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ARBITRATION COUNCIL FOUNDATION



# **STUDY ON LABOUR DISPUTATION AND USE OF STRIKES IN THE CAMBODIAN GARMENT AND FOOTWEAR INDUSTRY**

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July 2015

## *Study on Labour Disputation and Use of Strikes in the Cambodian Garment and Footwear Industry*

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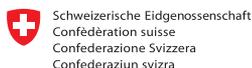
### **About the Arbitration Council Foundation**

The Arbitration Council Foundation is a non-profit and non-political organization registered in Cambodia. The Foundation supports and facilitates the work and activities of the Arbitration Council, the national, independent institution for labour dispute resolution in Cambodia; enhances the independence, reliability and efficiency of the Arbitration Council's work; and develops individual and institutions to resolve labour disputes.

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## FOREWORD

Industrial stability is our common goal. Strike is sometimes viewed as a threat to stability, but the right to strike is widely recognized as fundamental to freedom of association. Achieving industrial stability requires a balance between upholding the right to strike and minimizing volatility. This is a challenging task but it is the responsibility of all industrial actors to meet this challenge if we are to realize our common goal.

The Arbitration Council Foundation is one of key industrial actors in Cambodia, providing vital support to the national independent Arbitration Council to contribute to the achievement of industrial stability. The Foundation supports the Arbitration Council in the provision of labour dispute prevention and resolution services, as well as essential training and outreach assistance to industrial actors across the country. Since 2003, the Arbitration Council and Foundation have helped settle disputes in cases that involve approximately one million workers and employers in Cambodia.

On the occasion of the 2015 National Industrial Relation Conference, the Arbitration Council Foundation organized a study on labor disputation and use of strikes in the Cambodian garment and footwear industry. This study aims to contribute to a better understanding of industrial action and shed light on how to improve long term industrial stability. It is based on extensive research, interviews with key industrial relations actors, and analysis of some of the most up-to-date data and statistical information available on labour disputation and industrial relations, including as collated by the Arbitration Council and Foundation. This study may be expected to contribute to reducing the social and economic impacts of strikes on the garment and footwear industry and workers and employers across Cambodia through examination of the labour market governance and industrial relations climate, identifying the causes of labour strikes, and making recommendations for reforming labour market policy and the framework for labour dispute prevention and resolution.

Notably, social dialogue is a key element of this study. Social dialogue has been the medium through which this study was implemented; that is, through direct engagement, consultation and exchange of information among representatives of workers, employers and government on critical labour issues, practices and policies. This study will also contribute to more informed and constructive social dialogue among industrial actors, and contribute to literature on industrial relations with far-reaching policy implications. The

Arbitration Council Foundation is pleased to have the opportunity to work with many key industrial actors such as trade unions, employer and business associations, government officials, national and international supporters and friends of the Foundation and Arbitration Council, without whom this study would not be possible. On behalf of the Arbitration Council Foundation, I thank them for their valuable contribution and cooperation in the interest of this important study.

My special thanks go to Ms. Megan Reeve, Mr. Hun Chenda, and staff of the Arbitration Council Foundation for their tireless and excellent work in preparing this study; and to the Swiss Agency for Development and Cooperation for their generous financial support for this study.

This study represents a milestone in the path we are collectively taking as industrial actors in Cambodia. I believe it is a significant contribution to improving our understanding of not only how far we have progressed but also how much farther we need to go. But this study is not the endpoint and it is not comprehensive, nor is it intended to be. More studies like this are needed for Cambodia's industrial relations to continue to develop and mature, as we continue toward our common goal of industrial stability, strengthening productive employment and labour relations, and social and economic development for the good of all in Cambodia.

Phnom Penh, 27 July 2015



Men Nimmith  
Acting Executive Director  
Arbitration Council Foundation

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## EXECUTIVE SUMMARY

The number and impact of strikes in the Cambodian garment and footwear sector has been the subject of extensive public comment by industrial relations stakeholders. Polarized views on the subject have made the issue a controversial one. The widely touted potential impacts of strikes on the industry are however a unifying force, with the Royal Government of Cambodia, employers and unions all wishing to see the continued growth of the sector in the country. Whilst strike numbers represent only one factor which affects productivity, further development of the industrial relations jurisdiction will see labour disputes resolved more efficiently, thereby contributing to greater productivity in the sector.

The garment and footwear industry continues to grow and represents approximately 80% of the Kingdom's exports. The incidence of strikes in the sector has received significant interest due to both widespread industry-wide strikes occurring in relation to minimum wage negotiations and the sustained trend of higher strike rates over the last three years. Respondents to this study generally expressed concern about the rates of strike and the context in which strikes take place in the industry. These concerns, and the means with which to address them, are the key purpose of this study.

The right to strike is provided by both Cambodia's Constitution and the Labour Law which acknowledge through legislative means the legitimate role that strikes may play in Cambodian industrial relations. The general impacts of strikes are well documented, but significant questions remain about whether (1) there are identifiable patterns amongst the causes for strikes in the Cambodian garment and footwear industry and (2) whether action can be taken by some or all industrial relations actors to address the identified factors, in order to better support more harmonious means for labour dispute resolution. This study seeks to identify factors contributing to the incidence of strikes and provide recommendations to address them.

This mixed method study identifies three categories of factors contributing to strike action in the Cambodian garment and footwear industry:

- (1) Primary subjects in dispute in recent strike cases;
- (2) Triggers for strikes (being those matters which contribute to workers' decisions to go on strike rather taking some other action to resolve a dispute); and

- (3) Enabling factors which serve to create an environment where strikes are more likely to occur.

Primary Subjects: The most common and widespread subjects of strike cases include: (i) remuneration claims beyond the minimum set out in law and regulation; (ii) dismissal and alleged union discrimination; (iii) compliance with minimum standards; and (iv) occupational health and safety.

Triggers: Key triggers for strikes identified include, (i) weaknesses in workplace cooperation and workplace level dispute resolution, (ii) dismissals and alleged union discrimination, (iii) lack of enforcement of minimum legal standards, (iv) the relationships between unions, and unions and employers, in workplaces with more than one union, and (v) the use of unofficial payments.

Enabling factors: The ongoing frustration of potential for collective bargaining to act as a stabilizing force in Cambodian industrial relations serves to create an industrial landscape where strikes are more likely to occur and is therefore considered an enabling factor. Other enabling factors include, ongoing deficiencies in workplace cooperation and enforcement - which provides for an additional source of tension in the employment relationship, leading workers to go on strike as a means to ensure either that their employer engages with the issue and/or complies with minimum legal standards - and the routine (and expected) payment of strike pay which means that one of the primary legitimate disincentives for strikes is missing.

The persistently high number of strikes is a challenge for industrial relations in Cambodia. The identification of stakeholders' views on the factors contributing to the incidence of strikes provides an ability to identify areas of improvement in industrial relations. If industrial actors do seek to lower strike numbers, then focus must be had on addressing these identified factors. It is critical that parties and stakeholders do not focus on stopping or lessening strike numbers by taking coercive or punitive measures. By doing this, strikes will continue or increase in number as industrial tensions grow. Instead, by addressing the actual causes of strikes, long term industrial stability will be better able to be achieved. The following recommendations serve as a means to do this.

To address the identified contributing factors, it is recommended that:

- A procedure for disputes that concern only allegations of dismissal and/or union discrimination be developed in consultation with stakeholders as a means to 'fast track' the labour dispute resolution process for these matters and provide more immediate resolution to parties.
- Separate procedures (such as Independent third party mediation, as a subset of Arbitration Council/Foundation (AC/F) services) be developed for disputes which involve: significant numbers of claims (10 or more) or form part of a pattern of labour disputation or a request from the parties, in order to support employers and workers to negotiate broad based collective bargaining agreements (CBAs).
- A regulation in relation to the setting of minimum wage be issued after consultation with industrial relations stakeholders. This regulation should include: (1) express timeframes for the review of minimum wage (for example, on an annual basis); (2) additional detail clarifying the meaning of “decent standard of living compatible with human dignity” and the factors for consideration in setting the minimum wage (as set out in art. 107 of the Labour Law); and (3) the process by which the LAC will consider these factors, including the timeframe of the process itself and any ability for parties to make representations to the Labour Advisory Committee (LAC) for consideration before a recommendation is made by the LAC to the Ministry of Labour and Vocational Training (MoLVT).
- Legal provisions strengthened and enforcement improved to prevent and punish extortion by trade unions, management interference in union activities and other forms of illegal and impermissible behavior, including the payment of illegal fees.
- The payment of strike pay ceases over time. Given the continued constraints relating to enforcement of minimum legal standards, and the need therefore for parties to take strike action to achieve compliance, it would be appropriate for strike pay to continue to be made in circumstances where the strike concerns a rights dispute

and the employer is found to be at fault. The payment of strike pay should not be made where the strike concerns an interests dispute or a rights dispute which is unfounded. This could be achieved through various mechanisms such as agreement between the parties as part of CBA negotiations, establishment of specific procedures to deal with strike pay disputes and/or regulation.

- A strategy for improved Labour Inspection is developed by the MoLVT in conjunction with industrial stakeholders to ensure more frequent, independent and reliable inspections are undertaken and that existing enforcement mechanisms used to ensure compliance with legal minimum standards.
- A strategy for improved MoLVT conciliation is developed by the MoLVT in conjunction with industrial stakeholders, to ensure more consistent and reliable conciliation services.
- Encouragement of worker participation in collective bargaining to ensure that CBAs reached have done so with the acceptance of the workforce.
- Development of an easily accessible public record of CBAs which allows full disclosure of all CBAs reached (in full, including party details and substantive terms).
- Development of an easily accessible public record of all registered unions, their constitutions and representative status and all employers with broad demographic data, including number of employees employed.
- A complete, up-to-date and easily accessible online and published compilation of all employment, industrial relations and associated laws and regulations be produced by the MoLVT and the AC/F.
- Practice notes setting out established jurisprudential and procedural matters be produced and made available to parties by the AC/F.

