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The demand side of social protection: Lessons from Cambodia's labour rights experience

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The Demand Side of Social Protection

Lessons from Cambodia's Labour Rights
Experience

Alisa DiCaprio*

November 2011

Abstract

In fragile states, social protection programmes are often a kaleidoscope of projects financed and implemented by a variety of donors, government agencies and NGOs. Such an environment does not foster a strong sense of ownership by beneficiaries, which weakens the likelihood of sustainability in the absence of donor interest or government commitment. Loosening demand-side constraints may provide incentive to sustain social progress, but it is unclear what political or social structures can effectively facilitate voice in fragile states. Cambodia's unusual social protection trajectory offers some insight by presenting an example where labour rights has made substantial progress while all other protections lag. We assess whether the changed external environment might facilitate activism in other areas of social protection. Our analysis suggests that using an island of excellence to build institutions that open political space for activism can be a successful strategy in states where governments are unable or unwilling to provide comprehensive social protection systems.

Keywords: fragile states, Asia, social protection, Cambodia, social movements, labour standards

JEL classification: J51, J83, J88, K31

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1 Introduction

In less than a decade, Cambodia's garment sector has been transformed from a cluster of sweatshops where human rights violations were pervasive, into hundreds of monitored factories that are more likely to comply with labour law than they are to engage in forced overtime. In 2010, the ILO-affiliated monitoring mechanism found that 98 per cent of surveyed factories neither interfered with freedom of association nor engaged in anti-union activity.¹ This rapid evolution has not only spurred sustained growth in foreign investment, but also a reframing of the international perception of Cambodia from a dangerous hinterland to a viable production site for ethically branded clothes.

Despite these advances, overall indicators of social protection for Cambodia remain among the world's worst.² The reality is that the great strides that have been made in worker rights are effectively limited to one manufacturing sector and one category of rights. Beyond the garment sector, worker rights violations are a regular occurrence and social protection is limited in both coverage and diversity. In part, this rights gap reflects the roadblocks to domestic drivers, such as social movements, that can be a catalyst for the creation of sustainable social policies.

The challenges of creating effective social protection systems in poor countries are significant. Financing is a challenge when much of the population would be covered. Targeting the neediest is difficult in the absence of national social surveys. And while there have been notable innovations in social protection instruments around the world, successful interventions may not easily scale up and local adaption takes time.

But even if all of these supply-side issues are solved, it will not ensure the continuity of a social protection system in the long run. Dedicated spaces for state-society interaction are needed.³ This is because fundamentally, social protection policies are a redistributive decision made by the state. And if the state is not open or subject to pressure to redistribute, there is no incentive to continue income transfers once donor interest or assistance runs out.⁴ As the ILO points out, every government can afford social protection, it is just a matter of political will (Pal et al. 2005).

The political calculus a state undertakes in the decision to redistribute is largely a function of variables that moderate or facilitate the translation of domestic demand (Grossman and Helpman 2001). These can include the type of electoral institution, the degree of partisanship, and societal support for different interest groups. Social movements have been shown to be a powerful vehicle for demand transmission. But in

¹ Better Factories Cambodia (2010) 'Twenty Fourth Synthesis Report on Working Conditions in Cambodia's Garment Sector', 30 April 2010.

² Social Protection refers to social policies that address risk and vulnerability and which have a focus on reaching the poorest in society (Conway et al. 2000)

³ The importance of political spaces for negotiation of protection has been recognized, but until now, primarily limited to the literature on migration and social protection (see e.g. Sabates-Wheeler and MacAuslan 2007).

⁴ As Acemoglu and Robinson (2001) point out, redistributive policies are often seen largely as a useful tool to maintain government power, which suggests that unless the needy are politically active, social protection will not favour them.

fragile states, the divergence between formal rules and actual practice creates substantial additional challenges for the ability of citizens to engage with the state (Earle 2011). From the perspective of the social movement, its ability to achieve its objectives is dependent on the political opportunity structure that is in place. However, while it is clear that the policy context matters, there is little agreement in the literature as to exactly which institutions or norms are most likely to facilitate the translation of demand into supply (see e.g. Mares and Carnes 2009). Both donors and academia have recognized the need to better understand the politics behind social protection but this remains in the early stages (Niño-Zarazúa et al. 2011).

It is here that the case of Cambodia can yield the most interesting insights. The institutions and norms that define the new labour regime changed the political context facing other social movements. Because of existing evidence that protections stemming from local demand rather than donor projects are more likely to succeed (Devereaux and White 2010), the extent to which other actors use the spaces created by labour can inform donor efforts to promote sustainable social protection systems.

