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THE LABOR SECTOR AND U.S. FOREIGN ASSISTANCE GOALS

CAMBODIA LABOR SECTOR ASSESSMENT EXECUTIVE SUMMARY



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EXECUTIVE SUMMARY

1. Why Labor?

The world of labor is viewed here in its broadest context, encompassing people engaged in agriculture, industry, and service sectors, whether formally employed or informally engaged in making a living. We recognize that workers, employers, businesses, and corporations may be organized to forward their interests. People work on- and off-farm, in rural and urban areas, in their own countries or abroad. They may toil in legal or illegal activities. They may be working voluntarily or, in the case of trafficked persons, against their will.

Given the fundamental nature of work to people's lives, full consideration by policymakers and development professionals of the enabling environment for labor-related issues is crucial to being able to respond to people's overall development needs and aspirations. The latter is a core component of the U.S. government's (USG) foreign affairs goal of *transformational diplomacy*.

Viewing development challenges through a labor lens can be integral to achieving long-term development goals. Moreover, using that lens to identify programming options may actually be a *more effective strategy* for achieving those goals, in some cases. Working with labor unions and business and employers associations, communicating social and political messages through such labor organizations, and strategizing economic growth by focusing on employment levels and conditions can provide greater traction in achieving long-term development goals. In addition, working with labor unions especially can provide closer proximity to the poor, broader coverage, and more comprehensive and equitable program outreach.

Failure to address labor-related issues increases a country's vulnerability to pressures of workplace unrest and unemployed and disaffected youth, and weakens a country's long-term competitiveness through failure to comply with labor standards, provide stable labor relations, and address workforce development needs. These factors in turn discourage both domestic and international investment, which can exacerbate a downward spiral.

This country assessment represents the first case study undertaken by the U.S. Agency for International Development and the U.S. Department of State as part of the U.S. government's new engagement in a cross-sectoral approach to the labor sector. A technical paper that defines and details each component of the labor enabling environment has been drafted and vetted before a forum of labor organizations in Washington, DC, and is being finalized. An assessment guide is being prepared that will assist country teams in the undertaking of field labor assessments. This Cambodia assessment represents, therefore, the first opportunity to field-test the emerging conceptual framework.

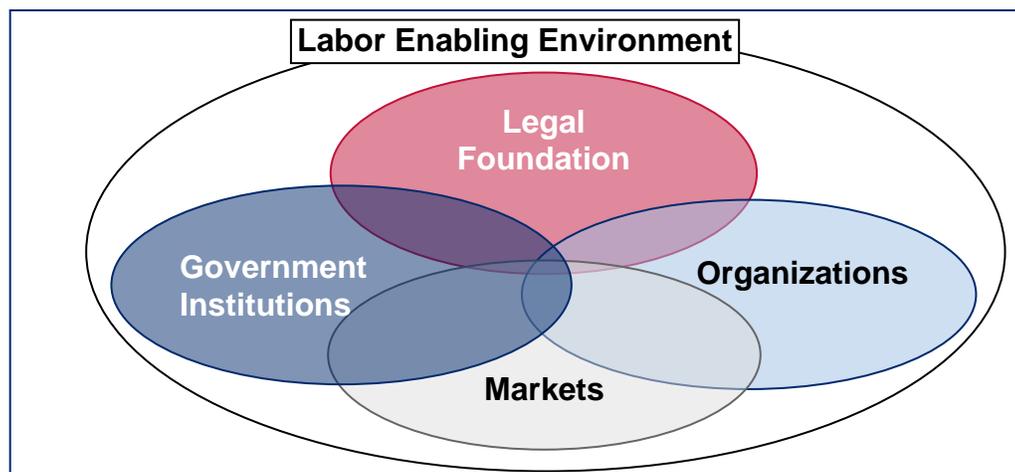
The purpose of this assessment of the labor sector in Cambodia is

- 1) to explore labor-related issues, i.e., the four integrated components of a well-functioning labor sector – labor laws and regulations, government institutions that support that legal framework, organizations that represent the interests of workers and employers, and the economic system, especially labor markets, that determines employment levels and terms – in the context of promoting the overall goals of USAID/Cambodia's program, which focuses on courts and the rule of law, corruption, civil society, and competitiveness, and

- 2) to assess where the strategic use of a “labor lens” would offer opportunities for the greatest traction in terms of program results.

