

## **Broken system: The plight of women workers in the Cambodian Garment Industry**

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**Teaser:** The structural changes in Cambodia's economy better allow women to take on waged jobs in the manufacturing and service sectors. These shifts have provided the opportunity for nearly two million women<sup>1</sup> to participate in the paid labour force. Of these, more than half a million work in the garment industry. Poor respect for human rights, unsafe working conditions and a sexist workplace culture combine to situate Cambodian women in the garment industry in danger of labour exploitation and sexual harassment. This article suggests that to realize women's full economic empowerment and self-determination, the Cambodian government and corporate actors must take swift action to address all forms of gender-based violence in the world of work.

### **Introduction to the Cambodian Garment Industry**

A series of structural changes made to Cambodia's economy in the 1990s, coupled with a number of bilateral and multilateral trade agreements,<sup>2</sup> have given birth to the development of the garment sector in the form it exists today. Often referred to as the 'backbone' of the national economy, since the industry's increased expansion in the 2010s, the garment sector has grown to employ some 700,000 workers, among whom 90 percent are rural migrant women. Dominated by foreign investors from Hong Kong, Taiwan, Malaysia and Singapore, with the majority of products exported to western markets,<sup>3</sup> the sector has become a crucial contributor to Cambodia's impressive rate of economic growth in recent years.<sup>4</sup>

This paper looks at the plight of women workers in the garment industry and is structured as follows: It first explores sexual harassment in the garment sector and why it is important for both government and corporate actors to address this. Second, it outlines additional issues experienced by women garment workers in relation to their working environment. A third section follows, which looks at the scope and scale of unpaid work and how it affects women's productivity and wellbeing at the workplace. The final section outlines possible actions to address the issues discussed, including with recommendations for the Cambodian government and relevant corporate actors that source their products from the garment industry in Cambodia.

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<sup>1</sup> (NIS, 2018) <https://www.nis.gov.kh/nis/CSES/Final%20Report%20CSES%202017.pdf>

<sup>2</sup> The Most Favoured Nation (MFN) and the Everything but Aim Preferential Trade Agreement

<sup>3</sup> The United States of America (24%), European Union (46%) and other (30%) in 2017.

<sup>4</sup> Shah, 2010; Hun, 2008

## I. Pervasive Sexual Harassment in the Garment Industry

Recent research on women garment workers in Cambodia indicates high levels of workplace sexual harassment, with women regularly reporting to their union representatives that they faced harassment not only by their employers or supervisors, but also by their peer male workers at their workplace. Such women also report sexual harassment outside the workplace, especially on the way home from factories, as a regular and daily risk that they have to deal with. Such findings are corroborated by an increasing volume of published studies on sexual harassment in the garment industry, in Cambodia and elsewhere.<sup>5</sup> For instance, a report released by Care International in 2017 found that nearly one third of women workers have been sexually harassed at their workplace during the last 12 months.

Despite the common occurrence of sexual harassment in factories and in broader Cambodian society, the country does not have specific legislation dealing with sexual harassment or sex discrimination. However, the 2009 Criminal Code does define and criminalize sexual harassment, with Article 250 reading: “Sexual harassment is *an act that a person abuses the power which was vested to him/her in his/her functions in order to put pressure again and again on other persons in exchange for sexual favour.*” *Sexual harassment is punishable by an imprisonment of between 6 (six) days to 3 (three) months and a fine of between 100,000 (one hundred thousand) Riels and 500,000 (five hundred thousand) Riels.* The article 172 of the 1997 Labour law also simply states that “*All forms of sexual violation (harassment) is strictly forbidden.*”

The above definition of sexual harassment in the 2009 Criminal Code is very narrow and fails to accurately identify the nature and scope such of harassment. For instance, it doesn't criminalize sexual harassment in public spaces among strangers, nor does it take account of workplace harassment perpetrated by subordinates or peers ('abuse of power' seemingly implies the harasser is in a position of authority). Efforts are underway by women's rights civil society actors to amend the legislation to bring it in line with the ILO Declaration on Fundamental Principles and Rights at Work,<sup>6</sup> which states that sexual harassment can happen at any place, and manifests itself in three forms: The first of these forms is the **physical form** which ranges from physical violence to touching and unnecessary close proximity. Second is the **verbal form** of harassment which includes comments and questions about appearance, life-style, sexual orientation and offensive phone calls; and third is the **non-verbal form** which manifests as such behaviour as whistling, sexually suggestive gestures, or the display of sexual materials.