Section 2 presents the theoretical context that frames our approach to social protection and social movements. Section 3 looks at the gaps that exist in the current social protection system in Cambodia. Section 4 then looks at the story behind labour's ability to achieve high-quality and sustainable social protections. Section 5 details the institutions labour created, and Section 6 looks at whether they have been used by activists in other sectors. Section 7 concludes.

2 The power of political opportunity

The question of which features of the political context facilitate social protection has been explored through two different orientations. These include the government perspective—how the structure responds to interest group actions (see e.g. Giugni 1998) and the social demand perspective—how the structure influences the activities of interest groups (see e.g. Tilly 1995; Meyer 2004). Because of the unique structure of Cambodian social protection, we are able to draw from both traditions. The story of labour's success gives us insight into how the policy context was affected by the actions of forces outside the government. The subsequent question about the potential for the rise of new activism is a story about how this revised context might be expected to affect the development of subsequent social movements.

Our focus on the environment in which social movements operate rather than features of the movements themselves results from our interest in fragile states. Fragility is a condition defined both by characteristics of assistance and characteristics of the state. In fragile states such as Cambodia, the government by definition 'cannot or will not provide basic services' such as social protection.⁵ In these cases, the channels through which interest group demand is translated into government action may not exist or function properly. Interest groups, in these cases, must forge their own channels for influence. It is this observation that motivates this paper.

⁵ According to the DFID website, 'fragile states are countries where the government cannot or will not deliver its basic functions to the majority of its people, including the poor'.

The conceptual framework we adopt in this paper is drawn from sociological perspectives on social movements, supplemented by the development literature on fragile states. The political process approach to social movements explores how they might alter political opportunities in a way that promotes their chances of success. The literature on movement-to-movement spillovers offers a way to understand how nascent interest groups might be moved to action given the way that earlier movements altered the social and political context.

2.1 Changing the political opportunity structure

The political context in which a movement operates is an important determinant of the development and outcomes of social movements (e.g., Davis et al. 2005). The so-called political opportunity structure is the set of institutional and societal constraints that determine the development and strategic decisions made by social movements.⁶ It can consist of elements such as access to the political system, elite division, elite allies, and degree of state repression (McAdam 1996), though there exist a great variety of conceptualizations.⁷

The features of this structure that may limit opportunities are particularly common in fragile states, where state-society relations are often contentious. In fragile states, there is often a divergence between formal rules and actual practice, and political elites may see little benefit from engaging with citizens (Haider 2010). Where there has been violence, movements may be further hindered by damaged social networks, uncertainty about which state actor is in control and should be the target of lobbying, and a lack of qualified personnel to engage in negotiations (Earle 2011).

Identifying which features of the political context might be expected to promote spaces for activism is a challenge even within countries. Different types of movements are able to adapt to different conditions—for example, the pro-life and the pro-choice movements in the United States both developed in the same political environment but follow very different mobilizing structures (McCarthy 1987). An unwelcoming political structure might prevent some movements from forming, while being the source of motivation for others.

We attempt to circumvent this identification problem in our paper by offering a country case study where the field for activism around social protection is broad, but has so far moved in only one sector. This way we can assess how a particular set of institutions and norms were changed and whether the resulting context should contribute to organizing around related issues. Here, we seek to contribute to the literature on social movement outcomes. Giugni (1998) suggests that there has been an overly-narrow focus on policy outcomes, but that indirect and unintended consequences can be just as important.

⁶ Tarrow (1996) offers a definition of ‘Consistent—but not necessarily formal, permanent, or national—signals to social or political actors which either encourage or discourage them to use their internal resources to form social movements’.

⁷ The political process perspective has been building since Tilly (1978) and Eisinger (1973) but there remains no consensus in the literature about exactly what constitutes this structure (for a good summary of the debates and critiques see Meyer (2004)).

Section 5 in particular uses this framework to orient our discussion about the changes that were introduced to the political opportunity structure facing movements around social protection both before and after the changes wrought by labour rights activism. Specifically, we will focus on the importance of international alliances, changes to existing state structures, and the introduction of new spaces for state-society interaction.

2.2 Movement-to-movement spillovers

Our interest in this paper goes beyond simply describing the changes wrought by a successful social movement. And extend to exploring if these changes might positively impact subsequent movements. This is the key question for social protection outcomes because if changes in the political opportunity structure are accessible only to the movement that changed them, then we cannot conclude that these changes are helpful for social protection and should be encouraged.

To understand whether, or the extent to which, other movements might benefit from changes engendered by previous activism, we turn to the literature on spillovers. This literature is concerned with the way that distinct social movements interact with one another. It recognizes that they are not self-contained and often members identify with multiple groups in ways that can facilitate learning. In fact, Rojas and Heaney (2008) suggest that in order for a movement to be successful it must be able to benefit from spillovers from others.