2. Four Components of a Well-Functioning Labor Sector

Around the world, different historical, cultural, political, and economic contexts have laid the foundation for different labor sector configurations. One may observe a range of structures and behaviors with regard to countries’ legal commitments to labor rights, institutional configurations in the workplace, tripartite relations, political engagement of labor organizations (both for workers and employers), employment and workforce participation, and degree of reliance on market forces to allocate labor. Yet despite the myriad of labor sector market and institutional arrangements observed around the world, the basic structure of a labor sector in any country can be usefully explained with the simple diagram below.



A well-functioning labor system rests on four elements that comprise the “labor enabling environment” that undergirds stable democracies and prosperous market economies. A sound labor enabling environment requires:

- An established legal framework that promotes the rule of law;
- Support from all three branches of government for a progressively improving set of labor laws and policies, their implementation and continuous improvement, and effective systems of dispute resolution;
- Freedom of association to form worker and employer organizations, and non-governmental organizations, that advocate on behalf of parties’ interests in labor matters and more broadly in civil society;
- A competitive and well-regulated market system that allows for the smooth allocation of appropriately educated and skilled labor in response to the private sector’s needs in agriculture, industry, and services sectors of an economy.

Each of these elements must be viewed as a mutually reinforcing system, depicted by their overlapping nature. Each requires the three others in order for the labor enabling environment to remain balanced and effective. In other words, this labor enabling environment is a holistic system whose proper function requires that the four elements are engaged collectively.

3. Cambodia: A Unique Case Study

Cambodia is a unique case in which to undertake this first country labor assessment. The USG's engagement on labor-related issues in Cambodia was grounded in the country's return to stability in the mid-1990s after two decades of civil war. Early technical assistance was provided through the Asian-American Free Labor Institute to help draft the country's 1997 Labor Law. The American Center for International Labor Solidarity (ACILS, or simply the Solidarity Center) provided significant capacity building support to nascent trade unions covering workers employed in a range of sectors. However, the signing of a Bilateral Textile Agreement between the United States and the Royal Government of Cambodia in 1999 stands out, not only as a pivotal moment in USG assistance to Cambodia, but also as a path-breaking approach to support for a country's labor enabling environment. The projects funded in the wake of the original agreement have ultimately led to the innovation of two extra-governmental programs – one, a program to inspect and monitor compliance with the Labor Law and core labor standards in Cambodia's garment factories (today known as Better Factories Cambodia), and the other, the creation of a mechanism to resolve collective labor disputes (known as the Arbitration Council). The two extra-governmental programs were originally developed by the International Labor Organization under parallel projects. Cambodia's record on compliance fed into semi-annual deliberations between the USG and Royal Government of Cambodia (RGC) regarding adjustments of the quota for Cambodian garments exports into the U.S. market. It is hard to overstate the significance of the USG labor program in Cambodia.

Though the original impetus to this labor program – Cambodia's Bilateral Textile Agreement with the U.S. – has since faded away with the elimination of the multilateral textile and garment quota system, regular reporting on labor conditions, regular mechanisms to feed back factory monitoring information to buyers, regular hearings to resolve factory disputes, and regular meetings in stakeholder forums contribute to the institutionalization in Cambodia of best labor practices.

