining external funding and support.



The strategy paper has no formal status at present. It is a working document to clarify the intentions of MOSALVY and its social partners on a range of matters concerning industrial relations in general, and dispute prevention and resolution in particular. Once all concerned parties have discussed and completed the paper during this workshop, it is anticipated that government, employer associations and trade unions will use it to guide dispute prevention and resolution arrangements in Cambodia in the years to come.

The discussion during this workshop will be facilitated by Mr. Robert Heron who is highly experienced in industrial relations. He has previously been working with the ILO as a specialist in this field. Because of his considerable expertise and experience in labour and labour relations, I am very pleased that he is here today to conduct this workshop.

I express my gratitude to H.E. Minister of Labour and other officials from the Ministry for their co-operation in developing the strategy paper.

I also thank the representatives of employer associations and the union movement for their input and co-operation, and thank all the others who were involved in the consultation process, which has led to this strategy paper

I wish you a fruitful and pleasant workshop.

Thank you.

APPENDIX B (II)

Remarks by Mr. Teh Sing, Vice President of CAMFEBA at the Tripartite Workshop on Strategies for Labour Prevention and Resolution in Cambodia

Hotel InterContinental, Wednesday 26th May, 2004

HE. Ith Sam Heng, Minister of MoSALVY,
Mr. Hugo Van Noord, CTA of ILO Labor Disputes Resolution Project
Ladies and Gentlemen,

I am Teh Sing, Vice-President of CAMFEBA. I would like to begin by giving my impression of the effort the Ministry of Labor and the ILO have been made in trying to address the issue of Labor disputes in Cambodia. Speaking on behalf of the employers, I believe that this strategy paper we are working on is a positive sign that Cambodia has taken a step further in trying to build-up a good industrial relation system.

From the employers' perspective, the very nature of labor relations in a market economy recognizes that workers and employers have conflicting interests and that disagreements are general trend and inevitable. Nevertheless, we regret to see that some conflicts and disagreements, that could have been prevented, have unnecessarily escalated into major and disruptive labor disputes. Although there might be a number of reasons behind, it is arguable that the core one is the lack of awareness about laws and regulations and absence of the reinforcement.

Despite the belief that prevention is better than cure, employers also recognize the essence of establishment of impartial and creditable labour dispute resolution institutions since there is no guarantee that prevention always work. In view of that, CAMFEBA and its members have been working closely with all the stakeholders, namely MoSALVY, Trade Unions and ILO, and now we are here today at this workshop on Strategies for Labor Dispute Prevention and Resolution because we believe that detailed discussion with the stakeholders is essential if we want to come up with the strategies that really work for the benefit of all.

That labor-management relations are harmonized and that labour disputes can be prevented are the employers' and workers' common interest. Together with the strong support from MoSALVY and ILO, I believe that it will provide a driving force to overcome the problems. I hope the workshop today will be a successful and fruitful one, and I thank you for your attention.

APPENDIX B (III)

**Remarks by Mr. Ros Sok
Vice President of LAC, representing employees at
the Tripartite Workshop on Strategies for Labour Prevention and Resolution
in Cambodia**

Hotel InterContinental, Wednesday 26th May, 2004

Your Excellency Ith Sam Heng, the Minister of MOSALVY, and the Chairman of LAC,
Mr. Hugo van Noord, the Chief Technical Advisor of LDRP,
Mr. Van Sou Ieng, President of CAMFEBA,
Excellencies, Ladies and Gentlemen, Distinguished National and International Guests,
All participants of this Workshop,

On behalf of workers, all union members and union leaders in Cambodia and on behalf of myself, I would like to express my great pleasure for participating in this important workshop. We consider that today's workshop will gain wider experience as new strategies for labour (prevention and) resolution at workplace and to contribute to improved operation and Cambodia's labour relations system in the future.

Excellencies, Distinguished National and International Guests, All Participants of the Workshop,

In the past several years, especially since the Labour Dispute Resolution Project started operation, it has provided with experiences and procedures for negotiating and resolving of labour disputes by various methods that are acceptable and it also has helped reducing problems of misunderstanding leading to good cooperation in the labour relations. However, we believe that these conflicting problems could not be completely eliminated at the workplace, in the family and in our society, it requires commitments, fairness, justice and good cooperation in our daily life, only then that these problems would be improved in the future.