- **Model grievance procedures should be drafted and published by AC/F and provided to parties for use. These model procedures could be provided to parties as additional assistance during various stages of the dispute resolution process including the conciliation stage undertaken by the MoLVT or the AC, or as a starting point for a formalized disputes procedure in a CBA. These procedures should provide certainty about timeframes for the resolution of grievances at the workplace and the manner in which the issue will be escalated and thereby standardise expectations between the parties. It would be appropriate to include provisions which address consultative processes which involve both workers and their representatives as a means to build workplace cooperation.**
- **Results of all workplace negotiations and conciliated outcomes in the workplace be published widely in the workplace and subject to review by relevant workers before the resolution is finalized.**
- **Further training (and complimentary training materials) developed and provided to workers by AC/F and/or other NGOs in (1) workplace dispute resolution and bargaining for a CBA, and (2) freedom of association related matters including the duties and entitlements of unions and union members.**
- **Completion of further study comparing strike rates and the respective contributing factors across developing industrial relations systems in the global garment supply chain. Such a study may serve to better contextualize strikes in the garment and footwear industry in Cambodia and provide insight into the manner in which other jurisdictions are addressing the escalation of labour disputes.**
- **Further examination of subject trends across disputes referred to the AC be undertaken by the AC/F (both involving strikes and those that do not), in order to determine longer range subject matter pressure points and provide an ability to contribute to a broader policy dialogue about these matters.**

## INTRODUCTION

The number and negative impact of strike action in the garment and footwear sector has been the subject of extensive comment; not least because of the human toll that many of the strikes have taken but also the potential that industrial disruption will cause vitally important foreign investment in the sector relocated to one or more of Cambodia's sovereign competitors. The right to strike finds voice in both Cambodia's Constitution and the Labour Law, giving strikes an explicit role in Cambodian industrial relations. However, there are questions about whether action can be taken by some or all industrial relations stakeholders to ameliorate or minimize any identified factors contributing to strikes, in order to better support more harmonious means for labour dispute resolution.

The Cambodian garment and footwear sector plays a significant role in the Cambodian economy. It represents approximately 80% of the Kingdom's exports (GMAC, 2015a) worth almost US\$5.5 billion in 2014 (BFC, 2014). The sector employs an estimated 650,000 workers in almost 1,000 enterprises, including more than 520 export factories (GMAC, 2015a; MoLVT, 2014; BFC, 2014). Notably, the sector can be characterized as one of the most developed in its engagement with the Cambodian industrial relations jurisdiction including the use of collective action and labour dispute resolution processes. The vast majority of the Kingdom's almost 3,000 registered trade unions formed in this sector, approximately 90% of cases registered with the Arbitration Council are derived from this industry (ACF, 2014) and most relevantly for the purposes of this study, it is this sector where strikes have been most visible. The industry-wide strikes of 2013/14 achieved widespread media attention and resulted criminal arrests and tragedy for some participants, including serious injury and death. This strike, whilst arguably the largest and most disruptive in the history of the industry, is part of a wider pattern of strike-taking which has affected the garment and footwear sector since the beginning of the sector's rapid growth.

A study focused on the key factors contributing to strike action in the garment and footwear industry has not yet been conducted in Cambodia. As such, this study seeks to provide insight into the prevalent subject matter of disputes during which strikes take place. Second, the study seeks to identify any triggers for strikes, being those matters which contribute to workers reaching a decision to go on strike rather than choosing a different approach to resolve the dispute; and third, any enabling factors which create an industrial relations landscape which makes strikes more likely to occur.

This is primarily a qualitative study based on the views of industrial actors themselves. Findings reached serve as the basis to provide recommendations to assist in better meeting the needs of industrial actors by minimizing the unnecessary escalation of labour disputes.

## INDUSTRIAL ACTORS

The Cambodian industrial relations jurisdiction is populated by a wide variety of industrial actors which includes the traditional tripartite actors; unions, employer associations and government and extends to non-government organisations and global garment buyers. The key industrial actors are described as follows:

**Trade Unions:** By the end of 2013 there were 2,831 unions registered with the Ministry of Labour and Vocational Training which includes active and inactive unions registered since 1998, including from factories that have now closed (Respondents to this study report that many of the registered unions may no longer be operational) (MoLVT, 2014). These unions are local unions formed at an enterprise level. Unions in Cambodia are largely organized within a three-tier hierarchy made up of enterprise-level unions, union federations and union confederations, with an additional alliance that includes three confederations. By August 2014, 94 union federations and ten union confederations were organized in Cambodia (ACILS, 2014).

Unions are generally considered to be either politically aligned with the governing Cambodia People's Party (CPP) – with which the majority of unions are affiliated – or the opposition Cambodia National Rescue Party (CNRP). A small number are viewed as being politically independent.

It has been estimated that by 2010 approximately 60% of workers employed in the garment and footwear sector were members of a union (BFC, 2013). It is not uncommon for multiple unions to be organized within a single enterprise and respondents to this study indicate that the presence of pro-employer unions (a union which is compliant to the employer's wishes often due to the exchange of money from the employer to the union) is also common.

**Workers:** The garment and footwear sector was estimated to employ approximately 650,000 by the end of 2014 (GMAC, 2015a) where women make up approximately 85-90% of the workforce (Nuon et al, 2012). In a 2005 survey, 60% of garment sector employees were below the age of 24 and 47% had completed

primary school education or less (Hatsukano, 2005)

**Employer  
Association:**

Established in 1996 and registered in 1999, the Garment Manufacturers Association in Cambodia (GMAC) represents employers in the garment and footwear sector. By May 2015, GMAC had 505 garment sector employer members and 58 footwear sector employer members (Interview with Mr. Kaing Monika, GMAC, May 2015). GMAC is the oldest employer association in the country, and in addition to advising on labour import/export facilitation and taxation related issues, is an active participant in various Royal Government working groups and sits on the Labour Advisory Committee (LAC).

**Employers:**

At the end of 2013, the garment and footwear sector was made up of 960 enterprises (MoLVT, 2014). Of GMAC member enterprises, 95% are owned by foreign investors (GMAC). Enterprises in the sector vary in size with some enterprises employing as many as 8,000 workers.

The sector is made up of export factories (which must be registered and obtain GMAC membership) and smaller sub-contract/non-export factories. Enterprises are in the majority owned by foreign investors from for example Hong Kong, Taiwan, Korea, China and Singapore (Natsuda et al, 2009).

**Ministry of  
Labour and  
Vocational  
Training:**

The Ministry of Labour and Vocational Training (MoLVT) is responsible for labour administration in Cambodia and setting the national industrial relations and employment policy. The Labour Law confers power on the MoLVT to issue implementing regulations to execute its duties.

The MoLVT also oversees the framework for labour dispute prevention and resolution as set forth in the Labour Law. The Labour Law sets out the role of the MoLVT's labour inspectorate and its functions including: ensuring worker and employer compliance with labour regulations, provision of technical advice to employers and workers on ways in which to observe the law and an initial dispute conciliation role. The first stage of the formal labour dispute resolution process – conciliation - is conducted by the MoLVT. According to

the MoLVT, among the 859 collective labor dispute cases received by its conciliators in Phnom Penh during the five-year period from 2009 to 2013, MoLVT successfully resolved 288 cases through conciliation, equivalent to a 33.5% conciliation rate (MoLVT, 2014).

**Arbitration  
Council; and  
Arbitration  
Council  
Foundation:**

The Arbitration Council (AC) was established in 2003 as Cambodia's independent national labour arbitration institution and is mandated to resolve collective disputes between employers and workers. The Arbitration Council has achieved a reputation for integrity and competence and is now one of the few governance institutions with the capacity and acceptance by both employers and workers to assist in the resolution of labour disputes (Adler & Hwang, 2013). The AC is supported by the Arbitration Council Foundation, a local non-profit, non-political organisation.

In 2004, the first full year of the AC's operations, 114 labour disputes cases were referred by the MoLVT to the AC for arbitration; by 2014, this figure had risen to 361 (AC, 2014). The AC has successfully resolved approximately 75% of the 2070 cases referred to it up to the end of 2014 (AC, 2015).

**Labour Advisory  
Committee:**

The Labour Advisory Committee (LAC) is a tripartite committee established pursuant to the Labour Law, composed of representatives from government (14 members) and employee and employer representatives (seven members each). The LAC has a broad mandate to study and give advice on a wide range of labour subjects. Although the LAC has a broad mandate, in practice it has primarily been engaged in the setting of minimum wages in the garment and footwear sector.

**Committee for the  
Settlement of  
Strikes and  
Demonstrations**

The Committee for the Settlement of Strikes and Demonstrations was established in 2004 to assist in the settlement of strikes and demonstrations. The role and duties of the Committee are set out in Sub-Decree 489 and include: monitoring incidences of strikes and demonstrations, taking all lawful action to resolve all aspects of strikes and demonstrations and collaborating with stakeholders to improve civil stability and better industrial relations. The Committee will intervene in cases of strikes upon

its own, or at one or more of the parties', initiative either after unsuccessful ministerial conciliation or after the issuance of an Arbitral Award by the AC.

The Committee is made up of civil servants from a range of Ministries and reports directly to H.E. Ith Sam Heng, current Minister of Labour and Vocational Training.

**ILO-Better  
Factories  
Cambodia:**

Better Factories Cambodia (BFC) was established in 2001 by the ILO in connection with the US/Cambodia Textile and Apparel Trade Agreement reached in January 1999. Whilst the MoLVT Labour Inspectorate has the primary responsibility for monitoring and compliance, due to lack of resources, capacity and other constraints, compliance and monitoring functions in the garment and footwear sector have also been carried out by the ILO through BFC since its establishment.

**Buyers:**

Cambodian garment exports are dominated by large predominantly European buyers, such as H&M but also include US companies such as Gap and Levi Strauss (Natsuda 2009). Given the focus on labour standards in the global garment industry, various buyers have instituted programs including monitoring activities, training and compliance measures in their supplier factories. These developments make buyers an important non-traditional industrial actor with an ability to influence behaviours at the workplace level.

## **RESEARCH METHODOLOGY**

This study employs a mixed method research design, which seeks to identify factors contributing to strikes through an analysis of results from: (1) interviews conducted in Phnom Penh in April - June 2015 and (2) existing primary and secondary sources.

This study also seeks to provide some analysis of the impacts of strike action taken in the garment and footwear sector. It is outside the scope of this study to quantify the affects of strikes on the parties or indeed to draw conclusions about whether the strike numbers are negative or positive. This study captures the respondents' views on the perceived impacts of strikes as a means to provide context to the taking of strike action.

