

APPLYING THE CONCEPT OF DECENT WORK TO CAMBODIA'S TEXTILE INDUSTRY: THE ILO'S ROLE IN ENSURING STATE COMPLIANCE TO INTERNATIONAL LABOR LAW

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ABSTRACT

The objective of this paper is to give an overview on the situation of workers in the textile industry of Cambodia. These persons, young girls and women in their majority, deal not only with very low salaries and extremely demanding journeys, but also sexual harassment, unlawful firings of pregnant women, forced overtime and unattainable production targets, among others. What can be done by the international community (encompassing States, International Organizations, NGOs and multinationals alike) to tackle these issues, and to ensure that the decent work standards put forth by the International Labor Organization are respected in Cambodia's garment factories? The answer to this question is multifaceted, but certainly involves cooperation between different actors – and, most importantly, actual interest in improving the working conditions of these women, something that has arguably been lacking from the analyzed actor's side.

KEYWORDS: Cambodia; International Labor Law; Decent Work.

INTRODUCTION

May 19th, 2015. A van carrying 38 garment industry workers – more than the maximum capacity of the vehicle – is hit by a speeding bus, leaving 18 workers dead, seven in critical condition and 13 injured (Pheap, Consiglio, 2015). This could have very well been an isolated fact: an unfortunate casualty that was aggravated by the violation of security standards, something that happens in virtually every country of the world. However, this is just a tiny expression of a much bigger issue that occurs in Cambodia.

Flashback to May 2013. Exactly two years before the accident above, two Cambodian factories collapsed within the span of four days. Even though there weren't as many casualties (two workers dead, and around 30 injured), the consequences could have been disastrous. As it is highly unlikely that two buildings that follow all security standards would simply crumble on a short time, those events drew international attention to Cambodia and sparked a much-needed debate around the country's textile

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industry and the various violations to human rights and national and international labor law that occur within these factories (Cheang, 2013; Unknown Author, 2013).

In this line, given the structural character of labor rights violations in Cambodia's garment industries, this paper begins by pinpointing what exactly occurs inside these factories. Then, it will analyze the multiple forms of violations to International Labor Law in which Cambodia incur, for it is the state's duty to ensure that the industries in its territory are not breaching these laws. Finally, the paper will present recommendations to both multinational enterprises and to Cambodia, and will highlight how the international community and, namely, the International Labor Organization – ILO can improve the living quality of the Cambodians.

DEVELOPMENT

“They're not able to travel with dignity. It's the greed of the industry and the lack of money the workers have. It's unacceptable”. Those are the words Dave Welsh, representative of American NGO Solidarity Center, used to describe the outcome of the accident of May 19th, and it gives interesting insight to the situation of garment industry workers in Cambodia. For the purpose of this paper, his speech will be divided and analyzed in three parts, rearranged in the following order: (i) worker's lack of money, (ii) industry's greed and (iii) dignity.

Worker's lack of money: breaking the cycle of poverty

Regarding the first topic, it must be said that minimum wage in Cambodia is a long-time issue that has been recently showing improvements, especially in 2014, following a series of peaceful protests. Said protests were dealt with extreme violence by Cambodian police, in a clear violation of the worker's right to collectively demand raises and right to freedom of speech, and ended up with five dead persons and many more injured (Kuo, 2015). Despite this fact, in the line with multiple recommendations by NGOs and the ILO (HRW, 2015), the government agreed on raising the minimum wage from \$80 to \$128 a month, 20% below the requested \$160 (Kuo, 2015).

Whereas of utmost importance, a raise on the minimum wage without effective inspection by state officials – another chronic issue in Cambodia – could be of little use to workers, especially those who work on clandestine factories, for the latter have a history of not complying with legal standards (Oliver, 2015). On this aspect, Cambodia is on the right track and the ILO has been working with both the government and international fashion retailers to minimize the side effects of changes. Indeed, many

companies have agreed to absorb the raise in salaries into their supply chain, consequently avoiding the loss of jobs of many Cambodians (Kourabas, 2014). This goes in line with the principles of the United Nations Global Compact (UNGC), an initiative aimed at businesses and their responsibility towards constructing a more socially just world.