On behalf of the union leaders at all levels and in all industries, and all workers in Cambodia, I would like to take this opportunity to express my deepest thanks to all national and international institutions concerned and to the project staff who have worked for the project so far, and we request for further assistance of the project to implement these strategies successfully in the future.

Finally, I wish Excellencies, Distinguished National and International Guests, All Participants of the workshop all the best with the 5 Buddha's blessings.

APPENDIX B (IV)

Speech by H.E. Ith Sam Heng, Minister for Social Affairs, Labour Vocational Training and Youth Rehabilitation (MOSALVY)

Workshop on
Strategy Paper for Labour Dispute Prevention and Settlement

Hotel InterContinental, Wednesday 26th May, 2004

Ladies and Gentlemen,
Representatives of Ministry of Labour, Employers Associations and Union Federations,
Distinguished guests,


First of all, on behalf of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, I am very pleased to participate in the opening of this Tripartite Workshop on strategies for labour prevention and settlement in Cambodia. I extend to you a warm welcome to this workshop.

The last decade has seen an extensive trade liberalization throughout the world. Cambodia is part of this global trend. We have become a member of ASEAN in 1999. We have signed many bilateral trade agreements with other countries in and outside the region. And we are now poised to enter the World Trade Organization. These international developments create considerable challenges, but also great opportunities for our country.

More than ever, what happens elsewhere internationally affects our nation. Conversely what we do here impacts on investors and on our economic development. We cannot afford to look back on the undreamed economic growth of the last few years and just assume it will continue. We must continue to plan for the future. We must take advantage of all the resources we have available in our country to ensure that our people and our children have increasing prosperity.

This means that we should maximise our potential for investment and economic development. It also means that we should make use of our resources to develop our industries. Most importantly it means that we should develop and improve the skills and capacity of Cambodians to overcome the country's problems and to help build a better future.

The key area where all these factors come together is in the area of labour relations. In cooperation with the International Labour Organisation the Ministry has taken important steps towards strengthening of Cambodia's industrial relations system. Achievements in this area include the formulation of Prakas, circulars and



other notifications to regulate the industrial practices. For example the Ministry has issued Prakas on Procedures for Individual and Collective Disputes Settlement, Prakas on the Registration of Professional Organizations and Prakas on the Representativeness of Professional Organizations of Workers. The Ministry has participated with the ILO in its garment sector monitoring project to improve conditions for workers, and to improve productivity for employers. And we have promoted and welcomed the introduction of the new Arbitration Council to help resolve industrial disputes.

These building blocks are now in place. But now we need to go further. We need to develop strategies that will link the progress already made in labour relations to a sustainable future that benefits everyone.

We cannot afford to be complacent about this. We cannot afford to participate in it half-heartedly, or to be less than fully committed to its success. The benefits of co-operation instead of confrontation and conflict are obvious to all of us. But sometimes we forget this. And there will always be obstacles and differences of opinion about how we should proceed.

So we want to ensure that everyone involved, through their representatives, has had an opportunity to have input. We also want to ensure that everyone has an opportunity to discuss and be consulted about what is proposed.

You have already seen the document that outlines strategies to prevent and resolve labour disputes. Discussions have been held for each of the three parties involved. Now, at this workshop we are together. What is agreed today will form the final version of dispute prevention and resolution strategies that will guide us over the next several years.

Your participation in this, your understanding and your commitment to it is a big contribution to the future of this country. Importantly, a coherent strategy will enable the Ministry, the employers, the workers and the Arbitration Council of Cambodia to function better. This will lead to what we all want to see: industrial peace, improved productivity and sustained economic progress. We need better skills, better understanding, better facilities and better attitudes to ensure success in the future.

Before I declare the workshop open, I now thank Mr Hugo van Noord, the ILO, and everyone who has worked on this strategy paper for helping bring us to this point.

I declare this workshop open and wish you bright idea and wisdom in your deliberations.

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