CAMBODIAN LABOUR ADMINISTRATION WITHIN
THE CONTEXT OF INTEGRATION

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Cambodia is a developing country located in Southeast Asia (one of the member countries of ASEAN and the International Labour Organisation (ILO)). This country has been influenced by the Civil Law system, in particular by France legal system during and following the protectorate almost a century (1863-1953). For this, the Cambodian legal system has been generally built based on civil law model as the legacy of the transfer of law.

The Constitution of 1993 establishing the Kingdom of Cambodia after the dark days of the Khmer Rouge regime provides several fundamental rights and freedoms to workers and employers. These include the right and freedom of trade union, right to free choice of job, right to gender equality as well as right and freedom to business.

Adhering to the principles and fundamental rights recognized at international level, especially to any principle adopted by the United Nations and ILO, shows a significant progress of Cambodian positive law.

Before directly talking about the topic, it is useful to have a look at the current state of the Cambodian labour law\(^1\). The Labour Code currently in force was adopted in 1997 with the support of various international experts. The provisions of this code are a combination product made from the evolution and inspiration of the previous codes (the first Labour Code was adopted in 1970) and new creation necessary to absorb any principles and fundamental rules prescribed by the Constitution of 1993.

Thus, the employment relationship has been governed by provisions considered protective vis-à-vis parties. However, the existence of legal rules alone is not sufficient to regulate all forms of labour relationship between the employer and workers. It needs also the establishment of supporting monitoring and enforcement mechanism. This is the task naturally assigned to the labour administration service.

A part from the straightforward meaning of the expression "labour administration", we may start with questions related to roles of this administration (I), obstacles he experienced in order to ensure a proper law enforcement (II) before trying to propose any possible alternative to improve the situation (III).

I. OVERVIEW OVER CAMBODIAN LABOUR ADMINISTRATION

We will address two following key issues in order to get a better understanding over both the concept of labour administration (A) and its functions (B).

A. Notion of Labour Administration

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\(^1\) For further information, see annex attached here to.
Chapter XIV of the Cambodian Labour Code states about labour administration and its functions without defining the term or specifying its concept. Indeed, beyond the simple reference to labour inspection, if we reviewing relevant articles prescribed in this chapter, it is a bit hard to precisely determine or define its notion. However, the ILO Convention number 150 ratified by Cambodia in August 23, 1999\(^2\) gives the definition to the term in its Article 1. Under this Convention, the terms "labour administration" refers to any act conducted by the public administration in the field of national labour policy, while the term "labour administration system" refers to all public administrative bodies responsible or in charge of labour administration. In 1973, a meeting of experts on labour administration has extended these definitions stating that the concept of labour administration should be understood in its broadest sense and should cover all activities undertaken by the public administration offices to assist governments in the development, implementation, monitoring and evaluation of labour policy. The Committee of Experts added that the concept of labour administration "should include all ministerial departments and public institutions created by national laws or regulations to deal with labour problems and the various institutions established for this purpose as well as the institutional framework, first, to coordinate their activities, and, secondly, to ensure consultation and participation of employers and workers and their organizations representative to the development and evolution of labour policy"\(^3\). If we reflect on the definition given by the experts, we can say that the State Institutions, in particular the Ministry of Labour have a big role to play in this area.

Within the Ministry of Labour, there is a body of labour inspector required by law to make the effective enforcement of labour standards. Cambodian labour law entrusts an important role to this agent in controlling work condition, a subject we will discuss in Section B of the report.

Another element of the labour administration system is the labour advisory committee. According to Article 351 of the Labour Code, the committee consists of:

- Minister of Labour or his authorized representative, President;
- Representatives of other relevant ministries;
- The equal number of representatives of trade unions that are the most representative at national level and representatives of employers' organizations that are the most representative at national level.

Finally, the Labour Arbitration Council, the Labour Court and the court of common jurisdiction are institutions guaranteeing the respect of any rights provided by the Labour Code.

B. Function

Article 338 of the Labour Code provides that the Labour Administration's responsibilities include the preparation, implementation, coordination, monitoring and evaluation of national labour policy. Particularly within the realms of public administration, it is the tool for formulating and enforcing legislation in order for this policy to materialize. The labour administration is empowered under this article to conduct following functions:

- Consistently study the situation of employed, unemployed or under-employed persons in light of the national laws and practices regarding working conditions, employment and professional life.

\(^3\) International Conference on labour, session 100, 2011, Rapport V, Labour administration and labour inspection, 5th agenda, p. 6.
- Pay attention to inadequacies and abuses in this area and puts forward a proposal and request a decision on method for remedy.

- Offer its advisory service to employers and to workers, as well as to their respective organizations, in order to promote consultation and real cooperation between the authorities or public institutions and employers or workers, as well as between employers' and workers' organizations.

- Respond to requests for technical assistance from employers and workers, as well as from their respective organizations.

- Offers conciliation services to employers and workers, as well as to their organizations, in order to help settle individual or collective disputes.

As above illustrated, Article 357 of the Labour Code states that the Labour Advisory Committee has the mission primarily to study problems related to labour, the employment of workers, wages, vocational training, the mobility of labour force in the country, migrations, the improvement of the material and moral conditions of workers and the matter of labour health and safety.

The Labour Advisory Committee has therefore the following duties:

- formulate recommendations on the guaranteed minimum wage;
- Give advice beforehand in order to extend the scope of a collective agreement or, in the absence of collective agreement, give advice on any eventual regulation concerning the conditions of employment in a given profession or in a certain specific sector of activity.

Furthermore, the labour inspector, within the scope of its capacity, is invested with the power to ensure that the provisions of the following legal instruments such as Labour Code, laws, implementing regulation even non- codified relating to the legal regime of the labour, collective agreements or accords are respected. The labour inspector should, within the scope of its missions, at least once a month check the standard compliance. The rest of his time is devoted in particular to check the legal compliance of the internal rule, the reconciliation of individual disputes arising between employers and workers concerning the interpretation or application of the terms of the employment contract or vocational training agreement or the provisions of any collective agreement, regulation or law in force.

Even without referring to the powers given to other institutions in the labour administration system including but not limited to the arbitration council and the court of common jurisdiction that we will discuss later, we still can say that there are sets of rules sufficient enough to allow the Labour Administration to carry out its role in this field of work. Although, in practice, we observe this administration has not well performed his duties or experienced several difficulties in fulfilling its role.

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4 Article 344 of Cambodian Labour Code
6 Article 24, 2nd paragraph of Cambodian labour code.
7 Article 300 Cambodian Labour Code.
II. OBSTACLES TO GUARANTEEING PROPER LAW ENFORCEMENT

Upon observation in recent years, labour disputes regarding compensation, health, safety, recreation and the dismissal, increase significantly. This constitutes a sign of difficulties in the implementation of the labour law in Cambodia. Since 2010, these problems continue to worsen due to non-application of the law by employers. We see clearly there are three major obstacles that contribute to these difficulties. The first one is the weakness of the labour administration system (A), legal barriers on the other (B) and finally judicial barriers when parties to conflict refer to the Arbitration council and/or to the courts of common jurisdiction (C).