The poor legal drafting and subsequently low levels of prosecutions, combined with legal loophole together with the lack of gender equality culture and poor respect for human rights have enabled corporate actors to pay less attention to addressing sexual violence at the workplace. This has resulted in repeated petitions demanding resolutions to address 11 priority problems affecting the lives of all Cambodian workers.<sup>7</sup> These petitions were submitted by women workers and civil society organizations to nine key

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<sup>5</sup> Care International 2017, The Solidarity Center, and the International Labour Office

<sup>6</sup> <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

<sup>7</sup> <https://www.klahaan.org/take-action>

government ministries<sup>8</sup> during International Women's Day 2019, International Labour Day 2019 and the 2019 Sixteen Days of Activism Against Gender-Based Violence.

Sexual harassment is often seen as a less serious crime compared with physical violence, as it usually does not cause physical harm. However, harassment often results in serious and prolonged psychological trauma for survivors. In the case of women workers, this hinders their ability to perform their work and subsequently affects their productivity levels. More importantly, many such women have also spoken of lasting impacts of sexual harassment on their mental health, wellbeing and personal relationships.

Employers should recognize and act upon their human rights obligations under the UN Guiding Principles on Business and Human Rights to respect, protect and remedy any human rights abuses. Furthermore, in this day and age, there is a growing consumer awareness of labour rights issues and a desire to purchase clothing from suppliers that are certified as providing ethical employment to their factory workers. Hence, there is also a business imperative among buyers and suppliers to ensure that workers enjoy a safe working environment for workers. Crucially, this must include taking steps, in close collaboration with government and civil society actors, to proactively prevent and address sexual harassment in garment factories.

## II. Fixed-term duration contracts (FDC) and Pregnancy-related discrimination

There are two types of labour contract specified in Cambodian Labour Law: **Fixed-term duration contracts (FDCs)** and **undetermined duration contracts (UDCs)**<sup>9</sup>. Article 67, paragraph 2, suggested that the utilization of FDCs can be renewed for one or more times, but cannot surpass the maximum total duration of two years. Any violation of this rule leads the contract to automatically become an UDC."<sup>10</sup> FDCs, in reality, are commonly offered to workers in the garment industry while UDCs are rarely used. Union activists and labour rights advocates have been vocal against the growing number of factory owners who have maintained workers' employment contract under FDCs beyond the legally permissible period or moved workers onto FDCs as a means to divide, control and exploit workers.

The utilization of FDCs has affected all garment workers but the severity is reportedly vastly different between men and women workers. Women workers have long reported experiencing discrimination at various stages of the employment process, including during hiring, promotion, and termination. A union activist who spoke on condition of anonymity claimed that many garment factories opted to hire women workers under FDCs so that the factory owners do not need to renew women workers' employment contract if and when they have become visibly pregnant. The length of FDCs varies between a period of two weeks to one month, or one month to three months, or three months to six months, or nine months, or one year. She further added that most women workers have been working continually without even a week, or a month interruption under the FDCs for over two years, and in some cases even longer than five years, yet their employers would keep their employment under FDCs.

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<sup>8</sup> Ministry of Women's Affairs (MoWA), Ministry of Labour and Vocational Training (MoLVT), Ministry of Interior (MOI), Ministry of Justice (MoJ), Ministry of Foreign Affairs and International Cooperation (MFAIC), Committee to Combat Trafficking in Persons, Council of Ministers (CoM), and private sector

<sup>9</sup> Article 66 of the 1997 Cambodian Labour Law

<sup>10</sup> Article 67(2) of the 1997 Cambodian Labour Law

In addition to this matter, forced overtime and quota production system have also been seen as contributing factors forcing many pregnant women workers out of the job. Working overtime is a common practice and also a tacit expectation of each worker from the employers especially during the high season prior to the outbreak of the Covid-19 pandemic which slowed down the demands from the market. Many pregnant women workers claimed that they have been forced to work overtime, without adequate breaks to rest or use washrooms and those who refused to take on such long hours reportedly face retaliation from supervisors.<sup>11</sup> This is in contravene to the article 137 of the Labour Law which stipulated that “the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week, and article 140 (b) the extension of the daily working hours cannot exceed one hour; (c) Hours of work cannot exceed ten hours per day.”