Research for this report consisted of a literature review, field research in and around Phnom Penh, focus group interviews, and individual interviews. Interviews were based on guide questions, which were translated into Khmer unless the respondent sought to proceed with the interview in English. Whilst the respondents were asked a series of standard prepared questions, the interviews were responsive in order to enable exploration of respondents' responses. Responses from various respondents were also put to other respondents to seek their feedback. Interviews typically took between one and two hours.

Interviews were conducted with officials of union confederations and federations operating in the garment and footwear industry, GMAC, local union shop stewards from eight garment factories, human resources, administration and compliance officers from the same eight factories, Arbitrators of the Arbitration Council and members of the Committee for the Settlement of Strikes and Demonstrations. The views of non-government organizations who operate in the labour field and major international garment companies (Buyers) have also been considered. Four focus group sessions were held with workers and management from two garment factories. A complete list of respondents is provided in the Appendices to this report.

## **STRIKES IN CONTEXT**

The right to strike is fundamental to freedom of association and a functional industrial relations system. A mature industrial relations system will allow for strikes but adequately support workers and employers in preventing and resolving disputes, to minimise the need for workers to take collective action in resolution of disputes, and thereby enhance industrial stability. Indeed, the ILO characterises strikes as the "most visible and controversial form of collective action in the event of a labour dispute and [a strike is] often seen as the last resort of workers' organizations in pursuit of their demands" (ILO, 2001).

Whilst strikes should therefore be viewed as part of a labour dispute resolution continuum, given the obvious negative effects of strikes – which include loss of wages for workers, disruption of production for employers, anxiety and stress for workers and supervisors and potential disruption to the broader community – excessive numbers of strikes can be a symptom of undeveloped or ineffective industrial relations and human resources processes. For example, the taking of strike action where other options are available and effective, can be viewed as a failure of industrial relations in that the strike is symptomatic of an inability to fix an extant problem through less acrimonious and disruptive means. Identifying and seeking to understand any patterns in the factors contributing to strikes in the Cambodian garment and footwear sector, may therefore assist in better balancing the dispute resolution continuum away from this “last resort”.

### **i. International Conventions**

The right to strike – whilst not provided expressly - is derived from two ILO Core Conventions to which Cambodia is party. The Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention 1949 (No. 98) guarantee the right to strike on the basis that the ability to access this right makes possible the appropriate exercise of freedom of association (Bellace, 2014). The right to strike is also expressly set out in a number of international human rights instruments including the International Covenant on Economic Social and Cultural Rights (at Art. 8.1(d)).

To date, Cambodia has ratified 13 ILO conventions, including eight ILO Core Conventions (see Table 1) of which Conventions No. 87 and 98 are two.

**Table 1. ILO Conventions ratified by Cambodia**

<b>ILO Conventions ratified by Royal Kingdom of Cambodia</b>	
<b>Convention</b>	<b>Date ratified</b>
Night Work (Women) Convention, 1919 (No. 4)	24 Feb 1969
Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	24 Feb 1969
White Lead (Painting) Convention, 1921 (No. 13)	24 Feb 1969
Forced Labour Convention, 1930 (No. 29)*	24 Feb 1969
Employment Policy Convention, 1964 (No. 122)	28 Sep 1971
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*	23 Aug 1999
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*	23 Aug 1999
Equal Remuneration Convention, 1951 (No. 100)*	23 Aug 1999
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*	23 Aug 1999
Minimum Age Convention, 1973 (No. 138)*	23 Aug 1999
Labour Administration Convention, 1978 (No. 150)	23 Aug 1999
Abolition of Forced Labour Convention, 1957 (No. 105)*	23 Aug 1999
Worst Forms of Child Labour Convention, 1999 (No. 182)*	14 Mar 2006

\* ILO Core Convention

Source: ILO (2015)

## ii. Cambodian Legal Framework

The right to strike is also recognised in Cambodia's Constitution which provides for "the right to strike and to organise peaceful demonstrations exercised within the framework of the law" (Art. 37). The Constitution is the foundational source of labour rights in Cambodia and recognizes human rights as they are enshrined in international human rights treaties, conventions and other instruments.

It should be noted that the constitutional right to strike and the right to demonstrate are two different and distinct rights and are set out in two different national laws. The right to strike is covered by the Labour Law of 1997. The right to non-violent demonstration is covered by the Law on Demonstration of 1991. This study focuses solely on strikes, but it is important to observe that strikes in the garment and footwear industry are often accompanied by demonstrations. It has been estimated that just under 30% of the strikes that occurred in 2014 involved demonstrations which blocked the gates of the enterprise (GMAC, 2015).

The Labour Law prohibits employers from disciplining or dismissing a worker in relation to his/her participation in a strike (Art. 333). The right to strike is not however, an unfettered right and is required to be undertaken in compliance with the limitations set out in the Labour Law. The Labour Law is the primary

legislation governing employment and industrial relations and applies to workers engaged in a formal employment relationship. Workers employed in the garment and footwear industry generally fall within the Labour Law's jurisdiction.

Article 318 of the Labour Law provides the definition of strike as a "concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purposes of obtaining satisfaction for their demand from the employer as a condition of their return to work". The Law provides that in order to exert their right to strike, workers must fulfil preliminary conditions before doing so. These conditions relate either to procedure (a strike cannot be held at any time) or to the workers' aims (a strike cannot be held for any purpose). With respect to procedure, Art. 320 of the Labour Law sets out that before workers go on strike, all peaceful methods to resolve the dispute must have been exhausted. Articles 319 and 320 provide for further scenarios when the right to strike may be exercised, which may be either to force compliance or seek benefits beyond current entitlements ("to defend the economic and socio-occupational interests of the workers"). These are respectively described as rights disputes and interests disputes.

Cambodia's Labour Law provides a comprehensive default process for labour dispute resolution in circumstances where there is not a collective agreement or the collective agreement does not provide for an alternative process. The disputes process applied in any given case will depend upon whether the dispute is of an individual or collective character.<sup>1</sup> Where a collective dispute cannot be resolved with workplace-level discussions the process mandates conciliation by MoLVT conciliators in the first instance and where this is unsuccessful arbitration at the AC, before workers may engage in a strike.

Data sourced from the Arbitration Council, GMAC and Better Factories Cambodia (BFC) and responses from stakeholders interviewed in this study indicate that labour disputes that have resulted in strikes, have generally failed to follow the requisite legal procedure.

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<sup>1</sup> An individual dispute is defined by Art. 300 of the Labour Law. What is ostensibly an individual dispute may be found to be a collective dispute if the individual dispute relates to issues of union freedom or matters of relevance to other workers.

Section II of chapter XIII of the Labour Law includes other procedural rules relating to strikes as follows:

- the decision to go on strike must be adopted by secret ballot and must follow other procedural rules set out in the union's statutes (Article 323)
- there must be prior notice of the strike (Articles 324 and 327) during which ministerial conciliation should take place (Article 325)
- there must be arrangements made regarding the maintenance of essential services if relevant (Articles 327 to 329)

Workers are not permitted to go on strike with respect to a dispute regarding the interpretation of law or regulation which has the effect of the law, in order to revise a collective agreement which is still valid or for reversing an arbitral award which was not opposed and which is still valid (Article 321).

Notably the Law also sets out a series of obligations on workers about the manner in which strikes should be conducted including that striking workers must conduct their strike peacefully (Article 330 and 336) and that striking workers must respect the right of non-strikers not to strike (Article 331).

### **iii. Effects of Striking**

The main effects of strike action are primarily the financial cost for the loss of productivity associated with a collective work stoppage, and the loss of wages for workers involved in the strike action. Strikes can also have non-financial implications such as affecting the relationship between the parties - in the short and long term - and cause anxiety, stress and loss of morale amongst workers and management which can negatively impact on productivity even after a return to work.

Some positive impacts of striking were advanced by union respondents to this study, who expressed that strikes can serve to assist in reaching a more worker-oriented resolution to some disputes and/or speed up the resolution process.

Strikes can have significant economic consequences. In addition to costs associated with lost production days, employers in the Cambodian garment and footwear sector may receive penalties from buyers and experience detrimental reputational impacts which impact on the size of orders or whether a business relationship continues. Whilst, respondents interviewed for this study indicated that the economic affect of a strike on an employer will vary depending on the

production schedule of the company, the numbers of workers involved and the duration of the action, all agreed that strikes can and do cause significant financial harm. In a comment about the positive role the AC plays in resolving disputes and thereby lessening strike numbers, GMAC estimated that every time there was a strike, the export industry loses about \$50,000 to \$100,000 per day or \$200 million per year. In a conservative calculation, the World Bank estimated the cost of strike action at \$63,644 per day in 2014 (World Bank, 2015).

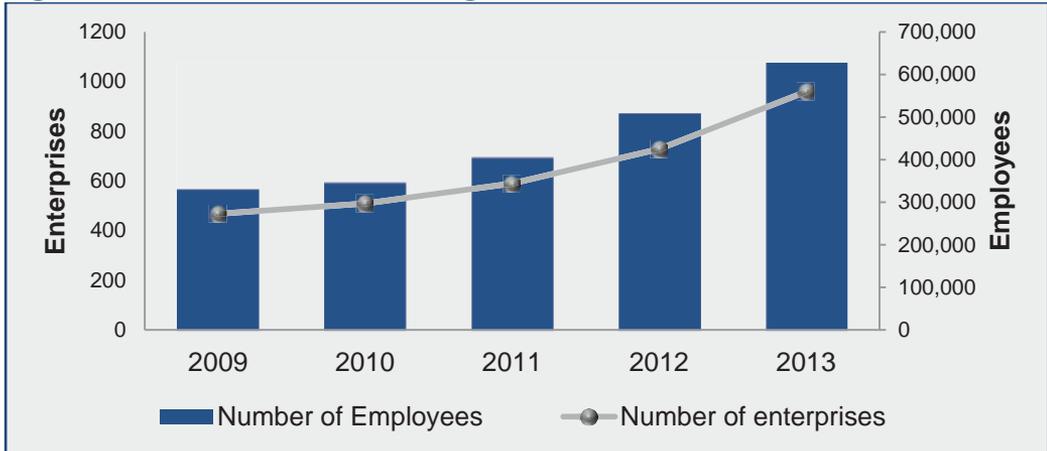
A worker's decision to go on strike will generally result in a loss of wages for the period in which they take the action, indeed the idea of "no work, no pay" is a widely accepted concept which is reflected in the Labour Law. However, most of the respondents interviewed in relation to this study confirmed that workers in the Cambodian garment and footwear industry were generally paid while they were on strike as a result of negotiations to resolve the labour dispute and return the workers back to work. Significant pressure (real or perceived) arising from buyers to meet delivery dates, has led to employers paying strike pay as a means to ensure that workers return to work in time to meet these dates and avoid penalties, or additional costs associated with alternative modes of delivery such as air freight (Oka, 2015). In addition, some respondents noted that the payment of strike pay could be a less expensive resolution to a dispute, ensuring that workers return to work with some outcome even though the substantive demand(s) leading to the strike remains unresolved.