Industry's greed: a double-edged knife

The UNGC, for instance, is the crossing point to the second topic, industry's greed. First and foremost, it should be said that greed is one of the basis of the capitalist system and is not a problem *per se*. However, when this greed becomes predatory and promotes extreme inequality and disparities – instead of being in line with the Declaration of Philadelphia and the Declaration of Social Justice for a Fair Globalization, and promoting development –, then it is the ILO's duty to act in order to guarantee the rights of those on the most fragile end of the rope: the workers.

That being said, the reason major industries hold factories in Southeast Asia should not come as a surprise; it is wide known that this region's conditions are extremely beneficial to business, all the way from wages and labor standards to taxation. And because of that, changing the situation in Cambodia and leaving other countries, such as Bangladesh or Vietnam for instance, to the *status quo* would not end the problem of exploitation, only change its address. A holistic and global approach should be employed when dealing with this issue, and the regional office of the ILO for Southeast Asia has been long working in this sense (HRW, 2015).

Regarding exploitation, in addition, the theme of subcontracts deserves especial attention. Subcontracting in the context of garment industries may be defined as “the outsourcing of cut-make-trim and any other functions from one production site to another” (HRW, 2015, p. 96). Just like greed, it is not by definition a neither harmful nor unlawful practice, and it is quite common among companies of various sectors, such as the technological one. What makes it a problem is when these subcontracts involve unfair exploitation of the workforce, a topic that will be later developed in the paper. This problem is aggravated by the fact that only factories with export licenses are subject to regulation by third-party monitor Better Factories Cambodia (HRW, 2015), which means the subcontracted sweatshops are exempt from such – and therefore more susceptible to breach labor law. The project itself is subject to many criticism regarding its effectiveness and transparency, and often connives with employers that exploit workers, according to many workers themselves (HRW, 2015).

As one would expect, big corporations such as H&M, Gap and Adidas take pride in saying that they do not support labor right's violations and that their supply chain is exempt from such (HRW, 2015) – after all, stating otherwise would be highly damaging to their reputation. On a simple analysis, indeed, they are technically not lying when they say so. They only do business with factories that comply with their standards of security and labor conditions, but then these factories subcontract smaller ones (often called sweatshops) to do part of the production – and it is within these sweatshops that most violations occur (HRW, 2015). These violations include, but are not limited to, the unlawful firing of women that appear to be pregnant, the employment of children, the over hours that far exceed the legally permitted in Cambodia and the harsh treatment of whistle blowers. These four aspects, for instance, are intrinsically linked to the human dignity of the workers, this paper's third and final point of analysis.

However, the argument of unknowingness is a fragile one: as well put by Oliver (2015), after a company has been involved with a couple scandals and nothing significant is done in order to rectify their practices, it is no longer an isolated case, but instead a business pattern. Companies must be held accountable for violations and even more for accidents that occur in sweatshops that, whether they officially know it or not, produce for them. A change in paradigm must come, one that understands that the companies actual knowledge is unimportant if there is a historic of violations and if they have not done everything in their power to seek information on the subcontractors. Much like the responsibility of commandants in International Criminal Law, companies have the obligation to know what happens under their watch, and should be held accountable for breaches to the law and to human rights.

Dignity: applying the concept of decent work to Cambodia's situation

The four main violations stated above (the unlawful firing of women that appear to be pregnant, the employment of children, the over hours that far exceed the legally permitted in Cambodia and the harsh treatment of whistle blowers) are intrinsically linked to the human dignity of the workers, this paper's third and final point of analysis. They have been tackled by the Declaration on Fundamental Principles and Rights at Work and by several ILO Conventions (namely, Conventions 29, 111 and 182), documents to which Cambodia is signatory.

In this line, and as will be clear as this section unfurls, the creation of more laws should not be the focus. Instead, to ensure the worker's dignity, the ILO must push for

more commitment from the State to inspect industries and to investigate cases of blatant violations. The most relevant violations that occur will be addressed in sequence.

