



# Evaluating a Promising Model of Non-State Labor Regulation: The Case of Cambodia's Apparel Sector

Chikako Oka

## ► To cite this version:

Chikako Oka. Evaluating a Promising Model of Non-State Labor Regulation: The Case of Cambodia's Apparel Sector. Creative Labour Regulation: Indeterminacy and Protection in an Uncertain World, 2014, 978-92-2-127820-7. hal-03181247

**HAL Id: hal-03181247**

**<https://hal.science/hal-03181247>**

Submitted on 25 Mar 2021

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

## **Evaluating a Promising Model of Non-State Labor Regulation: The Case of Cambodia's Apparel Sector**

Chikako Oka  
[chika.oka@rhul.ac.uk](mailto:chika.oka@rhul.ac.uk)  
School of Management  
Royal Holloway University of London  
Egham, Surrey  
TW20 0EX, UK

### **Abstract**

Amid growing criticism of private regulation of labor conditions in global supply chains, Cambodia's apparel sector monitored by the International Labor Organization (ILO) has been heralded as a successful model harnessing public and private authority. While the case has been extensively studied, its institutional mechanism as non-state regulation has not been explicitly evaluated. Based on extensive field-based interviews and participant observation, this chapter shows that the Cambodian model fares better than purely private initiatives in terms of rigor, legitimacy, coordination and capacity building. Nonetheless, it shares some of the weaknesses of private regulation such as lack of accountability, parallel systems and patchy enforcement.

### **Introduction**

Enforcing decent work is increasingly dependent on a hybrid of public and private regulation particularly in the developing world, where state regulation is weak (Graham and Woods, 2006; Amengual; 2010). Given the lack of government capacity, various non-state regulatory schemes have come into existence, most of which entail codes of conduct and some sort of monitoring systems. Nonetheless, non-state regulatory initiatives have been criticized on various grounds. Private initiatives focus on consumer and market demands and thus concentrate on issues that attract attention of activists and consumers rather than what workers really care (Seidman, 2008). Even when initiatives are driven by NGOs, they may lack accountability to local stakeholders (Rodriguez-Garavito, 2005). Moreover, private regulation may pre-empt workers' organization and weaken state regulation (Seidman, 2007). Furthermore, non-state schemes tend to lack coordination and create parallel systems (Posthuma, 2010).

Amid the criticism of non-state labor regulation, the Cambodian case has been heralded as a successful model harnessing private and public authority to bring about continuous improvement in working conditions (Polaski 2006). While the Cambodian case has been studied extensively, its institutional mechanism and recent evolution have

not been explicitly evaluated. Some studies focus on the earlier phase of the ILO program under the quota regime (e.g. Kolben 2004, Polaski 2006) while others concentrate on assessing labor standard compliance and workers' rights (e.g. Miller 2007, Arnold and Shih 2010; Shea, Nakayama and Heymann 2010; Robertson, Dehejia, Brown and Ang 2011) and their link to export performance (e.g. Beresford 2009, Berik and Rodgers 2010).

This chapter aims at improving our understanding about the potential and limits of the 'successful' model of public-private regulation. Understanding the Cambodian model is ever more important as the Cambodian model has served as the prototype for *Better Work Program*. The ILO, in partnership with the International Finance Corporation (IFC), has replicated BFC and launched a global version, Better Work Program, to improve working conditions globally using value chain dynamics.<sup>1</sup> Currently, the program is operating in Haiti, Indonesia, Jordan, Lesotho, Nicaragua, and Vietnam and it is expected to spread further.

The chapter draws on field-based interviews and participant observation during the summers of 2007 and 2008 based in BFC office in Phnom Penh, Cambodia. The author conducted 61 semi-structured interviews with factory managers, buyer representatives, industry experts, union federation leaders, labor activists, government officials, and international donors. The following chapter begins by outlining the genesis, evolution and key features of the Cambodian model. Then it assesses the model in terms of its rigor of standards and monitoring, legitimacy and accountability to stakeholders, and complementarity with state regulation. This is followed by examination of buyer-driven enforcement and the program's sustainability and changing business model. The chapter concludes by comparing the Cambodian model with private regulation and outlining challenges.

## **Background on the Cambodian Model**

The unique experiment in the Cambodian apparel sector grew out of the US-Cambodia Textile and Apparel Trade Agreement in 1999.<sup>2</sup> The rapid growth in Cambodia's apparel exports to the US in the 1990s caused reactions from the domestic

---

<sup>1</sup> For details, see <http://www.betterwork.org>

<sup>2</sup> See Kolben (2004) and Polaski (2006) for a more detailed account of the genesis of the project.

textile and apparel industry and the industry demanded import restraints in 1998 (Polaski, 2006). On the other hand, the AFL-CIO petitioned the US government to review violation of labor rights in Cambodia, and the Union of Needletrades, Industrial and Textile Employees (UNITE) advocated linking the labor standards to the bilateral trade agreement (Kolben, 2004). It was against this backdrop that the US and Cambodia negotiated and agreed on the trade agreement with a clause on labor conditions (Polaski, 2006).

The unique aspect of the bilateral trade agreement was a positive incentive related to working conditions: a clause stipulated that the US would increase Cambodia's export quotas provided that working conditions in Cambodia's apparel sector substantially improved in line with the local law and international core standards (Polaski, 2006). As the Cambodian government lacked resources and capacity to credibly monitor labor conditions of all exporting apparel factories, the US government turned to the ILO. Initially hesitant, the ILO finally agreed to monitor establishment-level working conditions for the first time on condition that it also provided capacity building (Kolben, 2004). Funded principally by the US government, the ILO Apparel Sector Program started its monitoring operation in 2001.

Gradually, a quota-increase incentive became less important as categories of apparel exports not covered by the quota regime grew rapidly. In fact, the quota incentive has been replaced by another unanticipated incentive, as buyers started using ILO monitoring reports to assess compliance performance of their suppliers (Kolben, 2004). Over time, the Cambodian government has come to see the ILO monitoring scheme as a niche strategy to promote themselves as an "ethical producer" while international buyers have come to appreciate ILO monitoring as a stamp of approval and to protect their reputation. This explains why the ILO monitoring program was renewed even after the expiration of the quota regime at the end of 2004, renamed as *Better Factories Cambodia* (BFC).