Meyer and Whittier (1994) suggest the presence of spillovers is ubiquitous because movements often have goals that go beyond their direct policy objectives. Using Meyer and Whittier's framework, we explore in detail three transmission channels through which we would expect the labour rights experience to impact new activism. These are overlapping communities, shared personnel and changes in the external environment. Underpinning each of these channels is the consideration that the labour rights system that rose in Cambodia is seen globally as one of the great turnarounds in social protection. Landmark changes such as these can have a long-lasting and exaggerated impact on activism through their signal about opportunity (Meyer and Boutcher 2007). Starting from these three channels, in Section 6 we are able to explore both how these channels might work and also if there is evidence that these channels are used by other groups. But first we turn to look at the existing social protection situation in Cambodia.

3 Spaces for activism: the supply of social protection in Cambodia

Before we can assess the extent to which new state-society spaces created by labour are useful for non-labour activism, we need to understand whether there is incentive for new social movements to coalesce around social protection. In this section, we describe three dimensions of social protection in Cambodia—legislation, financing and implementation.⁸

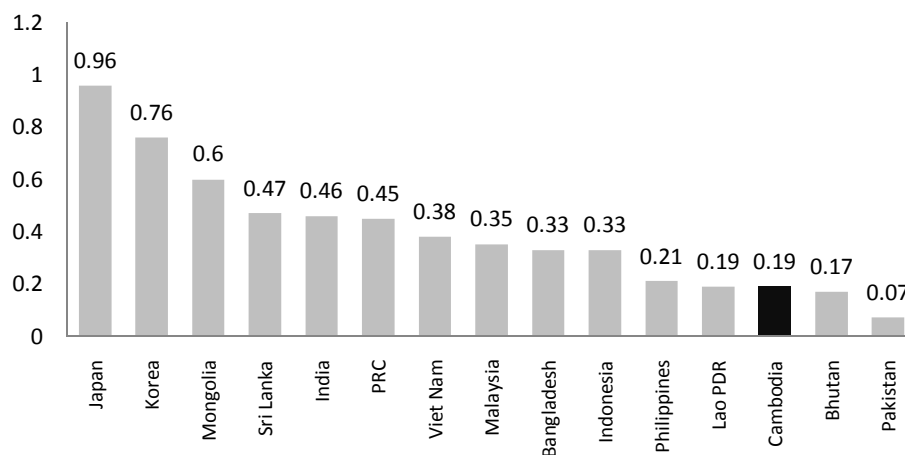
There is a strong legal basis for a functioning system. However, financing is almost wholly driven by foreign assistance. In the absence of government co-ordination, this has resulted in a lopsided protection system where legislation has not been

⁸ Harvey et al. (2007) call the range of instruments, financing and delivery capacity the 'three essential challenges' in social protection design.

operationalized in many sectors. This situation is typical of fragile states where the government is able to create the institutions of a state, but subsequently unable to carry out the functions of those institutions (Pritchett and de Weijer 2010). And it is here where social movements can have the greatest impact.

In comparison to other Asian countries, Cambodia scores relatively poorly in the Asian Development Bank’s Social Protection Index (see Figure 1). Cambodia has similar coverage indicators to other low-income countries in Asia, but lower expenditure (Tola 2007). Targeting of the poor is relatively good with 60 per cent of social protection spending going to them.

Figure 1: Social Protection Index (SPI) scores for selected Asian countries



Source: ADB (2008).

The limited reach of Cambodia’s social protection programmes is not unexpected in a country with pervasive poverty, high agricultural employment, continuing amputees from landmines and widespread child malnutrition. However in the sections that follow we will see that while resources devoted to social programmes are growing, the percentage of the population that is covered remains low and some vulnerable populations have not been targeted at all.

3.1 Legislation

While Cambodia scores poorly on social protection indicators, this does not reflect a lack of official recognition that vulnerable populations need protection. The Cambodian constitution lays down a fairly comprehensive baseline for the country’s social protection regime. It provides a number of mandates for social assistance and social security (for details, see Sann 2010; Chan and Ear 2004). While these elements identify several target populations, implementation has been largely limited to formal sector measures which are of limited application in a country where 85 per cent of the population is employed in the informal sector (ILO 2006).