4. Cambodia's Labor Sector

In Cambodia, we observe a rich and complex labor sector:

- In its **legal foundation**, Cambodia has accepted all core labor standards of the International Labor Organization, other international instruments that address the labor rights of trafficked persons, women, and children, and has reiterated its commitment to labor rights through labor-specific language in trade agreements. Nationally, Cambodia's Constitution, the 1997 Labor Law, regulations (known as *prakas*) issued by heads of ministries, and sub-decrees (*Anu kret*) approved by the Council of Ministers also protect labor rights and regulate labor-related matters.
- Cambodia's labor-related **institutions** include both governmental agencies and non-governmental institutions. Legislation is drafted by the executive branch's Ministry of Labor and Vocational Training, with input from a tripartite Labor Advisory Committee, and enacted by the National Legislature. The Ministry is also responsible for workplace inspections and dispute resolution/conciliation. Independent monitoring of working conditions in the garment industry is managed by Better Factories Cambodia, which conducts independent inspections and reports its findings to stakeholders in a transparent manner. Although Cambodia's judicial sector is nominally responsible for individual dispute resolution, the courts are widely disregarded as weak and corrupt and thus avoided. The independent Arbitration Council hears collective rights and interests disputes and publishes its findings; two-thirds of its cases are resolved successfully. Consultations between government and private sector stakeholders on industrial relations are carried out through the Eighth Working Group of the Cambodia Government-Private Sector Forum. Better Factories Cambodia, the Arbitration Council, and the Government-Private Sector Forum are donor-initiated programs which, while they receive some support from the RGC, continue to depend on support from other sources, including external donors and business.

- Cambodia’s labor **organizations** sector is active, although with such high activity levels, lack of transparency of these organizations is sometimes a challenge. Most of these worker organizations are unions with rights protected under the Labor Law, though those that represent civil servants, teachers, and informal sector workers are not. Trade unions, federations, confederations, and one alliance of confederations represent workers’ interests to individual employers and employer organizations. Strikes play a central role in Cambodian labor relations, and are notable in comparison to the small number of collective bargaining agreements that exist in Cambodia. A few labor rights non-governmental organizations watch over the sector, providing analysis, advocacy, and training. Cambodia’s profusion of worker organizations/unions, the wide variance in the ways they align or do not align with political parties, and the varying ways in which they engage or conflict with existing processes and powers present an interesting case study of the role of unions regarding democracy, governance, and economic development. Understanding these nuances is key to understanding which unions should be engaged and how they should be engaged to promote development objectives.
- **Labor markets**, the fourth component of the labor enabling environment, cover the entire spectrum of work in Cambodia, from women and children trafficked into the sex industry to formally employed and organized workers in the garment and tourism industries. Paid employees, protected by the Labor Law, represent only 20 percent of the Cambodian workforce; of the remaining four-fifths, nearly 45 percent are unpaid family workers and 35 percent are self-employed. Overall, 60 percent of Cambodians work in agriculture, forestry, and fisheries. Migration in search of work, either seasonally or longer term, within Cambodia, in neighboring countries, or outside the region, voluntarily or under more exploitative conditions, is becoming increasingly common, though hard figures are rare. While the poor and weakly educated are more likely to enter the workforce as children or in trafficked situations, better-off families in the rural sector appear more able to afford the costs of voluntary regional migration. Faced with 300,000 new job entrants each year, the Cambodian economy only creates 20-30,000 new jobs annually. Moreover, the system of workforce development that prepares youth and students for decent work in response to the needs of private employers is extremely weak in Cambodia.

5. Overarching Development Themes and the Role of Labor in Cambodia

Engaging in labor issues cross-sectorally, i.e. by integrating legal, political, and economic dimensions, can improve the efficacy of strategic approaches to USG programming.

USAID/Cambodia’s program currently emphasizes good health, good education, and good political and economic governance. Economic growth issues have also achieved increasing prominence in the program’s portfolio, and are expected to feature prominently in USAID’s next Cambodia country strategy. In particular, the mission expects to focus its upcoming economic growth program on business enabling environment issues.

Such a focus can provide a platform for helping to assure that Cambodia’s *labor enabling environment* is further strengthened. Labor enabling environments have been addressed far too narrowly in most approaches to “doing business”. Stimulating economic growth that is accompanied by employment growth in decent jobs requires an approach that considers not only flexible labor codes for hiring and firing workers, but weaves together consideration of labor-related rights, institutions, organizations, and market issues into a consistent and effective strategy.