A. Administrative Obstacles

State agents who work in the field of labour law and play a leading role in the implementation of the Labour Law and regulations are inspectors, labour controllers and other officials of the Ministry of Labour. Before all, only this labour administration is considered, before labour arbitration council and courts, as labour law’s enforcement agency. The members of this administration must in this case be adequately trained and have sufficient material resources to properly perform their duties (Article 339 and 340 of the Labour Code). If we review carefully these two articles, we realize that the law maker, in order to strengthen the enforcement of labour standards, has been willing to equip law enforcement’s officers with materials and specific skills to ensure labour law compliance. Requirements for their knowledge is up to the scale of the task entrusted to them. These include, for illustration purpose, checking compliance of the terms and conditions of the internal rules, giving or not giving any approval to dismiss any protected employee, mediating any individual litigation and labour collective dispute arising in the company as well as investigating working conditions, etc. These skills require, for them, significant legal experience and knowledge.

However, the reality on the ground is made because these agents are often faced with the lack of equipment needed to do their job. They are not well trained and do not necessarily have the legal knowledge and practice enough to properly monitor the application of labour standards. For this, their work efficiency remains limited. In another hand, the number of these agents is not sufficient enough to ensure effective control of the working standards currently in force. The Corruption has been added to these existing difficulties.

The issue of the strike, workers’ safety, the violation of their rights also remains difficult to resolve. For example, in textile industry, the number of strikes in 2013 is very high compared to the year 2012, more precisely 147 cases against 121. Most strikes were made in order to

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9 Cambodian labour confederation’s report « a week that tremble Cambodia, published in February 20, 2014, p. 6-7 (www.clccambodia.org).
10 Cambodian labour confederation, ILO : either employers and workers have problems of respect the law, report published on July 3, 2014 (www.clccambodia.org).
11 Article 339: “The Labour Administration must permanently maintain enough personnel, material, means of transportation, offices and premises to meet the needs of the service that is conveniently accessible to all interested persons. Agents of the Labour Administration must be acquired with adequate training for carrying out their respective functions”. Article 340 adds that: “The agents of the Labour Administration must have the sufficient qualifications to perform their assigned functions, have access to the necessary training in carrying out their functions and be free from all undue external influence”.
request for the wage increase in the textile sector\textsuperscript{13}. They are partly due to price inflation of goods and services. The minimum wage in Cambodia as in some other countries is determined by the Ministry of Labour following consultation with the labour advisory committee\textsuperscript{14}. A recent study done by the Statistical Institute of Cambodia on the monthly expenses of a person living in Phnom Penh, says that a person spends about $ 160 per month\textsuperscript{15}. Despite the fact that cost of living for workers is one of the factors to be considered in setting a minimum wage for workers, the Ministry of Labour is not able to fix for now a minimum wage that meets the needs of workers in general. The Ministry of Labour plays the role of mediator between employers and workers, rather than imposing its decision even though he is invested with statutory power to fix this minimum wage.

Regarding hygiene and health of workers, the Ministry of Labour in particular, Medical inspector, and the labour advisory committee did not exercise either their function effectively. A recent study shows that during the first six months of 2014, 900 workers fainted on textile workplaces including three died. This exceeds the total number of workers fainted during 2013\textsuperscript{16}.

Faced with the difficulties presented above, thousands Cambodians went to work in foreign countries like Thailand, Malaysia and South Korea as well to find a job with a higher level of salary\textsuperscript{17}. Currently, there are about 700,000 Cambodian workers who enter and work legally in Thailand\textsuperscript{18}. However, this figure does not include the 200,000 workers returned to Cambodia by Thai authorities after the recent military coup. These immigrants do not have valid documents. This is due not only to lack of attention of the Ministry of labour, but also of cooperation or coordination of other institutional partners such as the Ministry of Interior. The Cambodian Labour administration has not implemented or made enough efforts to control the recruitment process of workers to work in foreign countries; particularly the decree issued by the Government has not made clear the rights and various sums of money that a worker must pay to the recruitment company\textsuperscript{19}. One of the reasons why these people decide to cross the border illegally is the price and the location for obtaining the passport. In Cambodia, a passport costs about $ 135. In addition, the passport service is localized only to the capital of Phnom Penh, making obstacle to people who do not have sufficient financial ability to come to the capital and pay for an expensive service and then waits more than a month before finally acquiring the passport. Meanwhile, foreign workers in Cambodia are not well controlled by the competent authorities. For example, Article 261 of the Labour Code provides that: “No foreigner can work unless he possesses a work permit and an employment card issued by the Ministry in Charge of Labour. These foreigners must also meet the following conditions:

- **Employers must beforehand have a legal work permit to work in the Kingdom of Cambodia;**


\textsuperscript{14}Article 107-2\textsuperscript{nd} paragraph of Labour Code “The minimum wage is set by a Prakas (ministerial order) of the Ministry in Charge of Labour, after receiving recommendations from the Labour Advisory Committee”.


\textsuperscript{16}RFI, the question of fainted workers was discussed, (www.khmer.rfi.fr; August 24, 2014).

\textsuperscript{17}There are 31 private companies that offer recruitment and vocational training service to workers before sending them to foreign countries. These companies are licensed by Ministry of Labour and Vocational training. See meeting between the 1st commission of the Senate and Ministry of Labour and vocational training (www.senat.gov.kh, published on December 27, 2012).

\textsuperscript{18}www.rfi.fr/khmer (published on August 21, 2014).

• These foreigners must have legally entered the Kingdom of Cambodia;
• These foreigners must possess a valid passport;
• These foreigners must possess a valid residency permit;
• These foreigners must be fit for their job and have no contagious diseases. These conditions must be determined by a Prakas (ministerial order) from the Ministry of Health with the approval of the Ministry in Charge of Labour.

The work permit is valid for one year and may be extended as long as the validity of extension does not exceed the fixed period in the residency permit of the person in question”.

While, the Prakas of the Ministry of Labour on the hiring of foreigners in Cambodia, it requires employers to fulfill certain formalities and accordingly declare when hiring, but few employers pay attention to it.

The question of Child labour remains also a challenging issue. Indeed, many children could not access to school because of poverty. They have been exploited. According to a recent study by the ILO, about 430,000 children have left school and 400,000 others have no access to school. Most of the children who have dropped out are those whose families move from one province to another in search of jobs. According to sources of the ILO in 2012, approximately 750,000 children in Cambodia were working in various sectors among them 429,380 are victim of their work exploitation. They work beyond 49 hours per week.