Last, a worker who undertakes an illegal strike and then does not comply with court orders to return to work within specified timeframes will also run the risk of disciplinary action by their employer, including dismissal (Labour Law, art. 337).

#### **iv. Strikes in the Garment and Footwear Industry**

The Cambodian garment and footwear sector has grown significantly since 1997, both as a source of formal employment and contributor to the Kingdom's GDP. There has been steady growth in the number of employees employed - with the number of employees doubling between 2009 and 2013, with an estimated 650,000 workers now employed. There has also been a congruent growth in the number of enterprises in which workers are employed. This growth can be seen in Figure 2 below.

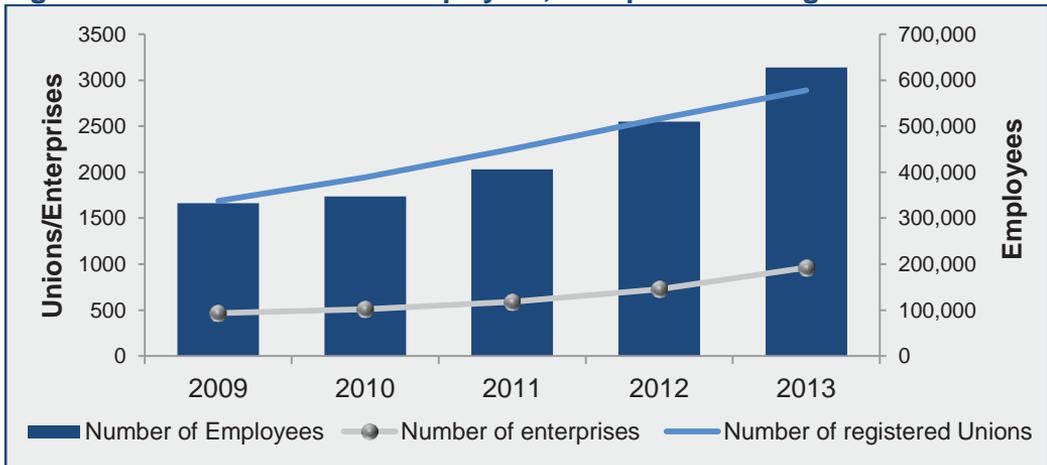
**Figure 1. Growth of the Cambodian garment sector**



Source: MoLVT, 2014

Numbers of registered unions have also increased in the period, from 1,687 in 2009 to 2,891 in 2013 (MoLVT, 2014). There is a strong correlation between the growth in enterprises and the growth in the number of registered unions. Much has been made about the proliferation of unions as a factor contributing to strike rates in the garment and footwear industry. This data indicates that while there has been an increase in the number of unions this increase has been in proportion to the increase in enterprise numbers over the period 2009 – 2013. Further examination of this issue is undertaken later in this report in order to gain a better understanding of how union numbers – and more particularly multiple unions in one workplace - may contribute to strike activity. The correlation between growing enterprise numbers and registered union numbers can be seen in Figure 3 below.

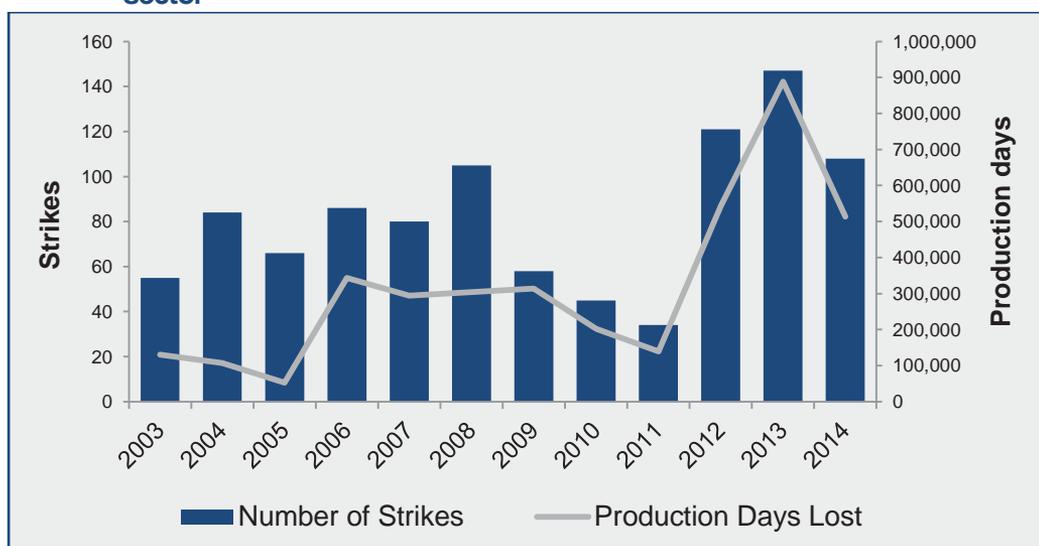
**Figure 2. Growth in Number of Employees, Enterprises and Registered Unions**



Source: MoLVT, 2014

The number of strikes has varied from year to year, with strike numbers in the last three years representing a significant trend of higher annual strike rates. Based on data collected by GMAC, strikes in the garment sector displayed an overall decreasing trend from 2008 to 2011; but then changed dramatically as strikes rose, peaking in 2013. Strike numbers then dropped by just over 25% in 2014 (to 108 which is comparable with the highest annual strike rate in the period 2003 – 2011) with a reported growth in strike numbers again in the first quarter of 2015 compared to the same period last year (GMAC, 2015).<sup>2</sup> The variations in the numbers of strikes in the garment sector can be seen in Figure 4, below.

**Figure 3. Number of Strikes and Production Days Lost in the Cambodian garment sector**



Source: GMAC, 2015

It is difficult to find directly comparable data on strike numbers in jurisdictions which also form part of the global garment supply chain such as Bangladesh, Myanmar and Vietnam. Whilst it is not within the scope of this study to make an assessment about whether strike numbers in the Cambodian garment and footwear sector are too high or otherwise, it is noteworthy that since 2011 Cambodia has seen a trend of considerably higher strike rates than the period prior to 2011. In addition, most respondents expressed concern about the rates of strike and/or the context in which strikes take place in the industry.

<sup>2</sup> This data does not include those strikes associated with the minimum wage dispute in 2013/2014.

**It is recommended that:**

➤ **A further study is completed which compares strike rates and the respective contributing factors across developing industrial relations systems in the global garment supply chain. Such a study may serve to better contextualize strikes in the garment and footwear industry in Cambodia and provide insight into the manner in which other jurisdictions are addressing the escalation of labour disputes.**

As part of its reporting GMAC has also estimated the number of employee days of production lost due to strike as 888,527 at its peak in 2013 but reducing by over 40% to 513,444 in 2014 with over 50,000 lost days of production recorded in the period January to May 2015 (GMAC, 2015).<sup>3</sup> Whilst the number of strikes in 2015 has risen from that recorded in the same period of 2014, the number of lost days of production recorded represents only 20% of days lost in that same period. This indicates that disputes leading to strikes in the first quarter of 2015 were not as sustained, or did not involve as many workers as those strikes taken in the same period in 2014.

Two noteworthy correlations can be discerned from this data. The two peaks in strike numbers, in 2008 and 2013, coincide with national elections in the same years; and the sharp decrease in strike numbers in 2009 (some 45% from 2008) coincides with the global financial crisis commencing in late 2008 and the subsequent and significant local concern about the uncertain future of the Cambodian garment and footwear industry. It is apparent that broader socio-economic factors appear to be contributing to the numbers of strikes in the industry. This is not unexpected given that labour related matters operate in a broader industrial, political - and in the case of the garment and footwear industry - globalised context. Indeed, commitments around an increase to minimum wages was a key election issue in 2013. Whilst important to note, these correlations give limited insight into those factors which present as more constant issues; as this data cannot provide any real understanding into the causes of strike outside of these static periods.

Industry level minimum wage disputes have also contributed to strike numbers in the industry with significant strikes undertaken in relation to increases that

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<sup>3</sup> The number of production days lost is calculated by taking the number of strikes in a year and multiplying this by the number of striking workers.

were awarded in 2006, 2008, 2010 and 2013. Upon review of available data alone, it is difficult to discern this correlation (see Figure 5 below). This may be because industry wide strikes, as opposed to workplace oriented strikes, have not generally been captured in statistics kept by various industrial actors.

**Figure 4. Strike numbers and minimum wage increases**



Source: GMAC, AC

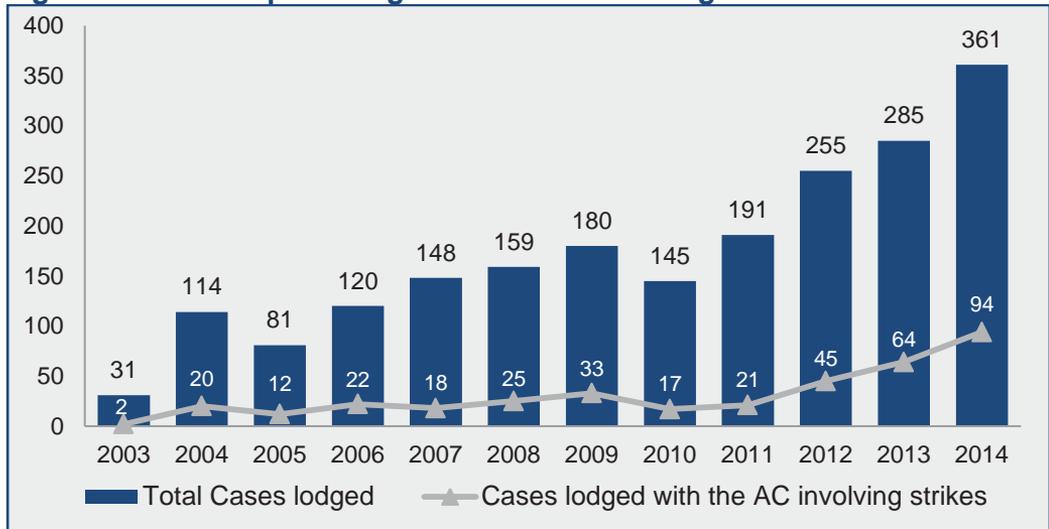
It is also noteworthy that in the 1 May 2013 – 30 April 2014 reporting period, BFC detailed that the 108<sup>4</sup> strikes that it had recorded in that period had occurred at only 86 of the 362 factories monitored (or 24% of the monitored factories). 54% of the factories which had strikes in the period had one or no registered unions present (BFC, 2014). This data suggests that strikes are not equally distributed across the industry, and indicates the presence of enterprise level factors which contribute to strikes.