While monitoring is the best known element of the ILO's engagement in Cambodia's apparel sector, the ILO's involvement has clearly gone beyond monitoring. The training arm of BFC helps build capacity of workers and supervisors by offering a variety of training courses. For instance, factory-based training teaches workers' rights and obligations stipulated in the labor law as well as practical issues related to safety

and health, HIV, and maternity. Since most workers are poorly educated, training is done through watching soap operas and playing games. BFC also offers training that helps improve quality, productivity, as well as negotiation and supervisory skills.

Apart from BFC, the ILO also operates Dispute Resolution Program, which helps build capacity at the institutional level. Specifically, it provides training for the Ministry of Labor and Vocational Training (MLVT) on conciliation and collective bargaining, promotes collective bargaining among employers, reviews the labor law to avoid conflicting interpretations, trains the police about the labor law and appropriate use of force, and helps unions to work out representativity.<sup>3</sup> Most importantly, the Dispute Resolution Program helped establish the Arbitration Council.

The Arbitration Council, set up in 2003 to deal with collective disputes, is a tripartite body composed of arbitrators nominated by unions, employer organizations, and the government. Each case is decided by a panel of three arbitrators, two of whom are chosen by the parties to the dispute and the third is decided jointly by the two arbitrators. The summary of cases is published on their website both in Khmer and English, contributing to its transparency.<sup>4</sup>

One feature that compromises its effectiveness is that the awards of the Arbitration Council are generally non-binding unless both parties agree to have binding awards. Despite this non-binding and non-enforceable nature of awards, since 2003, the Arbitration Council has presided over 800 cases and the majority of them have been resolved ‘successfully’.<sup>5</sup> The Arbitration Council is seen as a credible arbitrator by most stakeholders and a successful alternative to judiciary reform in Cambodia, where the formal court system lacks capacity and suffers from corruption (Adler and Woolcock, 2009).

Moreover, the ILO helped encourage Cambodia’s union movement through Workers Education Program (WEP).<sup>6</sup> Since 1998, WEP has been promoting unionization across industries including informal economy and training union leaders and rank and file members. WEP training covers workers rights, union member

---

<sup>3</sup> Interview with the Chief Technical Advisor of the ILO Dispute Resolution Project, 7 September 2007.

<sup>4</sup> The website of the Arbitration Council [http://www.arbitrationcouncil.org/eng\\_index.htm](http://www.arbitrationcouncil.org/eng_index.htm)

<sup>5</sup> Interview with Executive Director of the Arbitration Council on 30<sup>th</sup> August 2007. Here, success refers to one of the following: i) binding awards are implemented, ii) employers reject binding awards, but adopt similar solutions, iii) both parties agree to conciliation before awards are issued.

<sup>6</sup> This paragraph is largely based on Nuon and Serrano (2010: 51-52).

responsibilities and union leadership. WEP also assists union leaders in strengthening union structures, executive capacities and organizational development plans. In 2008, WEP activities reached 31 union leaders, 78 union educators and 1,852 union members (Nuon and Serrano, 2010: 51). WEP is also the focal point of union federation coordination to form a untied front vis-à-vis the government and employers in the form of joint statements and collective bargaining.

### **Assessment of the Cambodian model**

This section evaluates the Cambodian model along a set of criteria proposed by O'Rourke (2006) for evaluating non-governmental labor regulation: i) rigor of standards and monitoring ii) legitimacy of the system, iii) accountability to local stakeholders, and iv) complementarity with state regulation.

#### ***Rigor***

In terms of rigor, O'Rourke (2006) suggests examining whether the codes meet or exceed the ILO conventions and local laws, if standards are measurable, and if monitoring is technically competent. ILO BFC scores high on these dimensions. The current Cambodian labor law was drafted with the assistance of the ILO and adopted in 1997. Behind this revision lied mounting pressures from the US government during the trade negotiation to modernize the labor law.<sup>7</sup> Consequently, the labor law of 1997 is one of the most progressive ones in the region, encompassing all the basic international norms such as freedom of association and right to collective bargaining.

ILO monitors assess nearly 400 checklist items of labor standards, which are based on the Cambodian labor law and the international labor standards. The monitored standards have been agreed by a tri-partite governing body, Project Advisory Committee, comprising of the Cambodian government, employer association, and unions in the garment industry. Standards are clearly measurable and ILO monitors check whether each item is in compliance or not.

BFC has been characterized by its industry-wide participation, independence, and credibility. First, the Cambodian model obliges all exporting garment factories to submit to monitoring by the ILO. In fact, participation in the program is mandated by the Cambodian government as a requirement to obtain an export license. Second, since

---

<sup>7</sup> Interview with a representative of the US Solidarity Center, 29 August 2007.

ILO monitors are not directly paid by factories or buyers, conflict of interests often seen in private auditing is less pronounced.<sup>8</sup> Third, unlike some commercial auditors detached from local contexts and unable to talk directly to stakeholders, ILO monitors are locally hired Cambodian nationals who understand the language and local context, increasing their sensitivity and effectiveness as monitors. Fourth, ILO monitors are hired through competitive procedures, extensively trained, and well-equipped, helping ensure the quality of monitoring.

As for monitoring procedures, a pair of ILO monitors makes unannounced visits to factories every 6 to 8 months. Un-announced monitor visits span an entire day. The process includes on-site inspection, meetings with human resource managers, union leaders, and shop stewards as well as interviews with workers. Workers are normally interviewed during lunch break in a factory compound or just outside the factory gate. An investigator for Workers Rights Consortium (WRC) points out that this proximity to management may inhibit workers to speak up freely.<sup>9</sup> Copies of pay slips and hour records are collected for verification. ILO monitors assess each checklist item and determine whether a factory complies with a specified standard.