B. Legal Obstacles

1. Informal work

This working relationship is not governed by labour law due to the absence of relevant qualification required by the Labour Code. This includes for example the case of domestic workers and labour within the family. These workers do not enjoy the protections of labour law because of ambiguity or disguise of the relationship. It should be noted that the current Labour Code does grant protection only to any workers covered by the definition of the labour contract. By referring to this definition, we cannot have adequate protection for people who work in informal sectors because of the absence of employment contracts. As an illustration, Prof. Jean-Michel SERVAIS writes about the issue of informal work as follows: “nothing prevents the spouse, child, another family member of the employer to be bound by an employment contract. But once again, the subordination that has nothing to do with parental authority is not easy to establish”. This was also confirmed at the 90th International Labour Conference: "... majority of the workers in the informal economy are not neither recognized nor declared, they do not benefit neither from labour legislation, nor the social protection, for

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21 RFA, Child labour is a serious problem in Cambodia (www.rfa.org published on July 3, 2014).
22 Licadho organized children day at Sihanouk Ville (www.rfa.org published on June 15, 2014). Reading also articles 177 to 181 of Labour code. These provisions define minimum wage, working conditions and control made by labour administration. In Cambodia, the legal working duration per week for worker aged from 15-18 is 8 hours per day and 48 hours per week (article 137 of Labour Code). In another hand, children between 12 and 15 years old are authorized to work only between 4 and 7 hours per day (article 4 of the Prakas of Ministry of labour dated January 8, 2008).
example, when their employment status is ambiguous, so it is impossible for them to enjoy, exercise or defend their fundamental rights.”

The question we may raise here is: what is the meaning of an ambiguous or disguised employment relationship. The answer to this question sounds important to the extent that the labour law cannot grant any protection to people when the existence of an employment contract cannot be proved. In other words, an employment relationship is ambiguous when one cannot easily determine whether it is within the scope of the employment contract or a contract for services. It is this ambiguity that puts workers of this category outside the scope of the protection of labour law. For the same reason, disguising an employment relationship is to give it an appearance different from its reality in order to cancel or reduce the protection provided by law. It is therefore an act intended to conceal or distort the employment relationship by cloaking another legal aspect or giving another form that gives less protection to the worker. The disguised employment relationship may also be discovered in a situation where the identity of the employer was structured as an employer-intermediary in order to release the real employer of any involvement in the employment relationship, particularly the responsibility of any form vis-à-vis workers.

Poverty and subsistence economy in which live many Cambodians, especially in rural areas, justifies that fact that the employment relationship is very rarely subject to labour law. The Labour Code, for this reason, is a dead letter. For this, collecting bananas can be a typical example as the workers are simply asked to cut these bananas against some money. If there is an accident, we wonder who bears the responsibility for this accident. The issue invites us to examine the qualification of the employment relationship. The answer can be found in Article 1 of the current Labour Code, which defines the scope of this code as well as the relationship between employers and workers generated by employment contracts. As a result, we must establish the existence of an employment contract by proving for example the existence of the subordination of workers to the employer, a relationship which is not always easy to prove.

2. The issue of harassment within workplace and the burden of proof

The practice of psychological and sexual harassment do exist in Cambodia. Sometimes to free the company from any specific female employee, employer, instead of dismissal with severance, exerts a moral pressure for her to resign.

Under Cambodian law, psychological or sexual harassment is not expressly forbidden by law. Indeed, Article 172 of the Labour Code provides that “all employers and managers of establishments in which [...] women work, must watch over and maintain good moral rule and their public decency. Sexual violation of any forms is strictly prohibited.” Even if this article appears to prohibit sexual harassment, the issue of psychological harassment remains uncertain. What is a psychological harassment? Psychological harassment is characterized by repeated acts committed with specific purpose or effect to degrade the working conditions following which it may either adversely affect personal rights and dignity granted at work to any specific employee or alter the physical or mental health or jeopardize his professional future. Moreover, the question of the consequences of the breach of contract arising from or through the fault of the employer is not provided by the Labour Code. Does the resignation

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for reason of psychological or sexual harassment can be regarded as a termination without valid cause? What will be the sanction against the perpetrator of psychological harassment? And what is the scope of protection of victims and witnesses to such harassment?

In addition to psychological harassment, the question of burden of proof in cases of discrimination also exists because the rule of evidence in Article 65 paragraph 1 of the Labour Code refers in general to that of the common law. Under common law, victims of discrimination must provide proof of the discriminatory practice to convince the judge, which is not an easy task. The Labour Code does not contain any provision offering the possibility to reverse the burden of proof in this area.

3. Trade Union Freedom

Despite the fact that trade union right and freedom are provided by the Labour Code as well as international instruments to which Cambodia become a party, we see that this right and freedom are not well respected in reality. Indeed, even without talking about the weakness of the Cambodian administrative system, we can mention first the lack of comprehensive and detailed statutory provisions to secure the establishment and the functioning of this institution. Of course, the Labour Code contains general provisions on the right and trade union freedom, but it is not clear if a few people can create a union or it need a certain number of percentage to do so? What are their roles and limits? What are the registration requirements? What are the rights of union’s representative in their functions? Can they enjoy monthly hour credit? In order to form a confederation of trade unions, how many trade unions are required? How to control the budget of the trade union and the conditions of its dissolution, for example? With these ambiguities, many questions remain unresolved while enforcing general provision. For this and with an objective to guarantee the rights and interests of employees and employers by way of establishment of the trade union, a draft law on trade union was prepared six years ago. However, this project has not yet been submitted to the National Assembly for approval.

C. Judicial Obstacles

After examining the legal barriers including but not limited to non-sufficient normative instrument, judicial factors can be also regarded as an additional obstacle. This obstacle is generally for workers. When any institution invested with mission to find justice has limited capacity or does not work well, this means the “justice” itself has been affected. Among these institutions, there is Arbitration Council (1) which is a key player due to his exclusive missions and jurisdiction provided by law in the area of labour dispute resolution. Judges are also another key player in law enforcement (2).

1. The arbitration council: an institution of limited jurisdiction

The use of peaceful way of conflict resolution is a practice encouraged in Cambodia. The traditional justice, commonly named extra-judicial alternative, remains popular in Cambodian society even if the reference to the courts became, by law, mandatory in conflict resolution. The author of Labour Code has reintroduced the customary law by providing opportunities to use alternative dispute resolution mechanism. This opportunity is widely opened to the parties to the conflict. Only collective disputes may be referred to the Arbitration Council. The

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26 The draft law on trade union was once again reviewed (in www.cen.com published in July 12, 2011).
27 Arbitration Council is an institution having jurisdiction to resolve labour collective dispute. It is specified by Labour Code and institutionalized by Prakas of Ministry of Labour in May 2003. The arbitration council is
exclusion of individual disputes before the Arbitration Council constitutes a restriction for the workers. This creates an obstacle for workers who are in individual disputes with their employers. It seems hard to believe, given the current situation in Cambodia, that an employee files his complaint before the court of common jurisdiction for an individual dispute on the basis, for example, of dismissal, discrimination or abuse or bad treatment committed by employer or his/her authorized representative. The jurisdiction of the court of common jurisdiction must probably be understood as broad as it can to cover any individual conflicts as it is fallen under the general principles applied to any given company.