The Arbitration Council had record high numbers of disputes referred to it in 2014 with an over 25% increase in the number of cases referred (to a total of 361). There was also a corresponding increase in the number of cases which involved a strike that year; with over 25% of cases involving a strike occurring at the time of referral (AC, 2015). This number as a proportion of cases referred to the AC, has been relatively constant since the AC’s establishment in 2003 but has increased by 4% each year in the years 2012 – 2014. The increase in the number of labour disputes heard by the Arbitration Council and

<sup>4</sup> GMAC recorded 137 strikes occurring in the same period (GMAC, 2015).

the corresponding increase in strike action being undertaken at the time of referral can be seen in Figure 6, below.

**Figure 5. Labour Disputes lodged with the AC involving Strikes**



Source: AC Data, 2014

The number of cases referred to the AC involving strikes has historically been significantly less than the number of strikes recorded by GMAC amongst its membership (which has been as high as 82% more since 2004). In 2014 however, the number of strikes recorded by the AC was a mere 13% less than those recorded by GMAC. This suggests a number of things: (1) that the AC was called upon more often to assist in the resolution of cases involving strike (in fact in 2014, almost all strike cases were referred to the AC), (2) that a significant proportion of disputes which involve strikes are not participating in all labour dispute resolution steps, and (3) workers are going on strike very early in the dispute resolution process (either immediately after, at or pre-conciliation). Respondents identified a wide range of factors which triggered strikes early in the process, and these matters are addressed later in this report.

## **FACTORS CONTRIBUTING TO STRIKES**

There has been significant international commentary – both theoretical and contextual - on the contributing causes of strikes. These perspectives provide important background to this study. Various reasons have been described in the literature and include strikes as an outcome of poor negotiation and labour dispute resolution; as a result of conflicts associated with rapid social change; strikes as the consequence of failures in collective bargaining and strike as stratagem in the bargaining process (Cox, 2015). All of these factors play some part in contributing to strikes in the Cambodian context.

The primary objective of this study is to identify factors contributing to the taking of strikes in the particular context of the garment and footwear industry in Cambodia. Identified factors, sourced from analysis of primary data, existing literature and views of interviewed stakeholders, have been grouped into three themes. First, the subject of the matters in dispute in strike cases have been identified. These areas of dispute constitute “hot issues” which result in more reactive and intense behaviours – strikes – by workers and unions. Second, various factors can be grouped as triggers for strike action. These triggers, rather than being the subject of the dispute itself, concern a matter which cause workers to choose to go on strike rather than not to strike, and engage in other dispute resolution options. Third, respondents identified factors which serve to create an environment where industrial balance is compromised serving to create an industrial landscape where strikes are more likely to occur. These are described as enabling factors.

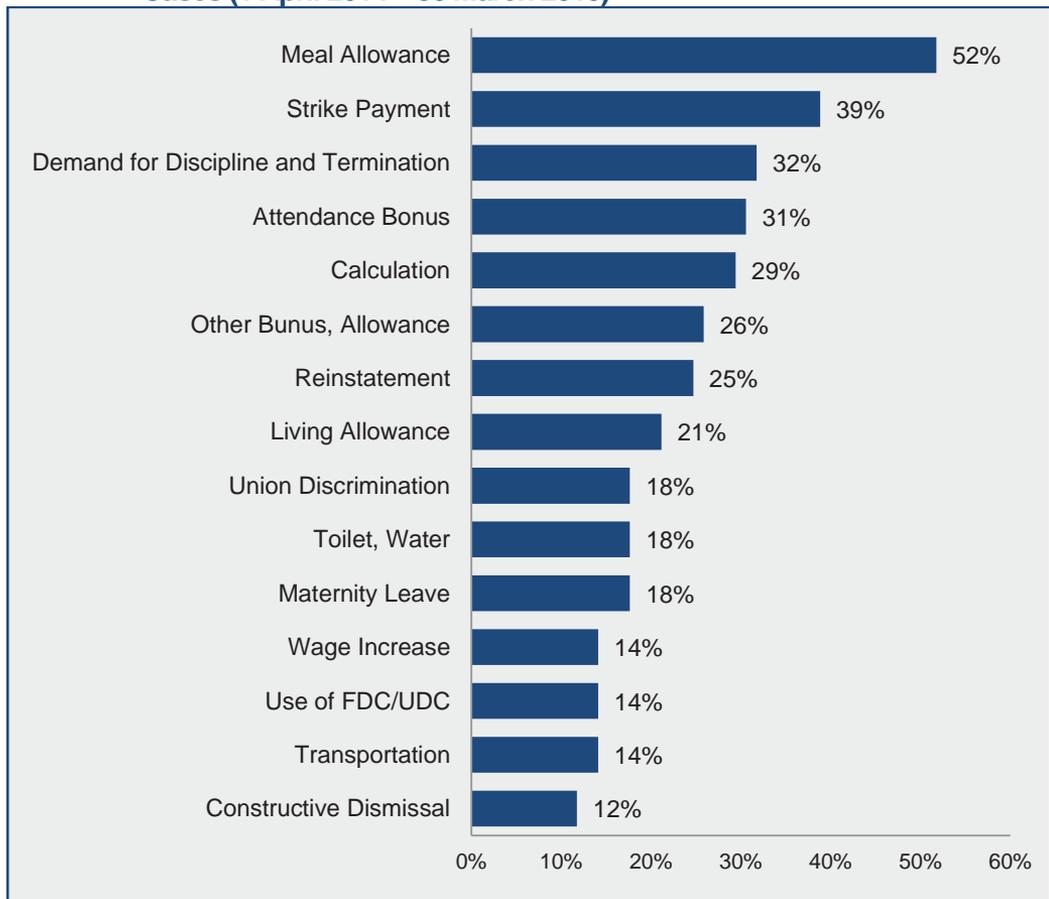
### **i. Subject of Disputes in Strike Cases**

From an analysis of the 85 cases from the garment and footwear sector referred to the Arbitration Council which involved strikes during the period 1 April 2014 – 30 March 2015 it is possible to identify (1) the most widely distributed issues in dispute, that is identical issues which occur in the highest number of cases, and (2) the most common issues in dispute overall (as a proportion of the total number of claims made across cases).

The cases reviewed involved an average of 8 areas of dispute or claims per case. A number of claims were common to a high number of dispute cases, with some occurring in only one or several cases. The subject matter of disputes covered approximately 80 separate subjects. Meal allowance claims (whether an increase to the lunch allowance quantum or introduction of a meal allowance for overtime work) represented a significant proportion from this period, occurring as an issue in dispute in 52% of the 85 cases. The 15 most

widely distributed issues across strike cases (or those claims which were most common across cases) can be seen in Figure 7 below.

**Figure 6. Subject Matter of Disputes involving Strikes: Commonality across Cases (1 April 2014 – 30 March 2015)**



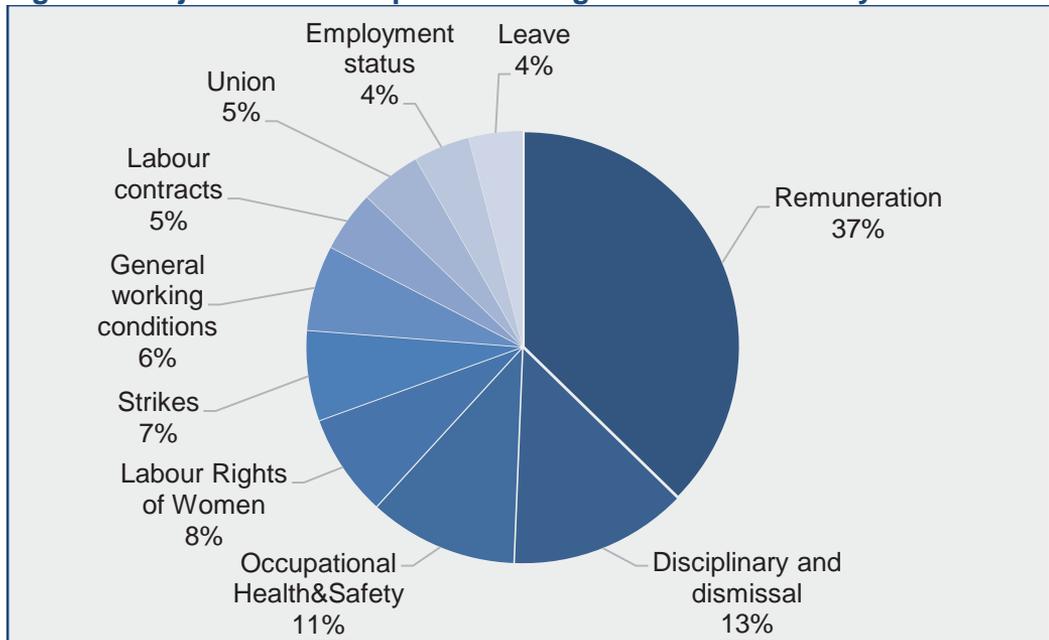
Source: AC

Thirty-nine percent of cases included disputes with respect to strike payment, and almost one-third of cases included demands for the disciplining or dismissal of management employees (32%), or disputes over the amount or calculation method of attendance bonuses (30%). Other significantly widespread issues included, claims for reinstatement (25%), demands for the introduction or an increase to the living allowance (21%), claims of union discrimination (18%), occupational health and safety concerns (18%) and maternity leave issues (18%). Fourteen percent of cases included claims relating to the use of fixed duration contracts, claims for increases to wages and/or transportation allowance.