While BFC's rigor of standards and monitoring scores high, its enforcement lags behind. ILO monitors have a mandate to monitor all exporting garment factories, but they have no enforcement power. ILO monitoring reports are accessed by participating buyers, who may demand their suppliers remedial actions if major compliance issues are found. Nonetheless, factories producing for buyers who do not participate in BFC have little incentive to change their behavior. Moreover, not all buyers require the same level of labor standards from their suppliers, contributing to the gap in supplier compliance. Oka (2010a) shows that factories producing for a larger number of buyers, and in particular reputation-conscious buyers systematically outperform other factories.

### ***Legitimacy and Accountability***

---

<sup>8</sup> The ILO monitoring program was initially funded by the US Department of Labor, later picked up by USAID and joined by other donors such as the World Bank and Agence Française de Développement (AFD). At the time of writing, BFC is funded by the World Bank, the Australian government, the Cambodian government, GMAC, and labor union federations.

<http://www.betterwork.org/EN/Donors/Pages/index.aspx>

<sup>9</sup> Interview with an investigator for Workers Rights Consortium (WRC) on 4 September 2007. He says WRC investigation involves interviews with workers in dormitories or on weekend.

The legitimacy of the system and accountability to local stakeholders form part of the evaluation criteria (O'Rourke, 2006). The ILO commands international respect for its expertise and authority on labor standards and rights. Moreover, the ILO program is mandated by the Cambodian government to monitor and report working conditions in all exporting garment factories, strengthening its legitimacy. Nonetheless, garment manufacturers' association of Cambodia (GMAC) is increasingly critical of BFC. Although GMAC did not object to ILO monitoring when it was combined with quota increases, they started to oppose it once trade benefits were removed.<sup>10</sup> GMAC contends that Cambodia's apparel sector is facing unfair competition from neighboring countries as Cambodia is obliged to pay the price of better working conditions while others get away with poor working conditions.<sup>11</sup> Besides, instead of rewarding such efforts, buyers demand lower prices and faster delivery.<sup>12</sup> Such remark from the industry illustrates the fundamental contradictions when buyers become the enforcement authority of labor standards.

Accountability consists of two concepts: *answerability* and *enforceability* (Schedler, Diamond and Plattner, 1999; Goetz and Jenkins, 2002). Answerability is the right to monitor and obtain explanation for actions. This requires wider access to accurate, relevant, and timely information, in other words, *transparency*. On the other hand, enforceability is the right to demand justification for actions and impose sanctions if necessary. Implied in the concept of accountability is a principal-agent relationship.

ILO monitoring has provided accurate, relevant, and timely information, but access to the information has become limited. Transparency was one of the original features of the program. Until 2006, the ILO published the compliance status of individual factories in their biannual reports on their website. This was revolutionary in the realm of social auditing as no private auditing firms or NGOs disclosed monitoring results by naming factories. Since October 2006, however, the ILO stopped disclosing compliance performance for individual factories. Detailed monitoring reports are stored in the web-based database, and the right to access is reserved for monitored factories and authorized parties (i.e. buyers).

---

<sup>10</sup> Interview with a consultant for Garment Industry Productivity Center (GIPC) on 30<sup>th</sup> August 2007.

<sup>11</sup> Conversation with a GMAC representative at Buyers Forum, 9 October 2008.

<sup>12</sup> Conversation with a factory managers at Buyers Forum, 9 October 2008.



This limited access to information precludes transparency-driven competition among factories envisaged by the Ratcheting Labor Standards (RLS) model proposed by Sabel, O'Rourke and Fung (2001). The RLS model is based on sector-wide participation, independent monitoring, public disclosure of monitoring results, and pressure by consumers and investors driving better working conditions. BFC resembles the RLS model except that monitoring information is shared with buyers only. This lack of transparency is seen as regression in terms of accountability to local stakeholders including unions and NGOs.<sup>13</sup> This may reflect the ILO's need to placate apparel factories as the program seeks to raise funds from employers.<sup>14</sup> Robertson et al. (2011) find that public disclosure had a statistically significant positive effect on labor compliance in Cambodia's apparel sector.

In terms of enforceability, the scheme does not have any built-in enforcement mechanism available to stakeholders other than buyers who act as a virtual enforcement authority based on ILO monitoring reports. Moreover, BFC does not conduct complaint-based inspection unlike labor NGOs such as WRC, making BFC less accountable to workers.<sup>15</sup> On the other hand, buyers request can influence day-to-day operations such as the timing of visits.

In sum, while the role of the ILO is considered legitimate by most parties, buyer-driven enforcement is seen as contradictory by factory managers. In terms of accountability to local stakeholders especially workers, the monitoring system itself does not score high given its limited transparency and lack of complaints-based monitoring. Nonetheless, lack of accountability of monitoring has been partially offset by broader engagement of the ILO, namely the Arbitration Council and capacity building of workers and union leaders as empowered workers have come to voice their demands through institutional and non-institutionalized means (Oka, 2011).

### ***Complementarity with State Regulation***

It is important that non-state regulation does not replace or weaken state regulation, but rather it should strengthen and complement it (O'Rourke, 2006). This section first

---

<sup>13</sup> Interview with a local investigator for Workers Rights Consortium on 4<sup>th</sup> September, 2007.

<sup>14</sup> Interview with an industry expert, 30 August 2007.

<sup>15</sup> Interview with a local investigator for Workers Rights Consortium on 4<sup>th</sup> September, 2007.

examines how state labor regulation functions in Cambodia and then assesses whether or not state institutions and those created and run by the ILO may be complementary.

Cambodia's Ministry of Labor and Vocational Training (MOLVT) has the Department of Labor Inspection (DLI) with 44 inspectors who conduct pre-announced inspection of all factories (garment and non-garment).<sup>16</sup> In 2006, inspectors conducted 2105 "simple" routine inspections and 577 "special" inspections for control of non-compliance. In terms of sanctions, they issued 902 warnings and charged fines for 19 cases, of which 17 cases went to court. Fines range from USD 250 to 5000, depending on the severity of violation, but expensive fines are rarely charged. In egregious cases, suspension of export license is considered together with the Ministry of Commerce. Suspension has been ordered to only five firms so far.