Furthermore, arbitral awards once issued have no immediate enforcement effect. A party may appeal to the court against an arbitral award when both parties have not signed in advance a clause whereby they accept the arbitral award. Moreover, even if such a provision was made, the winning party can only seek enforcement of the award in the court of common jurisdiction or being on strike. The complexity and fragility of the procedure governing labour dispute resolution and delays in the proceedings before the court of common jurisdiction constitute one of major obstacles to successful enforcement of arbitral award. Following case can be an example: The Cambodia Raffles Hotel. In this case, over a hundred trade union members and trade union leaders were dismissed by a luxury Hotel in Cambodia "Raffles". Despite the fact that the Arbitration Council has decided that the dismissal was illegal and ordered the reinstatement of these workers, the management of this hotel has not only ignored the decision of the Arbitration Council, but also organized an illegal trade union election and concluded subsequently a collective agreement with the elected one. These actions reveal, after the Arbitration Council, a clear intent on the part of the hotel management to ignore the legal existence of the union which had the exclusive right to represent the workers in the process of collective bargaining. The employer showed his obvious intent not to respect the right and freedom of trade union recognized not only by Cambodian labour law, but also by the Conventions No. 87 and No. 98 of the ILO ratified by Cambodia. The case of employees of the ASEANG industry, they protested against an employer who does not comply with the arbitral award following which he was ordered to pay their salaries.

Another similar case concerns bus drivers of the company “SORYA”. Even if the arbitrators have ordered the employees dismissed by the company to be reinstated, they were refused on the pretext that their positions were replaced with other newly hired employees.

2. The judges of the common jurisdiction: also judge in labour law

Already weakened by the lack of professional training after a long period of civil war, the judges has experienced great difficulty to ensure a proper law enforcement as they have to face at once double challenging issue, the limited legal resource that was already destroyed by the Khmer Rouges and emerging of legal instrument that are also most likely new for them.


28 www.cambodiadailykhmer.com July 15, 2014

29 It is important to know that court of first instance and Supreme Court just restarted to operate in 1982, following the falling of Khmer Rouge Regime. However, « it was, without doubt, that under UN’s influence, a large majority was done by way of judicial regulation over the functioning of Cambodian institutions. The previous Constitutions did not ignore this, or even far beyond this. Although, it has never been subject to any provision producing force as strong as it is. » in GAILLARD Maurice, « La démocratie cambodgienne, la constitution du 24 Septembre 1993 », Collection point sur l’Asie, éd., l’Harmattant, 1994, p. 125. Also, The Transparency International Cambodia, Corruption and Cambodia’s Governance System: The Need for Reform; August 2014; 66 pages.
For this, the judge is confronting with a situation where guiding general principles of law and general reflection on social right are completely absent, both in the field of labour law and in other fields of law in general.

In civil law system, case law plays a necessary role in term of construction and complementarity when the law is flawed. This case law can sometimes be used, when applied frequently by judges, as general principle of law. This is not the case for Cambodia. Statutory provision has not been interpreted by jurists. When judges have been referred by the parties, the interpretation of the same Act or of the same fact can lead to different solutions from one court to another, not because of the absence of uniformity of the interpretation that is guaranteed by the Supreme Court, but because of the lack of guidelines or method of interpretation of law. In Cambodia, the formulation of a law, the statement of a prohibition is of the order of abstraction as long as they have not been faced with the diversity and complexity of situations\(^{30}\). Law, in this sense, losses its connection with social reality which are permanently subject to constant changes and mutations like the labour law.

Apart from the difficulties in the implementation of its domestic law, the Cambodian judges faced another problem, the spirit of normative instrument generated by international law. It is hard for the judge to invoke an international convention to apply to a given situation. This question is particularly difficult when the provision of an international Convention already ratified is in conflict with the Cambodian labour law. Due to the absence of abrogation of any previous law and regulation that are contrary to a ratified convention, some judges may assess with difficulty whether the provisions of these law comply or not with the Convention. Do they compete or mutually complete? There may be the conflict between national and international law. As said Prof. Nicolas VALTICOS, "it is not uncommon for a conflict between international sources and domestic sources of labour law (...), the conflict is considered the one that, in terms of the internal legal order of a country can oppose an international source of labour law (bilateral agreement, ratified Convention, etc.) to a law or other domestic source"\(^{31}\).

The question of the effect of the International Convention in the domestic legal system should be elaborated since it is very important for the countries that have ratified the international conventions. The question is whether a court of any country may invoke, for example, a provision of an international agreement already in effect in order to apply to a case to which he has been referred. The case of Cambodia is specific. In fact, Article 31 of the Constitution expressly recognizes the supremacy of international treaties and conventions over domestic law. However, it does not say that the judge can directly apply a provision of an international convention on the rights of workers even if the agreement has not been ratified by Cambodia. According to the Cambodian Constitutional Council, such an agreement may be invoked before the Cambodian judges when it was ratified by Cambodia\(^{32}\). It is then a check of "conventionality" of the text criticized before the Court.

In the field of individual dispute resolution, Article 387 of the Cambodian Labour Code provides that: "Labour courts shall be created to have jurisdiction over the individual disputes occurring between workers and employers regarding the execution of the labour contract or the apprenticeship contract". According to the said article, only the individual disputes are


settled by the Labour Court. According to Article 389 of the same Code, in absence of the establishment of the labour court, any disputes concerning the implementation of the Labour Code are fallen under the jurisdiction of the courts of common jurisdiction. Be aware that at present, the discussion about the draft law on the establishment of labour court is still ongoing. This constitutes an open question regarding the jurisdiction of courts of common jurisdiction in the field of labour law. As labour law has a particular dimension, we need judges with a strong background in labour law and a specialized court as well. Or, most of Cambodian judges are versatile, acting on almost all areas of law. The question of sound interpretation and proper enforcement of the labour law will come in at all jurisdictional levels.

The co-existence of the Arbitration Council and the court of common jurisdiction, both invested with jurisdiction to deal with problems whose boundaries are sometimes blurred, of course raises not only the question of the need for consistency between the “jurisprudence” of the two institutions but also the need for clarification of any relevant procedures and missions necessary to secure their “good coexistence”.

III. ALTERNATIVES TO IMPROVE

Faced with the phenomenon of globalization and especially regional integration, Cambodia should not remain as it is. It must make efforts to reform its labour administration system. To get there, the commitment of the Cambodian government is sine qua non. This shall be accompanied by certain actions such as poverty reduction and the fight against corruption (A). This commitment shall be translated into action by the Ministry of Labour and Vocational Training (B) and finally the ASEAN and other international institutions are to play a major role in improving the system (C).