When the same 85 cases are reviewed more thematically to determine the commonality of the claim subject rather than the spread across cases, issues in dispute concerning claims for increased remuneration – whether it increases to

wages, additional allowances or increases to existing allowances – were the most common theme of claims by far. This can be seen in Figure 8 below.

**Figure 7. Subject Matter of Disputes involving Strikes: Commonality of Issues**



Source: AC

A review of this data shows that claims relating to remunerative matters are being made in a high number of cases (widespread) and are also a significant number of the claims being made in these cases (common).

A number of interviewed respondents to the study pointed to high levels of economic stress on workers due to cost of living pressures including the high cost of health care, lack of social security and need for family remittances amongst other matters, which provide a catalyst for strikes concerning claims for increased remuneration (whether by increasing wages or introducing or increasing an allowance). Indeed, it was widely asserted that strikes are now occurring more frequently in support of claims which seek benefits more than the minimum set out in the Law.

It is important to note that the 85 AC cases which involved strikes do not include any of the strikes which occurred in late 2013 and early 2014 connected to the industry-wide minimum wage dispute, although some of the disputes concerning wages in the reviewed strike cases, were focused on achieving a flow-on of the \$28 weekly increase to the minimum wage to above-minimum wage salaries. In the later months of 2013 and early 2014 however, demands

for increased wages across a range of industries resulted in widespread strike action involving thousands of workers across hundreds of enterprises. It has been estimated by GMAC that these strikes, which lasted approximately 15 days, cost the industry more than US\$200 million. Wide scale strikes also accompanied minimum wage deliberations in 2010 where unions reported up to 200,000 garment and footwear workers joined the strikes (CCHR, 2010).

**It is recommended that:**

- **A regulation in relation to the setting of minimum wage be issued after consultation with industrial relations stakeholders. This regulation should include: (1) express timeframes for the review of minimum wage (for example, on an annual basis); (2) additional detail clarifying the meaning of “decent standard of living compatible with human dignity” and the factors for consideration in setting the minimum wage (as set out in art. 107 of the Labour Law); and (3) the process by which the LAC will consider these factors, including the timeframe of the process itself and any ability for parties to make representations to the LAC for consideration before a recommendation is made by the LAC to the MoLVT.**

**MINIMUM WAGE FIXATION:** The Labour Law provides for the setting of a minimum wage by the MoLVT, after recommendations are provided by the LAC. The Labour Law does not set time frames for when review of the minimum wage will take place or require the decision of government to be accompanied by reasoning. These matters contribute to strikes by serving as two triggers; the first related to an application of industrial pressure to instigate a review by the LAC and the second, where an outcome is issued but there is either a lack of trust in the validity of that outcome due to a lack of reasoning around the decision. Equally it may be that dissatisfaction with the outcome is more likely if the outcome remains unjustified.

The MoLVT has indicated an intention to address some of these issues. Representatives of the Royal Government have spoken publicly about the principles which will inform the wage setting process, but there has not been any formalizing of these principles in regulation or otherwise. Positively, in the last round of minimum wage setting a timeline for the next minimum wage review was set.

In addition to disputes concerning increased remuneration and other benefits beyond the legal minimum, most union officials interviewed for the study asserted that lack of compliance with minimum standards set out in the law remained a common issue in strike cases whilst acknowledging that strikes

concerning employer compliance with minimum legal standards were less frequent than they once were. Several respondents considered that strikes over issues of legal compliance were more common at subcontracting factories, where working conditions were generally worse than in export factories (which are subject to BFC monitoring).

Other prevalent compliance issues in strike cases raised by those interviewed included the following:

- use of FDCs outside the lawful two-year period;
- delays in the payment of wages;
- rumoured bankruptcy and payment of entitlements at severance;
- payment of attendance and seniority bonuses;
- payment of entitlements in periods where factories have little or no work to offer workers; and
- forced or excessive overtime.

**FIXED DURATION CONTRACTS:** The use of FDCs is generally accepted as being widespread in the garment and footwear sector. Employers have asserted their right to use FDCs for reasons of flexibility and cost-efficiency and have stated that workers favour this type of contract due to the severance benefits associated with their use. FDC use results in a loss of various entitlements and causes significant employment insecurity, with related impacts on unions' ability to establish, organize and negotiate. AC jurisprudence establishes that FDCs may only be renewed for a cumulative duration of two years (Arbitral Award 10/03).

Many employers seek to employ workers on FDCs - often for periods longer than two years - and respondent union officials and various human rights groups assert that local union leaders are particularly vulnerable to non-renewal of FDCs. It is these tensions which reportedly contribute to the incidence of strikes.

**It is recommended that:**

- **A complete, up-to-date and easily accessible compilation of all employment, industrial relations and associated laws and regulations be produced by the MoLVT and the AC/F.**
- **Practice notes setting out established jurisprudential and procedural matters be produced and made available to parties by the AC/F.**
- **A strategy for improved Labour Inspection is developed by the MoLVT in conjunction with industrial stakeholders to ensure more frequent, independent and reliable inspections are undertaken and**

**that existing enforcement mechanisms used to ensure compliance with legal minimum standards.**

Both employer and worker respondents indicated that dismissal or alleged union discrimination is often the subject of dispute in strike cases. Various examples of these cases were provided by respondents including: alleged discrimination or dismissal of union activists during a workplace union's

*Sometimes after becoming union activists, [workers] stopped working, acting like the boss of the factory. They have been trained about the rights of the unions, special protection given by the law, and so on. People are not really and clearly educated. They often misunderstand about their rights; and abuse their rights. Then they are fired.*

Mr Kaing Monika,  
Deputy Secretary, GMAC

formation process; use of FDCs as a means to prevent stable employment for union activists or shop stewards; non-renewal of FDCs of union activists or shop stewards; dismissal of union activists or shop stewards for purported performance issues; and dismissal of shop stewards without following the requisite legal process.

Respondents asserted that dismissals often occur before a formal ballot for the union's office bearers has taken place or before the requisite paperwork for registration has been lodged with the Ministry of Labour. Given the sensitivity of this time for organizing workers and their

unions, such a scenario often leads to a strike as a means to legitimate the establishing union and/or assert strength in the face of perceived employer retaliation. The GMAC representative interviewed acknowledged that these matters were indeed a concern in the industry and that whilst some employers may not be blameless, in many cases what is perceived as union discrimination by workers may not necessarily be the case.

**It is recommended that:**

- **A procedure for disputes that concern only allegations of dismissal and/or union discrimination be developed in consultation with stakeholders as a means to 'fast track' the labour dispute resolution process for these matters and provide more immediate resolution to parties.**

Whilst occupational, health and safety matters were amongst the most common matters in dispute in the strike cases referred to the AC in the previous 12 months and also form the majority of non-compliance issues identified by BFC in the period May 2013 – April 2014 (BFC, 2014), this subject was not raised by any of the respondents in interview as a significant area of dispute leading to strike action. This suggests that whilst occupational health and safety issues often form part of a ‘package’ of subjects in dispute in strike cases, they may not be central to the disputes which lead to strikes, leaving remunerative subjects the primary focus.

The reported trends related to the subject matter of strike cases in the previous 12-month period (2013 – 2014) are broadly consistent with those identified for the period 2014-2015 in AC data. GMAC reported for that period that the primary issues in dispute leading to strike action involved the renewal of employment contracts or reinstatement of workers/union leaders and claims for increases in various allowances (including lunch, transportation and housing, overtime meal allowance and/or attendance bonus) (GMAC, 2014).

**It is recommended that:**

- **Further examination of subject trends across disputes referred to the AC be undertaken (both involving strikes and those that do not), in order to determine longer range subject matter pressure points and provide an ability to contribute to a broader policy dialogue about these matters.**

## **ii. Triggers for Strikes**

Respondents identified various factors which appear to prompt strike action by influencing workers and unions to take strike action rather than engage in other available dispute resolution options. First, the most common response amongst respondents when asked about the key triggers for strike action was the alleged discrimination against, and dismissal of, local union representatives. It was asserted that given the serious individual effect on the dismissed employee and the negative effect that such a dismissal has on union organizing, a strike is undertaken to force an early resolution of the dispute rather than waiting for the conclusion of the full formal labour dispute resolution process. Dismissal and alleged union discrimination act as both subject in dispute in a significant proportion of strike cases, and a trigger for strike action. See Recommendation 7 above which addresses this factor.

Second, many of the union officials interviewed for the study identified an employer's real or perceived lack of responsiveness or understanding of worker issues as a trigger for strikes, even in some cases where the issue in dispute was not considered in first instance of great substance. For example, a representative of the union federation C.CAWDU stated in the media recently that, "strikes in the Kingdom's garment industry picked back up [throughout 2015], largely because of poor communication between employers and workers." (Phnom Penh Post, 2015)

*Unions generally do not want to strike but would rather have a negotiation to resolve the dispute. However in most factories where there is a request from the union to meet the employer, the employer refuses the request. There is no negotiation. The employer often makes the problem worse during the negotiation which makes the employees angrier [and more likely to strike].*

Mr Pao Sina, President, Collective Union of Movement of Workers

A number of union officials asserted that they view striking as an effective tool to get the employer listening and that without taking strike action the employer would not do so. It was also suggested, that the perceived political alliance of the union (whether with the CPP, the CNRP or independent) can influence whether an employer will meet and negotiate with the union or not and where there is a refusal on the part of the employer to meet, a strike is likely to take place.

Most of the employer respondents asserted that many of the demands they received, including those which resulted in strike action, were crafted by the union federation rather than the local union or workers themselves; therefore, many issues were not considered to be 'legitimate' as the claims were not considered to be representative of the actual employees' views. Indeed, employer respondents appeared to doubt the veracity of these claims on the basis of the union federation's involvement. Local union representatives interviewed confirmed that in general they would seek advice from the federation before submitting a formal demand to their employer, whether or not a strike was being considered by the local union. Local union shop stewards interviewed stated that union federation officials may advise the inclusion of additional claims based on industry knowledge, and these then formed part of the negotiation sought by the local union.

Concerns were also raised by union respondents about the timeliness of workplace dispute resolution and the capacity and authority that middle management (for example the enterprise Administrator or HR Manager) have to

resolve the dispute given the owner of the factory often resides outside of Cambodia.