Unfortunately, labor inspectors are not considered as the effective enforcement authority of the labor law. Labor inspectors often demand bribes from factories they inspect. One factory manager complains: "inspectors come so often that it's like their house. They will find something to complain about, and rather than reporting, they ask for bribes, about \$20 to 40 each time."<sup>17</sup> Given that inspectors earn as little as \$40-50 per month, which is lower than the minimum wage in the garment sector, visiting factories for them is a way of supplementing their meager salary. Moreover, as state inspectors are obliged to pay for gas for their motor cycles, they are more likely to visit (or "harass" in the word of the factory manager) factories in town rather than far away factories.<sup>18</sup>

Within MOLVT, there is also the Department of Occupational Safety and Health (DOSH) with 12 medical inspectors, who visit each factory about four times per year.<sup>19</sup> Unlike the Department of Labor Inspection (DLI), DOSH has no authority to sanction firms even in case of egregious violations. Deprived of enforcement power, OSH inspectors sometimes even turn to buyers. OSH inspectors sometimes contact well-known buyers such as Addidas and Nike when they find major violation of OSH standards in their supplier factories and ask buyers to pressure their suppliers to rectify

---

<sup>16</sup> This paragraph is based on the interview with an official at the Department of Labor Inspection, 18 September 2007.

<sup>17</sup> Interview with a factory manager, 14 October 2008.

<sup>18</sup> Interview with a factory manager, 14 October 2008.

<sup>19</sup> This section is based on the interview with an official at the Department of Occupational Safety and Health, 21 September 2007.

the problems. On the other hand, DOSH officials do not contact ILO monitors. Important gaps in salary, equipments and procedures hinder cooperation between ILO monitors and state inspectors, according to the official.

MOLVT also has the Department of Labor Dispute (DLD) with 25 staff charged with mediating workers and employers as well as overseeing collective bargaining agreements.<sup>20</sup> For collective labor disputes, unions and employers are expected to negotiate first. Once negotiations fail, they must turn to the DLD for mediation. Only when the government-led mediation fails, could parties bring the case to the Arbitration Council, a tripartite body set up by the ILO to resolve collective disputes. According to one former union federation leader, the DLD tries to prevent cases from proceeding to the Arbitration Council.<sup>21</sup>

This is probably because MOLVT sees the Arbitration Council and the ILO in general as a threat to their jurisdiction. For instance, MOLVT and the Arbitration Council compete for the legitimacy of interpretations of the labor law, which contains ambiguities.<sup>22</sup> The interviewed official at DLD said that the government did not want the ILO programs (i.e. BFC and Arbitration Council) to be aligned with state institutions as the ILO programs were seen as heavily influenced by US interests.

Although there has been little cooperation between the ILO and MOLVT at the program level, there is some collaboration at the institutional level.<sup>23</sup> The ILO has been helping to build the capacity of MOLVT through training and joint investigation of child labor cases as well as jointly creation of an enterprise physician accreditation scheme. Such cooperation including joint factory visits should be strengthened. Nonetheless, the deep-rooted nature of the problem requires not only technical solutions but also political solutions such as anti-corruption drive and civil service reform.

All in all, there is clearly duplication between the work of state regulators and the ILO while complementarity is rather limited. BFC and the Arbitration Council run in

---

<sup>20</sup> This section is based on the interview with an official at Department of Labor Disputes, 10 September 2007

<sup>21</sup> Interview with a former leader of CCAWUDU, 29 August 2007.

<sup>22</sup> The Cambodian labor law contains ambiguities, which covet different interpretations. For instance, the article 67 prohibits the use of the undetermined duration contract that exceeds 2 years. MOLVT considers that multiple short-term contracts of less than 2 years can add up to more than 2 years while the Arbitration Council interprets that multiple contracts cannot exceed 2 years. Interview with President of the Arbitration Council Foundation, 30 August 2007.

<sup>23</sup> Email communication with Chief Technical Advisor of BFC on 20<sup>th</sup> September 2009.

parallel to the government systems of labor inspection and justice. Neither side seems to be interested in convergence as the state institutions are seen as too corrupt and incompetent whereas the ILO is seen as influenced by foreign interests. It is quite striking that state OSH inspectors prefer to work with buyers rather than ILO monitors. Nonetheless, lack of convergence does not suggest that the ILO programs weaken state regulation. ILO monitors verify compliance with the Cambodian labor law while the Arbitration Council implements procedures set out in the law and regulation. On the other hand, there is competition for legitimacy and jurisdiction.

While the debate on the effect of non-state regulation on state regulation is still raging, there is increasing evidence that state and non-state regulation are more complementary than substitutive (Amengual 2010; Kim, 2010). Based on research in the Dominican Republic, Amengual (2010) shows that state inspectors and private auditors focusing on different sets of issues and solving problems in a different manner are complementary. Amengual argues that the driver of comparative advantage is not coordination (as they do not explicitly collaborate) but comparative advantage. In the case of Cambodia, to avoid duplication and enhance effectiveness, BFC and MOLVT could specialize in respective areas: while BFC continues to monitor exporting apparel factories, MOLVT could concentrate their monitoring efforts on non-exporting apparel subcontractors and other sectors. For such specialization to be effective, however, the state institutions need to be fundamentally reformed.

### **Buyer-driven Enforcement<sup>24</sup>**

Given the regulatory vacuum created by lack of state regulation, buyers conscious of their reputation have come to regulate their supplies both reactively and proactively. Buyers act reactively in cases where transnational advocacy networks are mobilized to pressure them and demand remedial action in supplier factories. Through repetitive interactions, however, some reputation-conscious buyers have learned to be more proactive in addressing compliance issues in their supplier factories. On the other hand, some factories have come to see better compliance as a way of attracting reputation-conscious buyers and actively try to improve working conditions.

---

<sup>24</sup> This section draws on Oka (2010a).

### ***Pressure-driven Enforcement***

Buyers can make a significant impact at the factory level particularly when transnational advocacy networks are mobilized to pressure buyers. Specifically, activists engage in what Keck and Sikkink (1998) call “accountability politics,” where transnational advocacy networks act as a source of countervailing power, hold MNEs to their CoC, and pressure them to adopt more stringent standards. Important networks for anti-sweatshop campaigns are international trade union federations, student organizations, and other pro-labor NGOs. Such transnational linkages have proved helpful in improving working conditions in a few apparel factories in Cambodia as demonstrated by the following two examples.