Many pregnant women workers further claimed that they have faced difficulties to stay on the job and often voluntarily resign from their work at the factories as their pregnancy progressed, because their managers verbally harassed them for being “slow” and “unproductive.”<sup>12</sup> It is believed that most employers used this tactic to get rid of pregnant women workers so that they do not have to pay pregnancy benefits to women workers as per the Labour Law has guaranteed, a three months’ maternity leave irrespective of the duration of service, maternity pay for workers with a year’s uninterrupted service and a childcare support, etc.

The usage of FDCs has hugely impacted workers’ rights, to the extent that they are even unable to form unions or join existing ones to represent their interests and concerns. This is because the use of FDCs makes it easier for employers to “let go” of those workers who are active in union. When employment is more precarious, workers are less likely to “rock the boat” by demanding their rights to safe working conditions. All these short-term contract workers, no matter what the circumstances of their termination, are just given very low compensation after losing their jobs.

To add insult to injury, following years-long controversial debate around the legally permissible duration of the usage of FDCs, Cambodia’s Ministry of Labour and Vocational Training (MLVT), in 2019, issued the instruction on determination of the types of employment contracts to clarify on the determination of type of employment contract and it stipulated that the maximum duration of the FDC can be up to 4 years including the first contract and subsequent renewal.<sup>13</sup>

### **III. Unpaid Care Work and Childcare Amenities**

It is documented that over 60 percent of the garment factories are located within, or in close proximity to the capital city – Phnom Penh – and the rest are situated in bordering provinces namely Sihanouk Ville, Kampong Speu, Kampong Chhnang, Svay Rieng, Takeo and Kandal.<sup>14</sup> This geographical distribution of garment factories in Cambodia has not been in favor of many women workers who are not local residents of such places. Most women workers who migrated from their respective provinces for work have to live in a

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<sup>11</sup> Human Rights Watch, Work Faster or Get Out, page 8, 2015/

<sup>12</sup> Human Rights Watch, Work Faster or Get Out, page 8, 2015/

<sup>13</sup>[https://www.camfeba.com/legal/Announcemet.%20Notification%20\(LL\)/2019/Instruction\\_on\\_Determination\\_of\\_Employment\\_contract\\_Eng.pdf](https://www.camfeba.com/legal/Announcemet.%20Notification%20(LL)/2019/Instruction_on_Determination_of_Employment_contract_Eng.pdf)

<sup>14</sup> <https://www.aseanbriefing.com/news/cambodias-garment-manufacturing-industry/>

small shared rental room with their peers<sup>15</sup> and are not able to commute back and forth between their homes and workplaces on a daily basis due to distances or other reasons.

This situation forced women workers, including new mothers to leave their young babies and/or older children with their mothers in their respective hometowns. They would occasionally visit their children during the weekend and/or public holidays only. In this case, children are deprived their parent(s) at a young age e.g. three months old. There was a case that a colleague or visited a community in Kampot province for an interview in 2017. She visited a family that had an elder woman who was taking care of her 6-month old granddaughter. The child's mother left home for a job in Phnom Penh since the child was 3 months; she managed to visit home during the holidays and she could make a phone call every evening. After the interview, my colleague was leaving the house and then the child started crying. The grandmother described that child always cried when she saw young women because she thought that person was her mother. This situation is unlikely to happen for middle income, or upper income families and their kids but it is a very common situation for the working poor.

The article acknowledges the ongoing effort made by the Cambodian government to enhancing the accessibility, affordability and quality of the provision of early childhood services for citizens. The government's efforts on this matter is evidently reflected in the article 186 of the 1997 Cambodian Labour Law<sup>16</sup> and in the adoption of the National Policy on Early Childhood Care and Development in 2010 which subsequently led to a development and implementation of the 2014-2018 National Action Plan on Early Childhood Care and Development by the Ministry of Education, Youth and Sport, Education, with the vision that "all young children, from conception to less than six years of age, especially disadvantaged, vulnerable and poor children, shall be provided with care and development services"<sup>17</sup>. By the time of writing this article, a new National Action Plan for the period 2019- 2023 is being developed.