Women's rights, sexual harassment and the unlawful firing of pregnant women

Over the last couple of years, Cambodia has taken important steps in expanding the access to healthcare to pregnant women and on passing legislation that protected women's rights (Cambodia, 2014). However, on the work environment, harassments are still common. Despite over 90% of the workforce on garment industries being composed by women, the supervisors and managers of the industries are generally male, and sometimes abuse of their hierarchical superiority and power to take advantage of the female workers.

Those actions often go unreported, because these women would rather endure daily pain and humiliation than have their contracts not be renewed. This situation is helped by the fact that short-termed contracts are the rule in Cambodian garment factories, even though both doctrine of Labor Law and the ILO discourage them, precisely because they put the workers on a position of fragility and disadvantage in relation to the employer (HRW, 2015).

Pregnant women commonly face yet another form of harassment: accounts say that, despite Cambodian Constitution forbidding the deliberate firing of women because of their pregnancy, many do not have their contracts renewed when their supervisors discover that they are expecting a child. In 2012, the ILO Report on Gender Equality in Cambodia's Garment Sector found that almost half of the women have faced some sort of unlawful discrimination, based on age, marital status or pregnancy. To worsen the situation, the burden of proof relies, under Cambodian labor law, on the discriminated person, which poses an extremely hard and unequal barrier to these women, given that their socioeconomic conditions shrink their access to justice (ILO, 2012).

Child labor

Child labor is also an issue in many Cambodian factories, especially in the smaller sweatshops. Apart from often being paid below minimum wage and working the same extra-hours as other workers (see topic 2.3.3.), child workers are also deprived from an important part of their lives: basic education. Their work is so demanding that they do not have the time or the energy to enroll in a school and have a chance at making a better future for themselves.

Extreme poverty and hunger force children into the workforce, and their lack of education or specialization of some sort makes it virtually impossible for them to break the cycle of exploitation (Oliver, 2015). Cambodian law bans night work for children and allows kids from 15 years old on to be employed in factories – but only after their 18th birthday are they allowed to do heavy work (HRW, 2015). The law, therefore, is in compliance with the international standards put forth by the ILO; however, the effectiveness of such laws are highly questionable.

The NGO Human Rights Watch found cases of children as young as 12 years-old being employed. Oliver (2015) points in the same direction, and presents the case of a 17 years old girl who has been doing the same job (sewing piece of cloth onto a T-shirt) for over four years. Their work journey lasted 14 hours at times.

In March 2014, the Cambodian Labor Ministry imposed sanctions on six factories that actively employed children aged below 15. Many union leaders, however, were concerned that those children would be dismissed and be put into a situation of socioeconomic vulnerability (HRW, 2015). There is no simple answer to this issue, but an economic support from the government to these extremely poor families (through a monthly payment of a minimum wage for each children that enrolls in a school, for example) could be a form to deal with this grave breach to human rights.

Forced overtime, production targets and bonuses

Even though the law states that workers should have a maximum 8-hour long workday, what happens in reality is quite the opposite in Cambodia. They are forced by their supervisors to take several extra-hours per day on a regular basis, so they can meet a given day's production targets (Sweatshop, 2015). At times, their supervisors will not allow them to drink water or go to the bathroom, and will constantly scream at them to work faster, something that could be understood as keeping the workers in an inhumane work environment – and even maintaining them under slave-like conditions, for their journeys are extremely long, for they do not have time for much besides their work and for they are paid very poorly (Sweatshop, 2015; HRW, 2015).

Some factories go even further with their exploitation: they tell workers that a financial bonus would be in order if they meet a daily quota (a factory, according to Human Rights Watch 2015 Report, *Work Faster or Get Out*, offered an extra 75 cents of dollar per worker if they were able to sew 130 blouses under 10 hours). Then, this quota would be met or even surpassed, and the supervisors would not pay the promised amount to the workers. Overtime also often goes unpaid by factories, and the workers,

due to their fear of being sent home, do not blow the whistle. According to Better Factories Cambodia (HRW, 2015), 82% of factories oblige workers to perform from 3 to 5 extra-hours per day, well above the limit allowed by Cambodian Law for urgent circumstances and special cases (2 per day, or 12 per week).