A union federation leader cited one major case that mobilized a transnational solidarity network to address anti-union discrimination.<sup>25</sup> River Rich factory dismissed 30 union leaders and members after they organized an election to form an independent union in October 2006. Strikes calling for the reinstatement of the union members faced the riot police. As the union belonged to the federation, the Coalition of Cambodian Apparel Workers Democratic Unions (CCAWDU), which was affiliated with the International Textile Garment Leather Workers’ Federation (ITGLWF), they asked for assistance. Lack of cooperation from the management led the ITGLWF to pressure the factory’s major buyers, Inditex and H&M for action.

In June 2007, the senior representatives from the ITGLWF, Inditex, H&M, and CCAWDU had intensive discussions with the factory’s top management, which resulted in a historic agreement that went beyond the reinstatement of fired workers.<sup>26</sup> Since then, River Rich has been enjoying stable and cooperative industrial relations, thanks to this transnational linkage between the union, the international union federation, and the buyers.<sup>27</sup> Since the union has a close connection with the key buyers, the factory management is aware that the union may contact the buyers if any issues arise.

Another illustrative case involves the Worker Rights Consortium (WRC), Adidas, and PCCS garment factory. The WRC is a US NGO that investigates worker complaints and promotes information disclosure in factories producing University branded products.

---

<sup>25</sup> Interview with a union federation leader, CCAWDU. 10 September, 2007.

<sup>26</sup> The agreement is available from the website of the ITGLWF:  
<http://www.itglwf.org/DisplayDocument.aspx?idarticle=15317&langue=2>

<sup>27</sup> Interview with a training expert. 12 September, 2008.

In 2006, the WRC was contacted by workers to investigate the misuse of short-term contracts in the factory.<sup>28</sup> The Cambodian labor law stipulates that fixed duration contracts should be used for temporary positions and that they cannot exceed 2 years. At the factory, some workers were hired under the contract of fixed duration for 2 to 3 months, after which time they were instructed to take a week-off and then come back to work under new fixed term contracts. This practice deprives workers of their right to seniority bonus, maternity and annual leave among other benefits while it undermines employment security from inappropriate dismissal. At the time of WRC investigation in March 2006, around 1000 employees, about 25 percent of workforce, were under the fixed term contracts.<sup>29</sup>

As the initial discussions between the WRC and the management produced no effects, the WRC pressured Adidas, the factory's major buyer, to take action. With the intervention of Adidas, the discussions started to take on a different tone. Adidas issued a warning to the management that unless the factory converted all fixed-term contracts to non-determined ones in one month, it would cancel its orders.<sup>30</sup> Only after this key intervention by Adidas, the management started to change and finally agreed to make drastic changes.<sup>31</sup> The factory agreed to convert the majority of fixed-term contracts into non-determined ones, and this has been respected since.

Despite these successful examples, this transnational tactic of using buyer leverage to bring about positive changes at the factory level has its limitations. The WRC investigator acknowledges that reputation-conscious brands are more prone to pressures and therefore more cooperative, but other buyers care less. While this transnational strategy may work for major issues, it cannot deal with smaller day-to-day issues. A union federation leader involved in the River Rich case concurs that it is time-consuming and costly to pursue this tactic.<sup>32</sup> Moreover, those who can exploit transnational linkages are limited to well-connected and English speaking union federations.<sup>33</sup> All in all, mobilization of transnational networks may bring about positive

---

<sup>28</sup> Interview with a WRC investigator. 4 September, 2007.

<sup>29</sup> The WRC investigation report on this case is available from their website: [http://www.workersrights.org/Freports/Update\\_Dec2006.asp#PCCS](http://www.workersrights.org/Freports/Update_Dec2006.asp#PCCS)

<sup>30</sup> Interview with a general manager, PCCS Garment. 21 June, 2008.

<sup>31</sup> Interview with a WRC investigator. 4 September, 2007.

<sup>32</sup> Interview with a union federation leader, CCAWDU. 10<sup>th</sup> September, 2007.

<sup>33</sup> Interview with a union federation leader, FTUWKC. 26 September, 2007.

changes in some factories that produce for reputation-conscious buyers, but it is unlikely to address various day-to-day issues in the majority of factories.

Even if such transnational networks cannot be mobilized every time, however, the possibility of such an alliance has changed dynamics. Establishment-level unions have also come to see buyers as a source of leverage and an authority that can enforce the labor law and improve worker welfare. Indeed, more than a few factory managers complained that unions threatened managers saying they would call buyers if management did not cooperate. Even state OSH inspectors sometimes turn to buyers for help, as discussed earlier.<sup>34</sup>

### ***Buyer Engagement***

Through repetitive interactions with transnational activist networks over the past decade, some buyers have come to take a proactive approach to regulating working conditions in their suppliers. A local representative of Gap remarks, “We don’t want a bad surprise. We don’t want to learn about a problem in our supplier factory in some newspaper. Rather, we try to intervene before the problem gets bigger.”<sup>35</sup>

Major brands sourcing from Cambodia, Gap and H&M have local representatives who deal specifically with compliance issues. Gap takes a pre-emptive approach and tries to stay well-informed of situations in their supplier factories so that they can intervene at an earlier stage.<sup>36</sup> Gap’s local representative has extensive contacts with union leaders and helps resolve issues on a daily basis. In fact, other buyers without local staff sometimes even ask them to intervene in their supplier factories when problems arise. Gap is also heavily involved in dispute resolution. Gap pressures its suppliers to implement both binding and non-binding awards of the Arbitration Council. They enjoy such leverage vis-à-vis their suppliers partly because they tend to be the major buyer for their suppliers, accounting for up to 70 percent of production in some of factories.

The policy of H&M vis-à-vis their supplier compliance is “transparency, cooperation, and openness.”<sup>37</sup> Locally-based compliance staff visits their suppliers three to four times a year for two different purposes. First, there are visits based on a

---

<sup>34</sup> Interview with an official, Department of Occupational Safety and Health. 21 September, 2007.