**It is recommended that:**

- **Examples of model grievance procedures should be drafted and published and provided to parties for use. These model procedures could be provided to parties as additional assistance during various stages of the dispute resolution process including the conciliation stage undertaken by the MoLVT or the AC, or as a starting point for a formalized disputes procedure in a CBA. These procedures should provide certainty about timeframes for the resolution of grievances at the workplace and the manner in which the issue will be escalated and thereby standardise expectations between the parties. It would be appropriate to include provisions which address consultative processes which involve both workers and their representatives as a means to build workplace cooperation.**

Third, respondents identified a primary trigger for strikes were issues at the conciliation stage of the dispute resolution process. These issues included, a lack of, or variability in, the effectiveness in the conciliation stage. One respondent identified difficulty in guaranteeing MoLVT conciliation services at the workplace where an independent union (as opposed to a CPP aligned union) was involved in a dispute. Other respondents identified bias either achieved due to the making of unofficial payments to conciliators, or undue pressure on parties to compromise their interests to achieve a resolution of the dispute.

**It is recommended that:**

- **A strategy for improved MoLVT conciliation is developed by the MoLVT in conjunction with industrial stakeholders, to ensure more consistent and reliable conciliation services.**

Fourth, both employer and union respondents considered that lack of enforcement of minimum legal standards was a significant issue and that this lack triggered workers to resort to strike action in cases where a legal breach by an employer remained uncorrected by lack of enforcement. A number of union respondents discussed the important role that buyers may play as an

enforcement mechanism in lieu of state intervention with one respondent describing buyers as the most influential industrial actor with respect to legal enforcement.

*Buyers are very important because they enter into a contract with the employer to buy products. Buyers play a very important role in ensuring the employer's compliance with the law.*

Ms Mam Nhim, President, NIFTUC

*If there is a dispute, it is hard to enforce the employer in subcontracting factory to implement after the Arbitral Awards or conciliations at the ministerial level are made ... we report any violation on working conditions to the buyers to take action. For instance, regarding termination of employment contracts of the local union leaders, buyers somehow order the employer to reinstate them, or they order the employer to obey the Arbitral Awards ... Contacting buyers is time-consuming and [the effectiveness of this] depends largely on whether buyers are a main buyer or a minor buyer ...*

Ms Yang Sophorn, President, CATU

Union respondents called on the Royal Government to enforce the minimum standards in the law to ensure that employers complied; whilst employer respondents called on the Government to enforce the strike procedures in the Labour Law.

Fifth, there was extensive comment about union proliferation in Cambodia's garment and footwear sector and this affect has had on industrial relations and on incidences of strike, both by respondents to this study and in the secondary sources reviewed. Whilst the number of registered unions is undoubtedly large, this

label does not serve to accurately describe how union numbers – and more particularly the incidence of multiple unions in a workplace - may contribute to strikes. Interviews conducted for this study offered a wide range of responses on the subject of union multiplicity and strikes. A more accurate description of this issue may be that the manner in which relationships between unions, and between union officials and workers in the workplace, may contribute to the number of strikes taken. Whilst some commentary has suggested a correlation between union multiplicity and strike numbers, there is a question about whether a causal link exists between the two (Oka, 2015). This is an area that warrants further study.

Of the 362 factories monitored by BFC in 2013, 42% had one union, a further 17% had two unions and 12% had three or more unions (BFC, 2014).

MOST REPRESENTATIVE STATUS: CBAs reached with a union registered as having MRS will apply to all workers in the enterprise. For a union to gain MRS it must represent a majority of the total number of workers in the relevant bargaining unit (generally enterprise, but this could be occupation, location or industry) and meet the registration requirements of the Ministry (such as provision of a police check which unions report as being a significant administrative burden).

In addition, unions with MRS have legal standing before the AC to have interests disputes arbitrated; where a union without this status has sought to have an interests disputes arbitrated the AC has consistently declined to consider the matter.

COLLECTIVE BARGAINING: All Cambodian unions have the right to bargain collectively, and the Labour Law and associated regulations, oblige employers to do so. Unions without MRS (minority unions) have the right to represent their members only, whilst unions with MRS can represent the workforce as a whole. Under Cambodian regulation, if no single union within an enterprise holds MRS, then multiple unions may join together to bargain as a block with the employer.

Minimum standards of bargaining are set out in regulation, and include the key responsibilities of each party in the bargaining process and include mandatory participation in the Labour Law's dispute resolution processes if a negotiated outcome cannot be achieved and before any industrial action (strike or lockout) is taken.

CBAs cannot undermine the minimum entitlements set out in the Law and override less favorable conditions contained in contracts of employment.

In addition to political allegiances, respondents report that there are also a significant number of local unions which are pro-employer or management controlled. Workers may not know or agree to become members of the pro-employer union, but by subterfuge or coercion they are signed up and the union membership fee is deducted from their wage. Allegedly, these unions are typically paid a stipend by the employer to ensure industrial stability (by acceding to management demands). A number of respondents interviewed for this study claim that it is these unions which usually obtain the elusive Most Representative Status (MRS) as it is generally only with the support and assistance of an employer that the requisite number of members can be signed up and recorded for the purposes of Ministry registration. Further, it was asserted by a number of respondents that industrial conflict "between unions" often occurs where a pro-employer union is present and an independent union seeks to form or is also established in the enterprise. The lack of common interests between the unions can cause conflict, but it should be noted that the conflict really remains between the employer position (held by the employer and pro-employer union) and the independent union, rather than between the unions alone. By one union seeking to better represent and agitate for workers' claims, and the other union seeking to maintain a compliant relationship with the employer, tensions in a workplace can heighten and result in strikes.

Another respondent suggested that strikes also occur where management seeks to withdraw from an arrangement with a pro-employer union. This may lead to the scorned union, organizing a strike as a means to pressure the employer to return to the previous arrangement. These conflicts are clear examples of unfair labour practices which serve to deny workers of appropriate representation. It is also likely to backfire on an employer as such tactics may lead to increased workplace tension and the increased possibility of strikes, as workers become more frustrated at their lack of effective and representative union membership.

Union rivalry was also acknowledged as a trigger for strikes by several respondents, who asserted that competition for members may lead to strike action as a means to gain popularity and recruit more members. Union officials will make beneficial promises to potential members and then organize a strike to satisfy the promise. Indeed, one respondent considered it impossible to establish a new workplace union without taking strike action. Such a strategy seems short sighted if there is an effective union in the workplace already and conditions are comparable with other factories in the industry as the chance of the employer agreeing to meet the demand is likely to be low. However, it was suggested by multiple respondents – employer and union – that it is likely that some concession will be gained from the employer due to the pressure of delivery dates. At times this may only be agreement to pay the workers' wages and allowances for the duration of the strike, but this is enough to show that the union can be effective in representing workers and seemingly therefore, justify its use as an organising tool.

The last trigger respondents identified was the use of unofficial payments. Respondents were candid in their description of corrupt behavior (in the form of bribery, coercion and extortion) which in their view contributed to the causation of strikes either directly by triggering strikes or indirectly by undermining the proper operation of industrial relations in Cambodia (that is as an enabling factor). Many of these behaviours were described as being widespread and some examples can be summarized as follows:

- organization of a strike by union officials in order to obtain an unofficial fee from the employer;
- the payment of unofficial fees to union officials to settle a strike rather than reaching a resolution with the union on behalf of the workers, which then leads to continued and heightened disputation as workers seek alternative union representation to achieve their aims; and

- collusion between middle management/employer consultants and union officials to incite a strike in order to obtain an unofficial fee sourced from higher-level management in order to resolve the strike which will be split between the actors (union, consultant and middle manager).

**It is recommended that:**

- **Legal provisions strengthened and enforcement improved to prevent and punish extortion by trade unions, management interference in union activities and other forms of illegal and impermissible behavior, including the payment of illegal fees;**
- **Further training (and complimentary training materials produced) should be provided to workers in (1) workplace dispute resolution and bargaining for a CBA, and (2) freedom of association related matters including the duties and entitlements of unions and union members;**
- **Results of all workplace negotiations and conciliated outcomes in the workplace be published widely in the workplace and subject to review by relevant workers before the resolution is finalized; and**
- **Development of an easily accessible public record of all registered unions, their constitutions and representative status and all employers with broad demographic data, including number of employees employed.**

### **iii. Enabling Factors**

The matters described by respondents identify wider systemic issues, of which strikes are symptomatic. Many of these matters whilst not the subject of dispute or a direct trigger, have an enabling effect on the taking of strikes by contributing to an industrial relations environment in which strikes are more likely to occur.

The most significant enabling factor in relation to strikes are matters relating to workplace level cooperation and obstructions to good faith interactions between workers, employers, and their representative organisations. The triggers identified above which relate to ineffective workplace dispute resolution, conflict of interest and use of unofficial payments has contributed to an environment

where proper collective bargaining – seen as a stabilizer of industrial relations, and given the enforcement issues identified, a way in which parties themselves can achieve powerful normative change at the workplace level - has been unable to flourish. This is illustrated by the low numbers of authentic collective bargaining agreements (CBAs) registered with the MoLVT and few CBAs entered into by the union respondents interviewed. The demands for entitlements beyond the legal minimum which are the subject of many strike cases, appear to be progressed on an ad hoc basis rather than progressed as part of a campaign to achieve a broad based CBA. Whilst many of the respondents described that disputes generally have numerous claims (between five and 13) at issue, there will usually only be a few “key issues” which require resolution to achieve a return to work and so other issues are left unresolved. An inability to promulgate various claims at one time and achieve a longstanding resolution in the form of a CBA provides many more ad hoc opportunities for strikes to occur.

Union officials interviewed described numerous difficulties in attempting to reach CBAs. A number described unwillingness on the part of employers, but almost all described difficulties in obtaining MRS. A number of respondents stated that employers would only negotiate with a union if it held MRS. One union official described an advantageous CBA which was reached in principle with his union some 10 months ago only to remain unregistered because the union had not been able to achieve MRS due to membership numbers. Another union official described difficulties in obtaining information on the number of employees employed at various enterprises in order to prove that a majority were members of her union. Most concerningly, it was also suggested by many respondents that recognition as an MRS union often does not reflect how truly representative of workers the union is; it was suggested that many unions that gain MRS are pro-employer, and achieve MRS because the employer assists them in doing so as a means to promulgate the compliant relationship. This provides the employer and union the ability to make binding CBAs that cover the whole workforce irregardless of

*From my experience to get MRS is a challenge for the local unions in the factory. MRS sometimes can be easy to obtain because the administrator of the factory facilitates the process for the unions but it doesn't reflect willingness of the workers. For example, when a newly employed worker comes in the factory, the administrator will ask them to join with that union and request them to have thumb print. In addition this administrator also collecting the membership fee for the union.*

Mr Yoeng Chhun, President, KYFTU

whether the CBA represents the views of the workers, or indeed could even be considered beneficial to the workforce.