The treatment to whistle blowers, the right to protest and to collectively demand

The final point that should be addressed regards those brave workers who do not comply with the various forms of abuse that they are subjected to and decide to speak up – and for that are severely punished. Many factories fire workers that try to organize independent unions or simply do not renew their contracts. Human Rights Watch (2015) also presents a case of a competent woman that was rapidly fired after the supervisors discovered she gave some colleagues the number of an NGO that promotes decent labor in Cambodia.

The fact that every union must give their employers a list with the names of its members and leaders makes it easy for them to identify and fire “unproductive workers” – that is, the recurring argument employers use to fire union leaders without causing a lot of backlash. When firings do not happen, persecution, verbal harassment and even physical threats are used to make these employees refrain from blowing the whistle. As one should imagine, if there isn’t enough inspection to prevent blatant violations such as child labor, there certainly isn’t for the protection of whistle blowers too.

Moreover, given the brutal way with which the police treated peaceful protestors in October 2014 (as mentioned before, they asked for a raise in the minimum salary), it could also be said that the state is not the biggest ally to workers who want to improve their working (Kuo, 2015). Some NGOs, indeed, try to protect these workers and give them the necessary support to blow the whistle and even initiate legal proceedings against the factories they used to work for, but the situation is still much far from ideal (Sweatshop, 2015).

CONCLUSION

The main conclusions that can be drawn upon this analysis are: (i) Cambodia has begun to hear the desires of its population, and recently agreed upon a much-needed raise in the minimum wage; (ii) international corporations, especially those that take part in the UN Global Compact, must include the costs of the raise in the minimum wage into their supply chain, in order for jobs not to be lost and factories not to be

closed; (iii) Action that focus solely on Cambodia would not be effective if enterprises, due to the expansion of labor rights, migrated to other Southeast Asian countries; (iv) subcontracts are one of the main sources of labor rights violations, and the main reason why big chains are hardly ever held accountable for the recurring accidents; and (v) there are plenty of binding documents that defend the dignity of the workers and that promote decent work, what lacks in Cambodia is an effective inspection system, commanded by the state, that ensures the ruling of the law in the country.

In addition, for the situation in Cambodia's textile industries to improve, actions should be taken bearing in mind the following: (i) the strengthening of the inspection system of industries, with state officials ensuring that minimum standards respected; (ii) the immediate extinction of child labor, something that can only happen through more efficient state monitoring of industries; (iii) the effective protection by Cambodia's state of the employees that blow the whistle on the wrongdoings that happen in factories, guaranteeing their right to association, to free speech and to non-retaliation; (iv) the creation of policies on a national level to promote gender equality in order to diminish the number of cases of discrimination and harassment women face on their workplace, especially when they are pregnant; and (v) the regulation of subcontracting on an international level, making it a duty of the enterprise to approve the addition of a subcontractor to its supply chain – this way, no company would be able to say they did not know their products were being made in sweatshops that violate multiple human rights and security standards.

Finally, it is important to highlight that the role played ILO is and has been of paramount importance to improve the situation in Cambodia. Many studies have been made, some of which were used in this paper, and the Organization has worked closely with Cambodian authorities in order to push for improvements on its Labor policies. This is the ideal moment, however, for a broader action, and to bring due global awareness to the issue: the press has covered many scandals on the last couple years; reality TV has denounced the critical conditions; NGOs have released comprehensive reports on the topic.

Now it is time that the international community as a whole addresses this, and there is no better stage to do this at than the International Labor Conference, ILO's most representative instance. As not only state representatives would be present, but also unions from both employers and employees, the debate would certainly prove itself to be fruitful – and, perhaps, even some statements by industrie's representatives

defending the broadening of labor rights in Cambodia could be expected. A speech by the Secretary-General of the ILO on the topic would make the situation in Cambodia a topic of discussion that cannot be ignored – if not by the strength carried by his position, then by the action of NGOs during the Conference, as they would most likely use their pressure mechanisms, such as naming and shaming, to make the countries publicly acknowledge the many violations to labor and human rights that occur within the scope of the garment industries in Cambodia.

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