<sup>35</sup> Interview with a local representative of Gap. 24 June, 2008.

<sup>36</sup> This section is based on the interview with a local representative of Gap. 24 June, 2008.

<sup>37</sup> This section is based on the interview with a local representative of H&M. 16 October, 2008.

remediation cycle of 18 to 24 months, consisting of an un-announced visit and three follow-up visits. Then, there are “ordinary visits,” whose purpose is to engage in continuous dialogue and share best practices. This way, H&M compliance staff tries to foster an open relationship with suppliers, which helps to keep them informed of the situation and to contribute to suppliers’ continuous improvement. H&M local compliance staff also work closely with unions. When problems arise, they try to play a neutral mediator role between factory management and unions. When collective disputes are settled at the Arbitration Council, H&M enforces binding awards and sometimes also non-binding awards, depending on the nature and context of cases.

Nonetheless, not all buyers are so proactive and willing to invest their time and efforts to understand and solve problems in supplier factories. Multiple interviews have confirmed the difference in buyer approaches. Well-known brands, in particular those with local representatives, are more well-informed of the local situation and readily available to help solve problems on the factory floor. Moreover, these buyers tend to have more direct contact and established relationships with supplier factories, increasing their leverage. In contrast, discount retailers were never mentioned as helpful partners. These retailers tend to use sourcing agents, and thus their relationships with supplier factories are much more distant and mediated, diluting their leverage and as a result, negatively affecting compliance performance (Oka, 2010b).

### ***Supplier Efforts and Purchasing Practices***

Some factories are also taking a proactive approach. Since most buyers require factories to comply with their CoC and the national law before placing orders, factories learn about the required standards in advance and try to meet them, and some even try to go beyond the minimum standards. One factory manager mentioned that their current buyers do not have issues with their compliance performance, but the factory makes continuous and proactive efforts to improve working conditions to attract more buyers.<sup>38</sup> Given the fickle nature of the industry and the sluggish global economy, factories are keen to diversify risks by producing for different buyers from the US and Europe.

---

<sup>38</sup> Interview with a factory manager. 11 September, 2008.



Different buyers have different standards. One factory manager remarks “Nike is much stricter about everything.”<sup>39</sup> Since buyers who require higher standards tend to be famous brands that give higher profit margins, factories trying to attract them need to improve compliance and sometimes go beyond the national labor law. “Buyer CoC often go beyond the legal requirements, so if we comply with CoC, naturally, we go beyond legal compliance.”<sup>40</sup> Nonetheless, many factory managers complain that compliance with buyer CoC is simply a minimum requirement to get orders, and better compliance does not bring more orders. “No compliance, no orders. But better compliance is not rewarded. It just gets you at the start line.”<sup>41</sup>

In fact, purchasing practices of buyers often contradict with the goal of improving working conditions (CCC, 2009). A factory manager explains that significant fluctuations in orders make it difficult to keep all of their workers during low seasons.<sup>42</sup> While some buyers require suppliers to hire workers on permanent contracts, they do not share the burden of extra labor costs. In recent years, intense competition and rising prices have squeezed garment producers’ profits. One factory manager laments that “three years ago, the price of pant was \$10 a piece and the cost to produce was \$6 a piece. Now, the price stays the same and the cost has gone up to \$8-9 a piece. Buyers don’t increase the price because they can go elsewhere if they want to. It’s a buyers’ market.”<sup>43</sup> Consequently, factory management is sandwiched by buyers’ increasing demands and falling profits.

When buyers enforce labor standards instead of the government, improving working conditions is viewed as corporate social responsibility rather than legal compliance, and factory managers demand buyers to pay the price of good will. Yet buyers are unwilling to reward better working conditions through price premiums or increased orders. Burden sharing of the cost of compliance is almost non-existent in the global apparel industry (Locke et al., 2009; Ruwanpura and Wrigly, 2011). Buyers therefore end up playing two contradictory roles: enforcing labor standards on the one

---

<sup>39</sup> Interview with a factory manager. 16 September, 2008

<sup>40</sup> Ibid.

<sup>41</sup> Interview with a factory manager. 21 June, 2008.

<sup>42</sup> Ibid.

<sup>43</sup> Interview with a factory manager. 14 October, 2008.

hand and demanding lower prices and faster delivery on the other, squeezing supplier profits and their capacity to improve working conditions.

### **Sustainability and New Business Model**

Since 2006, ILO BFC has been going through a transition period. The ILO has continued to manage the program with the aim of transferring its capacity to a local independent entity. Initially, the goal of transfer was 2008, then postponed to 2010, and now it is increasingly uncertain if it will ever be transferred. In terms of financing, BFC has not yet come up with a viable plan to become self-sustaining. Initially, the program was set to be self-sustaining from 2010 onward as donor funding was to be gradually taken over by contributions from the Cambodian government, GMAC, and buyers. As of 2012, the program is still dependent on donor funding.

For BFC to become self-sustaining, it needs to substantially raise fees for its services. Notably, buyers need to pay BFC much higher fees to view monitoring reports. As fees increase, buyers demand more value for money, requiring BFC to offer more buyer-oriented services. On the other hand, GMAC has been putting increasing pressures on BFC to be a helpful partner rather than a watch dog. In light of these business needs, BFC went through organizational changes in the past few years to shift its core mission from compliance monitoring to problem-solving. Monitors have been re-trained to become “factory advisors,” who identify issues and suggest solutions rather than monitor compliance.

These changes pose both opportunities and risks to BFC. Shifting its focus to problem solving and remediation may enable monitors to better assist garment factories in meeting compliance challenges as evidenced by the “Latin” model of labor regulation. In the literature on labor inspection, a distinction is often made between the Anglo-Saxon approach to enforcement rooted in sanctions and deterrence and the Latin approach (practiced in France, Spain, and Central/Latin American countries) based on conciliation and rehabilitation.