Where membership is less than a majority of workers in the enterprise, many respondents also discussed the difficulties associated with forming a union bargaining group (made up of multiple unions); a situation which is exacerbated where there are multiple unions in a single enterprise or a mix of independent and pro-employer unions with very little ability to find common ground. On the flip side, there are also positive examples of unions acting together in pursuit of common goals, such as in relation to minimum wage reviews in 2010 and 2013/14.

*I think the employer is happy to enter into CBA negotiations and give a little more benefit to the workers because it ensures two-years of industrial harmony ... A lot of people outside the industry seem to feel that how stupid the factory's management is to not understand the CBA negotiation. I think it is about the confidence. If they are sure that this will surely guarantee industrial harmony, they will be happier to do it.*

Mr Kaing Monika, Deputy Secretary, GMAC

A number of respondents indicated a lack of confidence in the CBA process and its ability to assist in industrial stability. If indeed a significant number of MRS unions are not truly representative of the workforce it is unlikely that a CBA reached with such a union will achieve industrial harmony. Indeed, industrial stability will only be achieved where the interests of each of the parties to the CBA is represented and workers have been involved in the process and have truly accepted the outcome.

The achievement, or lack thereof, of MRS status will also have ramifications on a union's legal standing when participating in conciliation and arbitration. It was suggested by a number of union respondents that where a union does not have the requisite legal standing, and/or are seeking a benefit that is above the legal minimum, the union may determine that a strike is more effective in achieving a gain than working through the legal process. This is indicative of a short term view of labour dispute resolution which may be improved should appropriate collective bargaining be better supported and the ability to reach representative CBAs becomes more likely.

**It is recommended that:**

- **Separate procedures (such as Independent third party mediation, ideally as a subset of AC/F services) be developed for disputes which involve: significant numbers of claims (10 or more) or form part of a pattern of labour disputation or a request from the parties, in order to support employers and workers to negotiate broad based CBAs;**
- **Encouragement of worker participation in collective bargaining to ensure that CBAs reached have done so with the acceptance of the workforce;**
- **Development of an easily accessible public record of CBAs which allows full disclosure of all CBAs reached (in full, including party details and substantive terms); and**

In addition to issues with respect to workplace cooperation and good faith interactions between the parties, a number of other matters - addressed in previous sections of this report – are also considered significant enabling factors. These include:

- the lack of appropriate enforcement; should compliance with minimum legal standards be better enforced it is logical to conclude that strikes over these matters may decrease, and should compliance with legal procedures relating to strikes increase, then we can conclude – given the high success rate of the Arbitration Council in resolving disputes – that parties working through all the stages of the labour dispute resolution process may be able to resolve more disputes through means that do not involve strikes, and
- that the now established practice of paying strike pay serves to compromise the balance of consideration when workers make a decision about going on strike and shifts the focus of dispute resolution to matters concerning the strike, rather than resolution of any extant dispute which led to the strike.

**It is recommended that:**

- **The payment of strike pay ceases over time. Given the continued constraints relating to enforcement of minimum legal standards, and the need therefore for parties to take strike action to achieve compliance, it would be appropriate for strike pay to continue to be**

**made in circumstances where the strike concerns a rights dispute and the employer is found to be at fault. The payment of strike pay should not be made where the strike concerns an interests dispute or a rights dispute which is unfounded. This could be achieved through various mechanisms such as agreement between parties as part of CBA negotiations, establishment of specific procedures to deal with strike pay disputes and/or regulation.**

## CONCLUSIONS

Whilst the Cambodian industrial relations jurisdiction continues to develop, this study illustrates that strikes are symptomatic of continued weaknesses in the system causing instability. Inherent tensions in the relationship between employers and employees and fundamental rights to freedom of association and collective bargaining mean that strikes will take place in any healthy industrial relations system. The unnecessary taking of strikes however, will lead to outcomes which could damage industry and therefore damage job prospects and social and economic development; an outcome unwelcome to both employers and employees.

If industrial actors do seek to lower strike numbers, then focus must be had on addressing the identified factors contributing to strikes. It is vital that parties and stakeholders do not focus on merely stopping or lessening strike numbers by taking coercive or punitive measures. By doing this, strikes will continue or increase in number as tensions grow. By addressing the causes of strikes, long term industrial stability will be better able to be achieved.

As such, regard should be had for the identified key subjects of strike cases: remuneration claims beyond the minimum set out in law and regulation, dismissal and alleged union discrimination, compliance with minimum standards, and occupational health and safety.

Implementation of measures to address these pressure points is an important step. There should be significant focus on minimum wage setting – including the manner in which a “living wage” should be defined – in order to better determine the economic realities of garment and footwear workers and the enterprises in which they are employed. Sophisticated, sustained and neutral assistance to parties negotiating for CBAs will provide an avenue for workers and unions to seek increased remuneration responsive to enterprise level and industry factors and reach agreed (and representative) outcomes which assure industrial stability for defined periods of three years or less. In addition, more robust, widespread and reliable inspection and monitoring, and ultimately stronger enforcement of legal standards is vital in reducing strike numbers. This continued failing places unnecessary pressure on the parties to seek compliance through other means, including strikes.

Triggers for strike action should also be an area of critical attention. Proper drafting and good faith implementation of workplace grievance procedures,

which set out timeframes, formal and ongoing consultation between workers, employers and all union representatives (local shop stewards, activists seeking to form unions and union federation officials) will enhance transparency and set standard expectations about how issues will be dealt with. Employers should make efforts to engage all unions at the workplace in issues which may affect their members – whether a dispute is raised by an individual union or not – and likewise, non-unionised workers’ views should also be sought by employers. Further attempts should be made by employers and unions to strengthen the direct relationship between employers and their workers as it is imperative that both parties ensure that resolutions to disputes adequately represent the views of the workforce. Greater transparency of outcomes at all levels of labour dispute resolution – workplace, conciliation and otherwise – will ensure that workers better understand the process and outcomes and provide the requisite support of outcomes so that some finality to disputes can be achieved. Likewise, publicly available copies of CBAs reached by various unions and employers will provide workers the ability to complete a “scorecard” of (1) the unions they wish to join (allowing the market to offer some regulation of unions) and/or (2) the employer they seek to work for.

The short term practice of unofficial fee payment in lieu of appropriate dispute resolution should cease. This practice merely puts issues in dispute to one side, only to leave them likely to resurface in one form or another at a future time. This is a significant factor contributing to industrial instability. Recommended measures to address these practices include direct involvement of workers in workplace negotiations and collective bargaining, more oversight of financial interactions between unions and employers and transparency measures so that all parties are better aware of outcomes of negotiation and bargaining.

Appropriate trade union regulation is an important development, but will not serve to lessen strike numbers on its own. A wholistic approach is required to regulate the relationship between the parties to lessen endemic levels of conflict of interest, and graft. Care should be taken that regulatory measures enhance transparency and focus on the proper operation of representative bodies and their relationships, in addition to supporting a focus on appropriate labour dispute resolution, rather than punitive measures.

There are significant further developments to be made in the industrial relations system and the scope of this report is such that not all can be addressed. As such, the recommendations provided in this study serve as a starting point to

address the issues identified. Ongoing analysis, review and change will be required to ensure that stakeholders' interests are met and stable industrial relations achieved in the Cambodian garment and footwear sector.

## APPENDICES

### i. Respondents

Interview subjects:

- Kaing Monika, Garment Manufacturers Association in Cambodia (GMAC)
- Chuon Momthon, Cambodian Union Federation (CUF)
- Ek Sopheakdey, Coalition of Cambodian Apparel Worker Democratic Union (CCAWDU)
- Yoeng Chhun, Khmer Youth Federation of Trade Unions (KYFTU)
- Som Seoun, Workers Rights Protection Union Federation (WRPUF)
- Yang Sophorn, Cambodia Alliance of Trade Union (CATU)
- Mam Nhim, National Independent Federation Textile Union of Cambodia
- Sath Chheang Hour, Asian Cambodia Union Coalition (ACUC)
- Pao Sina, Coalition Union of Movement Workers (CUMW)
- Kong Phallack, Arbitrator, Arbitration Council (AC)
- An Nan, Arbitrator, Arbitration Council (AC)
- Mar Samborana, Arbitrator, Arbitration Council (AC)
- Vong Vanna (Arbitrator, Arbitration Council), Committee for the Settlement of Strikes and Demonstrations
- Bo Chanveasna, Head of the Secretariat of the Arbitration Council (SAC), Ministry of Labour and Vocational Training
- Prak Chanthoeun (Ministry of Labour and Vocational Training), Committee for the Settlement of Strikes and Demonstrations
- David Welsh, Country Director, Solidarity Center in Cambodia
- Jonah Wigerhall, H&M
- Mouen Tola, Community Legal Education Center

Factory Case Studies (where both management and local union representatives were interviewed):

- (1) Gladpeer Garment Factory (Cambodia) Ltd.
- (2) M&V International Manufacturing Ltd
- (3) Peace Glory (Cambodia) Manufacturing Co., Ltd.
- (4) Perfect Growth Private Co., Ltd.
- (5) Pou Yeun (Cambodia) Enterprise Ltd.
- (6) Quint Major Industrial Co., Ltd. (QMI)
- (7) Siu Quinh Garment (Mfg) Ltd.
- (8) Smart Shirts Garment Manufacturing (Cambodia) Co., Ltd.
- (9) Tianyan International (Cambodia) Fashion Co., Ltd.

#### Focus Groups:

There were four focus groups held in mid-April 2015 with local factory management and workers from two factories located in Phnom Penh; Chu Hsing Garment (Cambodia) Co., Ltd. and GDM Enterprise Co., Ltd. A focus group of workers and a focus group of management representatives were conducted with respect to each factory.

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