However, such a promise of childcare provision has yet to materialize. This is on the one hand due to our deeply ingrained unjust social norms and unequal gender roles placed upon Cambodian women. It is only relatively recently that mainstream women's rights advocates have begun pushing hard on issues related to equal parenting responsibilities and the gendered burden of unpaid care work. It is therefore perhaps too early to tell whether social norms are shifting in this regard, though some have posited that social media may have a positive role in sparking and platforming the necessary societal conversations. Cambodian women are traditionally expected to take care of everyone in the family, especially children and elderly people – this expectation is applied to both working and stay-at-home women and it is usually strongly internalized by women themselves. On another hand, it is due to the poor and unevenly applied law enforcement which enables many factory owners to circumvent their legal obligations under the Labor Law. There are reports that where childcare centers in factories are created, they are just a small room and have no or few staff.<sup>18</sup> Many factory owners have failed to set-up a fully

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<sup>15</sup> <https://www.khmertimeskh.com/76384/garment-worker-housing-survey-disputed/>

<sup>16</sup> Article 186 of the 1997 Cambodian Labor Law: Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a crèche (day-care center). If the company is not able to set up a crèche on its premises for children over eighteen months of age, female workers can place their children in any crèche and the charges shall be paid by the employer.

<sup>17</sup> National Action Plan on Early Childhood Care and Development 2014-2018, p.1

<sup>18</sup> <https://www.khmertimeskh.com/32870/empty-space-for-daycare-at-garment-factories/>

functioning day-care facility in the factory premises or provide substantial financial allowance to women workers to place their children in the private childcare centers.

Adding up to the aforementioned factors, one shall not ignore the fact that the Cambodian childcare landscape operated by the state and private corporate actors is still on a limited number – *even if growing*. Most childcare centers are still concentrating on catering their services to a privileged few in selected geographical areas with specific scope of children age. A 2019 survey conducted by the Planete Enfants & Developement (PE&D) highlighted that the average individual monthly fees for childcare service in Phnom Penh was around \$250, not including meals, and tuition or extra fees (enrollment, uniforms). The same survey found there to be a few childcare providers that are targeting middle-income families, charging around \$150, but they remain the exception. Others concentrated in rich districts like BKK1, BKK3 or Tuol Kork are targeting international families with fees of up to \$400 per month per child. According to these figures, even the cheapest childcare fees are exorbitant, unrealistic and unaffordable expense for many working families in the garment sector, with the minimum wage of \$190 in 2020<sup>19</sup>. This means that a majority of low and middle-income women rely on family support for childcare, e.g. mothers or other women relatives to take care of children, however, not everyone is fortunate enough to have family capital for childcare. Hence, they have to leave the labour market to take care of their newborn child because they cannot afford childcare fees.

It is imperative that the top brands such as Adidas, H&M, PUMA, Marks and Spencer, etc., who have been sourcing their products from Cambodia and been making gigantic profits from the Cambodian workforce look at this matter as a top priority and of urgency. As cited in a recent World Bank report<sup>20</sup>, research into childcare shows that a lack of childcare options for workers can translate into high employee turnover and absenteeism, low work satisfaction, and productivity. There is a Community-Based Childcare Initiative by World Bank, funded by Japan Social Development Fund (JSDF), and implemented by PE&D in collaboration with 22 garment factories across Cambodia to provide child care in the community.<sup>21</sup> This is expected to create an opportunity for women to go to work and providing sufficient care to the children. A similar type of childcare service should also be made available in all factories and this will need cooperation from the government and employers. The government and employers might need to revisit the initiative of the childcare center in individual factories and ensure that the center is sufficient and complied with national laws and standards. It is necessary for not only workers and children but also helps the companies enhance their corporate reputation with international buyers.

#### **IV. Conclusion**

From a policy standpoint, is the Cambodian government's primary legal obligations under the Cambodian National Constitution and international human rights instruments of particular the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) to respect, protect and promote the full enjoyment of human rights for all citizens.