Piore and Schrank (2008) argue that the Latin model based on rehabilitation rather than sanction is more effective and conducive to reconciling labor standards with competitiveness. The Latin model gives inspectors discretion and flexibility to work out a realistic plan to bring firms into compliance, paying attention to production demands

and specific situations (Ibid.). Besides, inspectors play the role of business consultants by spreading best practices in the industry.

Similarly, Locke et al. (2009) argue that a traditional “compliance approach” of private labor regulation emphasizing policing and sanction has not induced progress in working conditions. They maintain that a “commitment approach” characterized by joint problem solving and capacity building between buyers and suppliers is more effective in addressing the root causes of poor working conditions in supply chains. Yet, Pires (2008) argues that a hybrid approach, combining advisory and punitive roles of labor inspectors, would be more effective.

While the problem-solving approach has important advantages, its effectiveness is likely to be compromised under certain circumstances. The Latin model is a state regulatory mechanism entirely funded by the government while the ILO model is a public-private partnership, which is increasingly funded by buyers and the garment industry. Monitoring and consulting the very firms that finance their activities may replicate the classic dilemma and conflict of interests facing auditing firms (Seidman, 2008). Moreover, the commitment approach is effective only when buyers and suppliers are willing to invest in their relationships. When neither suppliers nor buyers are motivated, policing and sanction may be necessary to bring suppliers into compliance.

Overall, BFC needs to strike a difficult balance between monitoring and advisory roles, and follow-up research is necessary to determine whether and how the change affected behavior and outcomes. In fact, such balancing act is required for Better Work in general as Better Work provides a combined package of factory assessment and advisory services and assessing and advising the clients that fund their activities may create conflict of interests.

## **Conclusion**

The Cambodian case illustrates the potential and limits of public-private partnership in regulating the economy where state capacity is limited. Based on interviews and participant observation, this chapter has evaluated the ILO’s innovative scheme to improve working conditions in Cambodia’s apparel sector. The Cambodian model uniquely combines public authority (i.e. government mandated industry-wide monitoring), market forces (i.e. buyer-driven enforcement), and empowerment of

workers and unions (i.e. capacity and institution building). While the Cambodian model shares some of the weaknesses of non-state regulation such as lack of accountability, parallel systems and patchy enforcement, it fares better than other initiatives in terms of rigor and legitimacy as well as coordination and capacity building.

The coordinating role of the ILO has been important in bringing different actors together. The ILO has provided a forum for various stakeholders (i.e. the government, the industry association, union federations, and international buyers) to collaborate. One buyer remarked that it was unthinkable a few years ago that buyers could collaborate, as they saw each other only as competitors.<sup>44</sup> Indeed, private regulatory schemes often lack an institutional framework to coordinate different actors and responsibilities, compromising their effectiveness (Macdonald, 2007). In addition, BFC has helped reduce duplication of private audits as some though not all buyers have replaced their own or third-party audits with ILO monitoring. The idea is to use saving from monitoring for training and remediation offered by ILO BFC, and some buyers burden-share the cost of training. This contrasts with purely private schemes where various initiatives co-exist and compete without coordination, leading to duplication in some areas and lack of provision in others, given free rider problems.

Another important feature of the Cambodian model that sets it apart from other private initiatives is that it goes beyond monitoring. The ILO provided capacity building (i.e. Workers Education Program) and an institutional mechanism (i.e. the Arbitration Council) so that workers can defend their own rights and interests. Indeed, since the bilateral trade agreement and in particular the arrival of the ILO, unions started to proliferate.<sup>45</sup> The rise of labor movement in Cambodia has been an important driver behind sector-wide progress in working conditions and wages (Oka, 2011).

In sum, by setting standards, monitoring compliance industry-wide, coordinating stakeholders, as well as providing capacity building and institutional mechanism for workers to voice their demands, the ILO has provided a semi-public good to the industry that is unthinkable under purely private initiatives. While the Cambodian model has served as a prototype for Better Work, it departs from the original model in important ways. First, participation is voluntary rather than mandatory for most program

---

<sup>44</sup> Conversation with a buyer representative at Buyers Forum. 9 October 2008.

<sup>45</sup> Interview with an official at Department of Labor Dispute, MOLVT on 10 September 2007.

countries. Second, it does not provide sector-wide capacity building and an institutional mechanism for workers and unions as in Cambodia. Third, the emphasis is placed on advisory services and productivity enhancement rather than monitoring compliance. These differences suggest the difficulty in replicating the original Cambodian model.

On the other hand, the chapter has also revealed the limits of the Cambodian model. Given the lack of state capacity and pervasive corruption, the ILO has created parallel systems of monitoring and justice. Nonetheless, buyer-driven regulation creates gaps and fundamental contradictions. The difficulty of labor regulation in developing countries such as Cambodia, therefore, results from a combination of government and market failures. In the absence of a silver bullet, spreading the benefits of better labor conditions worldwide is likely to require progress on all fronts. While non-state regulation that goes beyond monitoring is promising, state regulation needs to take a center stage in the long run. To that end, government officials should be given the right incentive to enforce laws, which requires civil service reform and anti-corruption drive. Given the fundamentally political nature of the issue, technical assistance alone is unlikely to bring about a necessary change. This may be facilitated by internal and external pressures—governmental, inter-governmental and non-governmental—that demand democracy, transparency, and justice.

## References

- Adler, Daniel; Woolcock, Michael. 2009. “Justice without the rule of law: The challenge of rights-based industrial relations in contemporary Cambodia”, in *Justice and Development Working Paper Series*, Vol. 2, No. 2. Washington, D.C., World Bank.
- Amengual, Matthew. 2010. “Complementary labour regulation: The uncoordinated combination of state and private regulators in the Dominican Republic”, in *World Development*, Vol. 38, No. 3, pp. 405-414.
- Arnold, Dennis; Shih, Toh Han. 2010. “A fair model of globalization? Labor and global production in Cambodia”, in *Journal of Contemporary Asia*, Vol. 40, No. 3, pp. 401-424.
- Beresford, Melanie. 2009. “The Cambodian clothing industry in the post-MFA environment: A review of developments”, in *Journal of the Asia Pacific Economy*, Vol. 14, No. 4, pp. 366-388.