A. The Government's commitment

In addition to pursuing policies to reduce poverty and fight against corruption, one of the objectives of the Government of the fifth term is the implementation of comprehensive reforms.

The Government plays a cardinal role in improving working conditions for workers. We know that corruption is considered as cancer and the number one enemy of the development of the economy. Although the fight against corruption is not specific to the field of labour law, it directly concerns because corruption is omnipresent in Cambodia. The fight against it should come with some means more or less important (1). Comprehensive reforms include legal (2) and judicial reforms, areas that subsequently affect the labour law (3).

1. The fight against poverty and corruption

The Cambodian Government believes that economic growth is essential to effectively fight against poverty, and its scale relies strongly on the level of private sector development whose development requires sustained efforts to improve the system of governance. The Government’s strategy to fight against poverty has three main components, namely the

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33 Cambodia has double degree of jurisdiction such as court of first instance (provincial and municipal court), court of appeal and Supreme Court which ensure law enforcement.

achievement of sustainable economic growth of around 7% annually\textsuperscript{35}, ensuring a fair and equitable distribution of the economic growth to different segments of the population, urban and rural areas, and between the two sexes, as well as the management and use of natural resources in a sustainable manner in order to preserve the environment.

For this, job creation in the private sector and in rural areas is strongly encouraged as the poverty cannot be reduced if the majority of the population is unemployed. In addition, the development of the labour market through the establishment of supporting mechanisms in search for jobs and vocational training contribute to this goal\textsuperscript{36}. The informal work constitute equally an alternative to counter unemployment rate in poor countries like Cambodia today where the problem of access to formal employment remains difficult for disadvantaged populations such as the disabled, the former veterans and their families.

The political commitment of the government, with financial support from international organizations like the UN, ILO, and loans from the World Bank, the Asian Development Bank, etc., allow the government to improve, in cooperation with Non Governmental Organizations already in place, the social and economic development, in particular by promoting the creation of decent work for people living in the countryside. The Cambodian Government, with the assistance of the United Nations, aid from the international community and loan without or with low interest rate, was able to put in place programs to support very poor, allowing them to use credits to create small family businesses. The opening of credit with a low interest rate tends to widen. At the same time, the development of rural communities requires the provision of vocational training on site, which would allow local people to participate effectively and contribute to the development of small businesses in rural areas, thus promoting the development of agriculture sector. The Ministry of Rural Development has opened regional training centers located in various poor provinces. In parallel, working closely with donors allows these rural populations, with the training they have acquired, to have the ability to run small businesses and create local jobs\textsuperscript{37}.

For any circumstances, the poverty reduction is a key objective for the Cambodian Government as stated in Article 61 of the Constitution of September 24, 1993, "the State shall promote economic development in all areas especially the agriculture, handicrafts, industry, starting from remote areas, taking into account the irrigation policy, electrification, transportation, modern techniques and the credit system". This creates best endeavors obligation (obligation de moyen) for the State following which it shall take necessary steps to advance the economy and reduce accordingly poverty among the people in rural areas. However, this policy should not ignore the fundamental rights of workers, recognized by the Constitution and international conventions; this means it must also be accompanied by specific measures to combat against discrimination and promote among workers equal access to employment as well as during work execution, especially for women and children.

Reducing poverty also contribute to an effective labour law enforcement because if people can live comfortably, workers are less concerned about their survival and pay further focus on the respect and protection of their fundamental rights granted at workplace.

\textsuperscript{35} The Royal Government of Cambodia, “Rectangular Strategy” for Growth, Employment, Equity and Efficiency, Phase III, Phnom Penh, September 2013, p. 7.
\textsuperscript{36} The Royal Government of Cambodia, “Rectangular Strategy” for Growth, Employment, Equity and Efficiency, Phase III, op.cit. p. 30 et s.
\textsuperscript{37} Cambodian Rehabilitation and Development Board (CRDB) and Council for the Development for Cambodia (CDC), other priorities within cross-sectors (rural development) in www.cdc-crdb.gov.kh. For the question of promotion of agriculture development, see HANG Chuon Naron, Economy of Cambodia : fight for development, Phnom Penh, 2005, p. 134.
Currently, the Royal Government puts in place several programs and strategies to combat against the practice of corruption. The enactment of the law and the establishment of the Anti-Corruption Unit (ACU) serve respectively as legal basis and information to the Government and Court in search and punishment of perpetrators of corruption.

It seems that one of the best ways to fight against corruption committed during labour law enforcement, like in any other field, would be to increase the salary of civil servants and judges so that they can live in good conditions. From investor’s point of view, the adoption of the law against corruption encourages them to invest not only in Cambodia but also to improve the working conditions of Cambodian workers and enable them to raise wages, among others as well.

2. Legal reform in the field of labour relationship

Even if employees are protected by the Labour Code and other legal instruments, their working conditions in certain areas such as domestic work are not yet guaranteed by the Labour Code. Article 4 of the present Code states that: "Domestics or household servants" are those workers who are engaged to take care of the homeowner or of the owner's property in return for remuneration. In Cambodia, wealthy families often calls for women from very poor families in rural area to come and live in their property and take care of household receiving in return a certain sum of money.

Indeed, the protection of domestic workers or household servants has been included in the ILO Convention No. 189. This Convention provides specific protections to domestic workers. However, due to its social context, Cambodia has not yet ratified this Convention. Within this situation, it is therefore difficult to get access to the relevant legal instrument to protect the workers. For this, it is time to think and act with a view to improving the situation of informal workers.

a. Improving future of informal workers

We have thus to figure out different alternative to improve their working conditions since indeed, under the Cambodian Constitutional law and certain international conventions ratified by Cambodia, the workers employed in the informal sector are not excluded from the protection. To do so, it is indispensable that the Government, Parliament and relevant stakeholders involve actively in favor of their protection. It is therefore necessary, at first, to question the role of the Government and Parliament in this process. In other words, what are the legal conceptions we can introduce for the reform (i) and which legal reform that can be done for the benefit of these workers (ii).

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38 Article 1 of the Labour Code states: this code shall not apply to domestics or household servants, unless otherwise expressly specified under this law. These domestics or household servants are entitled to apply the provisions on freedom of union under this law. A part from the recognition of this right, the Code is silent over right of domestics and household servants.