USAID/Cambodia’s 2005-2010 strategy emphasizes good health, good education, and good governance. Within the mission’s strategic objective for improved political and economic governance, four challenges figure prominently, namely corruption, courts, competitiveness, and civil society. These challenges elicit numerous opportunities for second-generation, labor-related programming, in particular with respect to courts (or “rule of law,” more broadly) and competitiveness. A focus on the labor enabling environment

in these two areas would further strengthen the same goals that business enabling environment activities seek to promote, and thus give the USAID programs particular leverage moving forward.

Corruption presents an ongoing challenge in Cambodia. Corrupt practices have been documented in Cambodia's fledgling unions. While engaging in labor issues is not a direct avenue to addressing this key constraint, considerable traction in fighting corruption might be gained in both the public and private sectors by pursuing anti-corruption measures in the labor sector, as well as empowering labor civil society organizations to fight corruption where it directly and negatively affects their members' interests. Looking at anti-corruption issues "through the labor lens" might best be done by 1) analyzing USAID's general development programs to identify where workers' and employers' organizations have an incentive to contribute to anti-corruption objectives; and 2) designing a labor-sector strategic approach which explicitly factors in awareness of the pernicious effects of systemic corruption on development outcomes, and suggests appropriate responses.

Respect for the **rule of law** (ROL) serves as a pillar for promoting democracy and good governance in every country and, particularly during this crucial period, in Cambodia. Promoting the ROL requires promoting both substantive human and civil rights, including labor rights, and respect for procedural justice with established rules and procedures that are fairly, transparently, and consistently applied by sound institutions. Labor issues and actors are highly relevant to these ROL components in the following four areas: 1) promoting good governance in labor relations; 2) supporting the role of worker organizations to promote good governance and fight corruption; 3) promoting constructive roles for labor-related civil society actors to promote democratic reform and peaceful political and interest-group competition; and 4) promoting adherence to the ROL in the private sector.

A country's business and labor enabling environments are key determinants of its overall **competitiveness** profile. Several labor-related considerations – e.g., labor costs, labor productivity, labor standards compliance, workplace stability (itself a function, in part, of respect for labor rights), union leadership, workforce development, as well as flexibility with respect to hiring and firing of workers – figure into the competitiveness equation. Competitiveness is also affected by institutional issues such as pervasive corruption and patronage, which raise costs through the assessment of "unofficial" taxes and fees. Delays and risks caused by corruption can hamper the creation of new businesses, the procurement of authorizations, timely inspections (related to labor, product quality, origin, safety, etc.), transport and shipping, etc., all of which serve to increase the costs of doing business and thus reduce competitiveness and trade capacity. Key labor-related priorities to be considered with respect to competitiveness and trade facilitation include: 1) building stable labor relations and a sound labor enabling environment; 2) improving labor productivity; 3) increasing labor's and employers' capacity to understand the effect of corruption on productivity and competitiveness issues, and then the role of productivity and competitiveness as they relate to employment security; 4) developing a systematic approach to workforce development that involves the private sector, labor, and government; 5) promoting diversification of Cambodia's economy; and 6) strengthening Cambodia's international market niche as a "fair labor" producer.

Labor organizations such as trade unions and employer/business associations stand out from most **civil society** organizations in Cambodia that are funded primarily with donor resources and do not have a popular membership base. With their broad membership base, labor organizations especially have a unique potential to act as democratic organizations which elect their leaders and represent their members' interests in policy processes. Enhancing these broad-based civil society organizations' ability to collect dues by providing appropriate services to their members is an effective way of promoting their independence and therefore that of civil society.