- Berik, Gunseli; Rodgers, Yana Van Der Meulen. 2010. "Options for enforcing labor standards: Lessons from Bangladesh and Cambodia", in *Journal of International Development*, Vol. 22, pp. 56- 85.
- CCC (Clean Clothes Campaign). 2009. *Cashing In: Giant Retailers, Purchasing Practices, and Working Conditions in the Garment Industry*. Amsterdam, CCC.
- Goetz, Anne-Marie; Jenkins Rob. 2002. "Voice, accountability and human development: The emergence of a new agenda", *Occasional Paper* No. 4. New York, UNDP.
- Graham, David; Woods, Ngaire. 2006. "Making corporate self-regulation effective in developing countries", in *World Development*, Vol. 34, No. 5, pp. 868-83.
- Hall, John. 2000. "Human rights and the garment industry in contemporary Cambodia", in *Stanford Journal of International Law*, Vol. 36, pp. 119-174.
- Keck, Margaret; Sikkink, Kathryn. 1998. *Activists beyond borders: Transnational advocacy networks in international politics*. Ithaca, NY, Cornell University Press.
- Kim, Jee Young. 2010. "Villains, dummies, and victims? The role of local actors in transnational private labor regulation in Vietnam", paper presented at the Society for the Advancement of Socio-Economics, Temple University, Philadelphia, 24-26 June.
- Kolben, Kevin. 2004. "Trade, monitoring, and the ILO: Working to improve conditions in Cambodia's garment factories", New Haven, CT, in *Yale Human Rights & Development Journal*, Vol. 7, pp. 79-107.
- Locke, Richard; Amengual, Matthew; Mangla, Akshay. 2009. "Virtue out of necessity? Compliance, commitment, and the improvement of labor conditions in global supply chains", in *Politics and Society*, Vol. 37, No. 3, pp. 319-351.
- Macdonald, Kate. 2007. "Globalizing justice within coffee supply chains? Fair trade, Starbucks and the transformation of supply chain governance", in *Third World Quarterly*, Vol. 28, No. 4, pp. 793-812.
- Miller, Douglas. 2007. *'Business as usual?' Governing the supply chain in clothing post MFA phase out. The case of Cambodia*, Global Union Research Network Discussion Paper No. 6. Gevena.
- Nuon, Veasna; Seerrano, Melisa. 2010. *Building unions in Cambodia: History, challenges, strategies*, Singapore, Friedrich-Ebert-Stiftung Office for Regional Cooperation in Asia.

- Oka, Chikako. 2010a. "Accounting for the gaps in labor standard compliance: The role of reputation-conscious buyers in the Cambodian garment sector", in *European Journal of Development Research*
- Oka, Chikako. 2010b. "Channels of buyer influence and labor standard compliance: The case of Cambodia's garment Sector", in *Advances in Industrial and Labour Relations*, Vol. 17, pp. 153-183.
- Oka, Chikako. 2011. "What can bridge gaps in labor standard compliance? Evidence from Cambodia", paper presented at Regulating for Decent Work: Regulating for a Fair Recovery. ILO, Geneva, 6-8 July.
- O'Rourke, Dara. 2006. "Multi-stakeholder regulation: Privatizing or socializing global labour standards?" in *World Development*, Vol. 34, No. 5, pp. 899-918.
- Piore, Michael; Schrank, Andrew. 2008. "Toward managed flexibility: The revival of labor inspection in the Latin world", in *International Labour Review*, Vol. 147, No. 1, pp. 1-23.
- Pires, Roberto. 2008. "Promoting sustainable compliance: Styles of labor inspection and compliance outcomes in Brazil." in *International Labour Review*, Vol. 147, No. 2-3, pp. 199-299.
- Polaski, Sandra. 2006. "Combining global and local forces: The case of labor rights in Cambodia", in *World Development*, Vol. 34, No. 5, pp. 919-932.
- Posthuma, Anne. 2010. "Beyond 'regulatory enclaves': Challenges and opportunities to promote decent work in global production networks", in Anne Posthuma and Dev Nathan (eds.): *Labour in Global Production Networks in India*, pp. 57-80. New York, Oxford University Press.
- Robertson, Raymond; Dehejia, Rajeev; Brown, Drusilla; Ang, Debra. 2011. *Labour law compliance and human resource management innovation: Better Factories Cambodia*, Better Work Discussion Paper No. 1. Geneva, ILO.
- Rodriguez-Garavito, Cesar, A. 2005. "Global governance and labour rights: Codes of conduct and anti-sweatshop struggles in global apparel factories in Mexico and Guatemala", in *Politics and Society*, Vol. 33, No. 2, pp. 203-233.
- Ruwanpura, Kanchana, N; Wrigly, Neil. 2011. "The costs of compliance? Views of Sri Lankan apparel manufacturers in times of global economic crisis", in *Journal of Economic Geography*, Vol. 11, pp. 1031-1049.
- Sabel, Charles; O'Rourke, Dara; Fung, Archon. 2001. *Can We Put an End to a Sweatshop?* Boston, Beacon Press.

- Seidman, Gay. 2007. *Beyond the Boycott: Labor rights, Human Rights and Transnational Activism*. New York, Russell Sage Foundation Press/American Sociological Association.
- Seidman, Gay. 2008. "Transnational labour campaigns: Can the logic of the market be turned against itself?" in *Development and Change*, Vol. 39, No. 6, pp. 991-1003.
- Seidman, Gay. 2009. "Labouring under an illusion? Lesotho's 'sweat-free' label", in *Third World Quarterly*, Vol. 30, No. 3, pp. 581-598.
- Shea, Anna; Nakayama, Mariko; Heymann, Jody. 2010. "Improving labour standards in clothing factories: Lessons from stakeholder views and monitoring results in Cambodia", in *Global Social Policy*, Vol. 10, No. 1, pp. 85-110.
- Schedler, Andreas; Diamond, Larry; Plattner, Marc. F. 1999. *The Self-Restraining State: Power and Accountability in New Democracies*. Boulder and London, Lynne Rienner Publishers.