39 Without referring to numerous international conventions, such affirmation can be found in several article of the Constitution commencing from Article 31 that declares as follows: « Cambodian citizen are all equal before law, enjoy rights to freedom and have same duty without discrimination for reason of race, color, sex... ». Article 35 and 36 of the same Constitution prescribe the right to participate in politic, economic, social and cultural life of the Country, right to choose their own career, right to the same salary for the same work, right to trade union, right to social insurance. etc. In term of equality of rights, the Constitution does not distinguish upon the basis of beneficiary of the right. By analogy, workers who work in informal sector and formal sector enjoy the same rights.
i. Potential legal approaches

It should be understood that there are two different approaches currently presented to improve working conditions of the informal workers\(^{40}\). The first one is to merely apply the existing labour law and regulations to the case of informal workers because if we analyze their relationship, we can conclude as a result that the employment contract really exists. It would be thus essential to prove the existence of subordination relationship so that the existing labour standards in force can be applied. This is the result of the application of the concept “equality before normative instrument” upon which any standard shall apply to all workers of any category who are fallen under employment contract. However, this approach may produce side effect while the labour standards will be applied to all workers. As previously mentioned, it is very difficult to validly prove employment relationship within informal sector. By adopting this approach, the Government should possess substantial resources in order to control employment relations in both the formal and informal sector in favor of law enforcement. For this, all necessary measures should be taken so that the informal sector would not be escaped from the implementation of law currently in force.

The second approach tends to adopt any specific regulation adapted to informal workers with clear statement that evidencing the supporting subordination relationship is not subsequently required. In other words, by skipping the first approach “the straightforward application of the Labour Code”, we would be able to provide a minimum protection to informal workers regardless of their status. This concept was already incorporated into the Cambodian Labour Code in the section covering agricultural workers. This was established not to meet formal equality among workers, but rather to ensure social balance between workers in the formal sector and informal sector in accordance with the concept “fair and equitable”. This approach tends however to establish equality between informal workers by excluding others.

ii. An alternative to be taken into consideration

After illustrating the two approaches, we believe that the solution can be found elsewhere, in the middle path between these two approaches: implementing the Labour Code and the creation of new regulations for the informal sector since a genuine relationship between employer-employee cannot be established even following all criteria required by the current Labour Code\(^{41}\). It is not easy to achieve equality of rights for workers in this way, while in current Cambodian economic and social context, it would be preferable to protect workers rather than seeking for a strict equality between them. With time and poverty reduction policy through, for example, the promotion of decent work for all people living in the rural area, equity will likely be reduced in favor of equality in the broadest sense. In this perspective, the Government and the Cambodian law-maker have a big role to play in improving the working conditions of workers in the informal sector via for example close cooperation with local authorities and non-governmental organizations to strengthen enforcement of the existing labour standards. To do this, he must first take steps to strengthen the registration duty for any company that can employ labour from the Ministries of Commerce and Labour\(^{42}\). Currently,


\(^{41}\) Prof. SERVAIS Jean-Michel shares the view that favors a specific norm for informal sector as stated below: « there is no single answer to the question whether it would be better, for any given country or any given international institution, to establish specific rules to govern different forms of works or progressively apply the common rule to all categories of works. Although, a conclusion emerged from the previous developments: specific norms are frequently better than punctual references to any general rules adapted to such specific situations”. In, Secteur informel : un avenir pour le droit du travail? previous article, p. 684.

\(^{42}\) Article 17, 1st paragraph Labour Code: “All employers, to whom this labour law is applied, shall make a declaration to the Ministry in Charge of Labour when opening an enterprise or establishment. This declaration is
most of small commercial enterprises do not comply with. As a result, they are not obliged to declare workers to the relevant service of the Ministry of Labour as required by Article 21 of the Labour Code.\textsuperscript{43} The ignorance of the registration requirement could also be due to a corrupt bureaucracy, civil servants receiving registration fee more than that required by law.

The Government and Parliament may also make recommendations, plans, draft law or proposals for legislation to protect workers in this sector who are often excluded from the scope of labour law. The idea behind this is that legislation is needed for workers in the informal sector so they can obtain some protection for their health and safety for example. There is no need to wait for such employment relationship to be governed by the Labour Code to examine the situations in question. It seems necessary to adopt specific regulations for these workers.

In addition to the legislative framework, the Government of Cambodia should also promote the formation of trade unions by different ways such as facilitating the registration process of any organization or associations whose objective is to protect the interests of workers in rural areas. Furthermore, the Government, through the Ministry of Labour, should also actively participate in strengthening the enforcement of law and other regulations that have been adopted. This is the need to increase the number of labour inspectors working not only in the formal sector as in textiles or hotels, but also in any remote areas far from the capital where informal work exponentially increases. This approach support an idea upon which informal workers should be entitled to an insurance plan in the same way as other workers without being subject to any provision of the Labour Code of 1997.

b. Act in favor of the enactment of law on trade union and other labour standards

The draft law on trade union has not yet been passed by parliament. For this, the Government shall push any relevant authorities to finalize this soon so that it can be submitted afterward for Parliament’s approval. The Government and Parliament must review the bill with special care in order to make sure that the rights of workers would not be restricted and that the interests of the employer are not jeopardized. In addition, the Government of Cambodia, through the Ministry of Labour, should also review any statuary provisions that are no longer corresponding to the economic and social reality and subsequently amend them as well. As a member of the ILO, Cambodia needs to review its international obligations and if time permit, adopt international conventions such as those governing the labour inspector, domestic work and so on.

3. The ongoing judicial reform

The functioning of the judiciary is affected by the very low wages, insufficient both technical and human resources.\textsuperscript{44} However, technology evolution, policy choices, Cambodia's membership in ASEAN and international organizations such as the International Labour Organization (ILO) and the World Trade Organization (WTO), necessarily calls for reform to adapt to these changes and the security of the whole society. To satisfy these needs, the government must demonstrate a clear political will that is committed to the path of respect for

\textsuperscript{43} Article 21, 1st paragraph of Labour Code: “Every employer must make the declaration to the Ministry in Charge of Labour each time when hiring or dismissing a worker.”

\textsuperscript{44} The Transparency International Cambodia, Corruption and Cambodia’s Governance System: The Need for Reform, op.cit. p. 54.
the independence and neutrality of the judiciary, in accordance with the Constitution\textsuperscript{45}. This includes the implementation of reforms to ensure the independence of the Supreme Council of Magistracy. The Royal Government will support in particular judicial reform to strengthen public confidence in the judiciary\textsuperscript{46}. By focusing on detailed strategies and priorities, the Government aims to strengthen collaboration with partners for the development and consolidation of the rule of law, equitable access to justice, and the creation of an environment of peace and political stability. The rule of law is essential for democracy and economic development. The implementation of the judicial reform, undertaken by the Cambodian Government with the support of donor countries and international organizations, is to undertake a comprehensive restructuring of the courts. This reform is not only to reassure the democratic life and respect of law, but it also aims to create conditions conducive to strengthen legal security of investments. All of these constitute essential conditions for economic and social development\textsuperscript{47}. Judicial reform is twofold: the reform of the courts on the one hand (a), and reform of the judiciary on the other (b).

a. The courts

In order to implement court reform policy, a draft law on the establishment of the Labour Court was developed. The goal is to install the labour court in all provinces of the country, not only in the capital since the conflicts arising from the employment relationship exist not only in Phnom Penh. If the draft will be passed by Parliament, such dispute will be referred to these courts.