Two seeming tensions among program area objectives have been encountered in Cambodia's labor program; from their acknowledgement, two possible synergies ensue. The pursuit of the rule of law with respect to labor rights may sometimes seem to be at odds with 1) the objective of workplace stability, and

thus competitiveness and economic growth, and 2) the goal of employment generation and broad-based growth. In addition, a paradox is also observed. By creating strong, independent labor institutions like BFC and the Arbitration Council, opportunities to strengthen government capabilities to do these things – or at least to take modest steps toward that goal – may be overlooked. In the long run, the functions carried out by these two best practice organizations are among those that governments would normally fulfill, though that may be a distant goal in Cambodia.

For instance, in promoting freedom of association, which is at the core of democratic principles, actors may advocate for their own interests in ways that appear antithetical to the goal of stable workplace relations and a competitive economic environment. The solution is to seek ways of protecting fundamental rights, promoting the common good and encouraging employers and workers to work cooperatively to promote their common interests. As workers and employers learn to engage more cooperatively, they can join forces to become effective civil society actors in fighting corruption or working in support of a broader range of human rights.

In addition, in focusing on labor rights, union-strengthening, and dispute resolution in formal employment, broader labor market issues (employment generation outside of the country’s two urban centers, workforce development, social protection) now press. The solution here is to build on the foundation of the “first-generation” labor program by designing a second-generation labor program that expands coverage of labor programs into other segments of the labor market, using labor organizations and institutions as service providers. This will strengthen their capacity *and* serve a broader set of labor needs.

6. Opportunities for Labor-Related Programming in Cambodia

Numerous opportunities exist in Cambodia for implementing labor-related programs to achieve mission objectives.

In the area of **rule of law**, USAID could

- Promote transparency in labor sector organizations, many of which suffer from significant issues such as weak accounting procedures, internal decision making, and communications with members. Workers need to know what to expect from their unions and how to hold their leaders accountable, leaders need to understand how to communicate with and solicit input from workers, and especially how to dissuade workers from taking illegal or unwise actions (e.g., illegal strikes, pushing for unrealistic wage increases, etc.).
- Promote substantive rights by enhancing the capacity of trade unions to advocate for positive change in governmental practices; improving trade unions’ provision of services to members, thereby generating more independent revenue for them, and strengthening their independence; helping civil service unions to advocate against corruption; promoting legal reforms to bring Cambodia into compliance regarding the rights of public sector workers to organize; promoting peaceful dialogue between unions and political candidates on substantive matters; supporting women’s leadership in trade unions and on broader social issues involving their rights (e.g., fighting domestic abuse, addressing maternal health, etc.); encourage building of capacity of local government and civil society stakeholders to protect labor rights and monitor labor standards, drawing from the efforts of private and international institutions.
- Promote substantive and procedural rights by promoting improvements in labor administration by the Ministry of Labor and Vocational Training; and
- Promote the efficient and effective resolution of labor disputes by promoting an effective system for the binding resolution of individual rights disputes; improving the Arbitration Council’s

institutional capacity and the enforceability of their awards; and promoting the use of collective bargaining agreements.

In the area of **economic growth and competitiveness**, USAID could

- Combine a focus on the business enabling environment with one on a labor enabling environment, to ensure not only economic growth overall, but *broad-based* economic growth;
- Build a stable labor relations system by promoting Freedom of Association through rules and processes by which workers choose a unified bargaining representative (e.g., addressing “most representative” status); promoting workplace relations stability through promotion of collective bargaining agreements; and promoting more broad-based bi- and tripartite cooperation and advancing of common goals; build worker respect for labor laws; increase union compliance with dispute resolution procedures; increase MOLVT enforcement capacity; and
- Build a workforce development system to enable improved communication between, and increased sharing of interests by, labor and the private sector, strengthen the education and training sector’s ability to prepare appropriately skilled workforce entrants and job candidates, and broaden the tripartite dialogue beyond bread-and-butter issues to include productivity, competitiveness, and social protection issues by engaging with trade unions to develop a pre-employment orientation program for formal job entrants; working with stakeholders to operationalize the National Training Board with a system for workforce assessments, skills standards frameworks, and curriculum development; involving labor representation in broad policy discussions with implications for labor.

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