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<sup>19</sup> <https://cambodianess.com/article/garment-workers-to-get-us190-minimum-wage-in-2020>

<sup>20</sup> <http://documents1.worldbank.org/curated/en/404631569817435376/pdf/Project-Information-Document-PID-Community-based-Childcare-for-Garment-Factory-Workers-Project-P171063.pdf>

<sup>21</sup> [https://planete-eed.org/wp-content/uploads/2020/01/CBCC-project-summary\\_2020.pdf](https://planete-eed.org/wp-content/uploads/2020/01/CBCC-project-summary_2020.pdf)



The Cambodian government needs to take swift and decisive action to protect garment workers who are producing for international apparel brands. The Cambodian legal framework lacks a basic and comprehensive anti-discrimination law which would both fully define discrimination against women, and also provide a legal mechanism for relevant enforcement and remedies in the Cambodian courts. Cambodian laws do not actively promote women, neither in the treatment of survivors in the formal justice system, or the representation of women judicial professionals.<sup>22</sup> There is no law that defines discrimination. There is no law allowing a woman to file a court claim for discrimination, nor is there a comprehensive law on sexual harassment in public spaces, schools and workplaces.<sup>23</sup> The Labour Law also does not require equal pay for women. Amendments to existing legislation and the drafting of new specialist legislation is therefore required without delay.

The Cambodian government must uphold its treaty obligations and implement article 5 of CEDAW which requires Cambodia to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women and to implement the CEDAW Committee's 2019 concluding observation, paragraph 25 (a), which requires the government to systematically "assess the impact of measures adopted to combat gender-based violence against women and girls, and continue to explore and adopt innovative approaches to address the root causes of such violence." This means that the Cambodian government must recognize the burden of unpaid care work and its impacts on women's employment and develop options for affordable childcare centers in Cambodia so that men and women can participate in the labour market on an equal footing, and ensure that women are not falling behind after marriage and/or childbirth. The Cambodian government should work to narrow down and close the gender gap, if Cambodia is to realize its commitment of "leaving no one behind" as stated in the Sustainable Development Goals.

Another crucial action that the Cambodian government should prioritize is to strictly regulate and regularly monitor the working conditions and environment inside the garment factories. The Cambodian government can consider introducing a "carrot and stick approach" to incentivize and/or penalize any corporate actors that have failed to establish safe working environment, or set up full functioning childcare amenities inside their factory premises. Furthermore, any garment factories that have been found guilty of using FDCs as a means of union-busting and/or to get rid of visibly pregnant women workers or new mothers, should be met with harsh criminal punishment and significant financial penalty.

On the employers' side, garment sector employers, buyers and other actors should build on recent efforts, such as the *Community-Based Childcare (CBCC) for Garment Factory Workers* which is being implemented by PE&D to providing sustainable, affordable, safe and quality childcare services for young children of garment factory workers and help the garment factory workers strike a better balance between their private and professional

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<sup>22</sup> In Cambodia's courts, it's a man's world – with the effects felt by female employees and victims alike  
<https://www.phnompenhpost.com/national-post-depth/cambodias-courts-its-mans-world-effects-felt-female-employees-and-victims-alike>

<sup>23</sup> CSO's oral statement presented to the CEDAW Committee during the 74<sup>th</sup> review session in Geneva, 2019

lives, while improving child development because supporting childcare can also help companies enhance their corporate reputation with international buyers and access higher-value markets.

Further, they should also build on *CARE's Enhancing Women's Voice to Stop Sexual Harassment (STOP) program*<sup>24</sup>, to hold themselves accountable for preventing and responding to harassment in their factories. Complaint mechanisms that are available and accessible to factory staff, and other initiatives such as a women's contact point should also be initiated and a comprehensive training package rolled out, accompanied by clear guidelines that are clearly and comprehensively communicated. Workplace amenities such as bathrooms should be well lit and hygienic, and surrounding areas should be safety-audited and upgraded accordingly, to reduce the risk of sexual and gender-based violence in and around the factories. Employers who violate the labor rights of garment workers must face swift penalties to reduce the culture of impunity, and the unethical use of FDCs and union-busting practices must cease immediately.

Greater corporate accountability for upholding human rights is needed. If not, the predominantly women workers will continue to experience sexual harassment and pregnancy-based discrimination, inadequate housing and infrastructure, forced overtime, and anti-union practices that neither the government nor major brands have adequately addressed (hrw- work faster or get out).

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<sup>24</sup> <https://www.care-cambodia.org/stop>