The establishment of this court will certainly enhance the capacity and quality of judgments. However, we must not forget that collective labour disputes should always first be referred to the Arbitration Council following, of course, the mediation at the company level. Once receiving the award of the arbitration council, any party who has not signed the non-opposition clause (non-binding clause) may bring the case to the Labour Court. From this, the conflict may go to the Supreme Court. If we compare the procedure to proceed and the financial resources of the parties, we see that the workers are once again at a disadvantage position. How to get out of this? We need to reform the legal system so that it will be adapted to the reality of our society, but in which direction? Does it need to abolish the Arbitration Council, even though it becomes now an integral part of industrial life in Cambodia?

Moreover, the creation of the Labour Court in all provinces of the country constitutes a reasonable idea as the labour relationship exists not only in the capital but also in rural areas that are in general escaped from labour law enforcement. However, if we look at the current situation, there is a unique Arbitration Council which is located in the capital of Phnom Penh. So, how to resolve any conflict happened in the countryside? Is it better to establish labour court that has jurisdiction to examine both individual and collective labour dispute or refer all collective dispute to this unique Arbitration Council of the Kingdom? In addition to the proceeding issue, we must also think about the effectiveness of arbitration award. Only Cambodian law makers can express and determine the fate of the draft law which will be submitted for their approval.

\textsuperscript{45} Article 109 of Constitution of 1993 guaranteeing the independence of judiciary. Article 111 states that: «Neither executive power nor legislative power can exercise judicial power whatsoever.»

\textsuperscript{46} Within 4\textsuperscript{th} legislature (2008-2011), the council for legal and judicial reform was presided over by Prime Minister HUN SEN and Deputy Prime Minister, His Excellency Sok AN. Within this 5\textsuperscript{th} legislature (2014-2018), the council has been placed under authority of Ministry of Justice.

\textsuperscript{47} HANG ChuonNaron, Economy of Cambodia: Fight for development, op.cit.; p. 61.
b. The magistracy

The establishment of institutions alone is not sufficient enough to make a better justice to citizens. It requires judges, lawyers and prosecutors to be well trained to ensure sound implementation of law and to act with responsibility for their acts. When there is a judicial institution with qualified judge, we can get the confidence of foreign investors, sustainable economic development, Rule of Law following which the rights of citizens and workers would be respected as specified in the Constitution and other international conventions adopted by Cambodia. This constitutes also a tool for Cambodia, especially for the Cambodian people, to restore confidence in the State’s bodies. Within this perspective, new judges and lawyers have been selected through competitive examination organized by the Royal School of Magistracy and Lawyer training Center to enable them to acquire a solid legal knowledge.

Moreover, the reform of the judiciary should, in our view, also be accompanied by the publication of court decisions, such as the judgments of the Court of Appeal or those of the Supreme Court as well as doctrinal commentaries since the judges’ independence and impartiality may not produce great impact as long as there is no uniformity in the interpretation of the law and judgments of the court of first instance due to the absence of access to judicial precedent. Moreover, like any other country that practices Civil Law, conflict resolution in Cambodian law links with judicial precedent as guideline for any court decision since the decision of higher Court and doctrine play a role preponderant in the interpretation of law.

The general and abstract nature of law requires judges to interpret it to answer the facts submitted for their review. For this, judges in Cambodia, some time, interpret it according to their own beliefs which lead to unpredictable and even absurd judgment48. The absence of well-known judicial precedent that serves as a guideline or a guiding principle can be a source of law enforcement issue generated by judges whose decisions can vary from one to another or from court to court. The publication of the Court’s decisions and relevant commentaries in any magazine or journal would be very desirable to enable judicial engine to be improved and operate consistently throughout the country. Furthermore, this would allow students and all those who practice legal professions such as lawyers to get access to and take benefit from it accordingly.

B. The works of the Ministry of Labour and Vocational Training

We realized since the first part of our presentation that the obstacles in the implementation of Labour standards are largely due to the weakness of this institution and absence of adequate resources. The Ministry of Labour should ensure that any officer invested with monitoring function would be adequately trained to guarantee the compliance with statuary requirements. He must take all necessary measure to control the companies that recruit and send workers to foreign countries. He may also suggest to the Government of Cambodia to sign one or more bilateral agreements with these foreign countries to protect the rights of Cambodian workers. The Ministry may require these recruitment companies to establish a mechanism to observe working conditions of workers and to secure indebtedness in the event of company’s insolvency. The alternative dispute resolution mechanism between workers and the company is also an issue not to be negligent in order to prevent from any abuse. As indicated in his name, vocational training is one of the tasks of the Ministry of Labour and vocational

Training following which he can cover any people who have not had access to jobs that require a degree and professional qualifications. The provincial department throughout the country can assist in providing some training to those people so they can have a job that allows them to get a decent income and live in dignity.

C. The role of ASEAN and other international organizations

The borders within ASEAN will be opened by the end of 2015 and people migrated in search of job within member countries will also be multiplied. Therefore, what would be the role of this organization in the protection of these future workers in general? We know that once the borders will be opened, the workers will circulate to find any jobs that meet their qualifications with a better paid. In this context, it is important that all ASEAN member states ensure compliance with the labour law to guarantee the fundamental rights of these workers. However, there is not yet any specialized agency created by ASEAN to ensure the compliance with the law or directive as in the case of European Union where the Commission and the Court of Justice of the European Union play roles as guarantor of the Community’s standards. Thus, the proper law enforcement conducted by each ASEAN member states will be a very good compromise to improve the rights of workers.

By recognizing that improving working conditions and vocational training of workers contribute in developing countries both economically and in terms of human resources, States’ community and international organizations have made great efforts to help poor countries or any country that has difficulty in implementing both national and international standards. Cambodia has benefited from such as support from, for example, the ILO in preparing the Labour Code through its experts, and on-site investigations about the working situation, in labour market and vocational training for employees. Thus, labour standards in Cambodia have gradually been met and the information on the situation of workers and vocational training could be provided.

Currently, this organization has made, through financial support of the UN, significant aid. For illustration purpose, there is support to the functioning of the Arbitration Council, on-site surveys and publish the results of these investigations on textile companies in Cambodia as well as cooperation with non-governmental organizations in order to create jobs for people who live in the countryside respecting always the decent working conditions pursuant to any conditions required by international labour standards49.

In the textile sector, the United States and Cambodia signed a bilateral agreement by which US agrees to allow Cambodia to export garments with exemption of custom duties and in return Cambodia is committed to improving working conditions in Cambodia. The ILO has been appointed to monitor compliance with these commitments in cooperation with the Cambodian government and the social partners. Project “for a better factory in Cambodia”50 was established and its operation so far has been successful. First, it helps to make transparent working conditions and to improve the image of business in compliance with the provisions of the Labour standards. On the other hand, it helps to train employees, their representatives, trade union representative and officials responsible for monitoring and enforcing labour standards in capacity of inspectors or labour controllers.

49 The role of ILO is not only to control the respect of the legal instruments, but to also assist poor countries to combat against poverty by creating jobs in conformity with labour norms.
50 www.betterfactories.org
It should also be emphasized that in order to materialize a little more the respect of labour laws, international organizations, civil society as well as mass media have set up a system of pressure on factories so they perform, in addition to their production and commercialization function, their responsibility in terms of protection of work force and respect for the environment. The mechanism has been designed to encourage companies to improve working conditions. Their products are related to ethical labels including large groups such as Nike, Gap, Adidas (...) who are very concerned, for example, about social issues for the reason of their image with consumers. International organizations such as the ILO and the United Nations can play a major role in the implementation of the labour law in Cambodia. Certainly, there is no real economic or military sanction regarding control of working standards adopted within their respective framework. But, the strategy of pressure can be direct or indirect such as publication of reports showing directly the name of the country that does not respect or do not cooperate. The risk generated from the image projection may scare governments of any country receiving aid or entering into any international agreements with certain favor. The mechanism of direct quotation during an international conference or the publication of any reports on law enforcement situation constitutes a tool that may produce better efficiency than that of any sanctions in strictosensu.
ANNEX\textsuperscript{51}

The history of Cambodia has indicated that the development of the labour law has evolved through five main stages as follows:

1. Pre-independence era:

- Social measure was taken to gradually eradicate slavery pursuant to a Decree of February 1, 1898 with completely abolished slavery.
- The very legal measure to govern the relationship between employers and Employee were in initiated under the 1920 Civil Code within which a labour contract was required for the employment of workers.
- Further detailed regulations on contact-related employment were issued in a 1927 Sub-decree to establish:
  - A 10 hour workdays.
  - Materials requirement for living conditions.
- A Joint Decree covering Indochina establishment:
  - The labour Inspectorates in 1927.
  - The Reconciliation between workers, employment and employers in 1930 and 1932.

In 1936 the Government of Cambodia drafted and enacted 3 laws to Regulate three different categories of people involved in the labour filed:
- The Decree of December 30, 1936 covering Indochinese people and other in the same classification.
- The Decree of February 24, 1937 covering European and others in the same classification.
- The Royal Ordinance No 84 NS of May 20, 1938 expanding the coverage to overseas Cambodia.

These 3 laws have significantly marked a turning point in the historical Evolution of the Cambodia Labour Law.
- The Regulation on liberalized agricultural labour taking effect in 1942.
- In 1947 the Royal Decree 375 NS of October 30,1947 abrogated the 1938 Royal Ordinance and imposed the implementation of the French labour regulation on Cambodia nationals while Cambodia labour regulations was being drafting.

Meanwhile, a Cambodia Inspectorate and a Social Affair Office were established under the Ministry of Information and Social Affairs.
- After the signing the French-Cambodia Treaty on November 8, 1949, French labour inspectorates were officially transferred to the Cambodia Government and The Ministry of Labour and Social Affairs was establishment in 1951 by a Royal Decree No 651 NS of December 26, 1951.

2. Post-independence era to 1970:

From 1953 onward, significant events have marked this era:
- The transfer of the administration of the Cambodia courts from the French Administration to the Cambodia Government on August 29, 1953 and the organization of Labour services which was establishment and subsequently strengthened. The

\textsuperscript{51} Source: Ministry of Labour Law and Vocational Training.
Ministry of Labour and Social Affairs was also gradually reorganized. Various other legal documents were also used to broaden the scope of the Labour Law.

3. From 1970 to 1975:

The year of 1970 saw important change when the Labour administration of the Khmer Republic amended the Labour Law. Several major events of significant importance took place at that time, namely:

- The complete overhaul of the Labour administration through Decree No 701/707 CE of October 31, 1970
- The Khmer Republic ratified its membership to the International Labour Organization by Decree No 467/71 CE of April 7, 1971 which became effective on February 24, 1969.
- The administration of detailed responsibilities of technical officials working for the field of labour.
- The establishment of roles and responsibilities of the Ministry of Labour Social Affairs and Employment.
- The drafting of a new Labour Law.
- The ratification of various International Labour Conventions.

4. From 1979-1992:

- One should note that during the period 1975-1979 Cambodia fell under the genocide Pol Pot regime where all the previous national achievements were completely shattered and Cambodia people brutally massacred.

From 1979-1992 some important events took place:

- The social Affairs Committee, an institution equivalent to that of a Ministry, was established pursuant to Decision No 07 of October 24, 1979 in order to deal with issues related to social affairs such as disabled veterans, orphans, windows and indigent elderly.
- The Ministry of social Affairs and Disabled Veterans was established by Decree No 19 Kr.ch. of March 5, 1985 to supplant the Social Affairs Committee and to take charge of pensions of disabled officials, orphans of Deceased officials, armed force personnel, compensation settlement for Disabled veterans and supplementary income for families of dead soldiers.
- The Ministry of Social Affairs and Labour was established by Decree No 53 Kr. Of May 2, 1992 to take additional responsibilities in the labour sector Pursuant to the labour law which was enacted by the National Assembly by Decree No 99 Kr. of October 13, 1992.

We should recall that the 1992 Labour law was drafted by the Department of Labour Wages of the Ministry of Planning and not by the Ministry of Social Affairs and Disabled Veterans. Only after the promulgation of the said law by Decree No 99 Kr. of October 13, 1992 that the government tasked the Ministry of Social Affairs and Labour as the agency to implement this law.

5. From 1993 to present:

- Cambodia has adopted a democratic and multi pluralist policy since the 1993 general election.
• The Law No NS/RKW/0196/17 of January 24, 1996 establishment the Ministry of Social Affairs, Labour and Veteran Affairs to be responsible for three social sectors: Social Affairs Labour and Veteran Affairs.

• In 1994, with the kind support of ILO, the French Ministry of Labour, and AAFLI, the Ministry of Social Affairs, Labour and Veteran Affairs took the Existing 1992 Labour Law and various other labour related document in Conformance with the 1993 Constitution as a foundation to draft the new “Labour Law” which was subsequently promulgated by Royal Decree No CS/RKW/0397/01 of March 13, 1997.

• The new Labour Law has in many respects completed the old labour law and regulations to make its implementation much more efficient and effective. A particular attention should be drawn on the 1997 Labour Law allows a great freedom of establishment of trade unions, right to strike and to lockout, provisions which were not available in previous laws.

This law is a very important instrument to promote better working relationship, individual and collective bargaining, to resolve individual and collective labour disputes, and ensure labour sanitation, safety and general labour conditions of workers and employees in the Kingdom of Cambodia.

Cambodia is a state respecting the rule of law and as such the Ministry of Social Affairs, Labour and Veteran Affairs appeals to all workers, employee and employers as well as to labour officials to strictly implement the Labour Law for the benefits of all the parties concerned.