Figure 2: Constitutional elements related to social protection

Article	Target population	Rights
36	All	Right to choose any employment
		Shall receive equal pay for equal work
		Right to obtain social security and other social benefits as determined by law
		Right to form and to be member of trade unions
72		The health of the people shall be guaranteed. The State shall give full consideration to disease prevention and medical treatment
46	Women	Commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited
	Women (esp. rural)	State and society shall provide opportunities to women ... so they can get employment, medical care, send their children to school and have decent living conditions
73	Women (and children)	State shall establish nurseries and help support women and children who have inadequate support
48	Children	State shall protect the rights of children ... the right to life, education, protection during wartime and from economic or sexual exploitation
72	Poor citizens	Shall receive free medical consultation in public hospitals, infirmaries and maternities
74	The disabled and families of those killed in combat	The state shall assist
75	Workers	The state shall establish a social security system

Source: Author's assessment.

Figure 2 illustrates that while many of the elements confer rights that citizens can demand, others use the legally ambiguous promise of 'shall' and require additional legislation before they become a source of entitlement. In some cases, this has been codified by law, for example, the law on social security schemes was passed in 2002 in fulfillment of Article 75. However, others such as the promise of opportunities to rural women, have not yet been officially drafted into the legal structure.

The absence of constitutional protection for the elderly is illustrative of the types of gaps in protection that are embedded in the Cambodian system. The elderly are a target group in most social protection systems. But in Cambodia, care for the elderly is explicitly not the provision of the state. Article 48 of the constitution states that 'children shall have the duty to take care of their elderly mother and father according to Khmer traditions'.

In an effort to promote both operationalization of existing constitutional protections and respond to donor concerns, the Cambodian government has articulated a National Social Protection Strategy (NSPS), which was drafted by and will be co-ordinated by the

Council for Agricultural and Rural Development.⁹ The NSPS consists of the four pillars (Figure 3) and is considered to be a part of the two overarching national development plans that lay out the government’s priorities—the National Strategic Development Plan and the Rectangular Strategy for Growth, Employment, Equity and Efficiency.

Figure 3: Scope of the Cambodian National Social Protection Strategy

Social insurance		Social safety nets			Complementary social welfare services	Labour market policies
Other insurance	Community-based health insurance	Public works	Transfers (cash or in-kind)	subsidies		

Source: Council for Agricultural and Rural Development.

The expected approval of this strategy in tandem with the passage of several key laws shows that the government is continuing to operationalize mandates for social protection in the Constitution. The existence of formal legislated rights gives citizens—to the extent that they are aware of their rights—a justification of their demands for protection. They are not asking for anything the government has not already recognized that it should be providing. But there remains a long way to go. A closer look at the types of programmes that are in place today reveals the imbalance in funding and attention.

3.2 Financing

Financing social protection in fragile states is often overwhelmingly provided by donors, which often results in uneven capacity. This is the case in Cambodia where the majority of funding is provided by its development partners (Braithwaite et al. 2009). The high proportion of foreign funding both ensures that some additional groups are being protected, but also distances the state from being considered as the decision maker by activist groups.

Fragile states often spend little on social sectors because of their inability to collect taxes and the preference to spend what little is collected on military and security spending or lavish ministerial benefits. Cambodia for example has very low tax revenues—only 11 per cent of GDP is collected, as opposed to 20 per cent in other developing countries (UNESCAP 2010).¹⁰

The results of donor-dependence are that donor interests can drive social spending rather than fund it. RBMG (2010) identified Cambodia’s development partners as the key actors in aid decision-making, although this is slowly changing. In 2002, the Cambodian government designated four ‘priority ministries’—health, education,

⁹ The NSPS has to pass through four stages of approval before it is officially endorsed by the Cambodian government. As of this writing, the first three are complete and the fourth stage is tentatively scheduled for February 2011.

¹⁰ In 2009, 3.1 per cent of Cambodia’s national budget was dedicated to social ministries, as opposed to 4.3 per cent for the Asian region.

agriculture and rural development. We can see in Figure 4 that donors have favoured health and education, and also public works. Other social protection ministries, such as the Ministry of Social Affairs, receive little attention. This is reflected also by government spending. According to the World Bank (2006), in 2002 the government of Cambodia provided only 5 per cent of what donors and NGOs contribute to the Ministry of Rural Development.

Uneven support for ministries involved in social protection also exacerbates inequalities among beneficiaries. If we unpack Cambodian government spending on social protection, more than two-thirds of expenditures are on micro-credit loans and social insurance with only one-third of Cambodia's very limited social protection spending left for all of the other programmes. The coverage component reveals that of the seven priority groups, four (the elderly, the sick, the disabled, and the unemployed) have less than 10 per cent coverage, and the highest coverage for a needy group only reaches 45 per cent (for children with special needs).

The way in which social protection is financed in Cambodia (and many other fragile states) can distance the state from social activism. Donor dependence ensures that beneficiaries cannot demand more services of the state in those sectors since they are not provided by the state.

3.3 Implementation

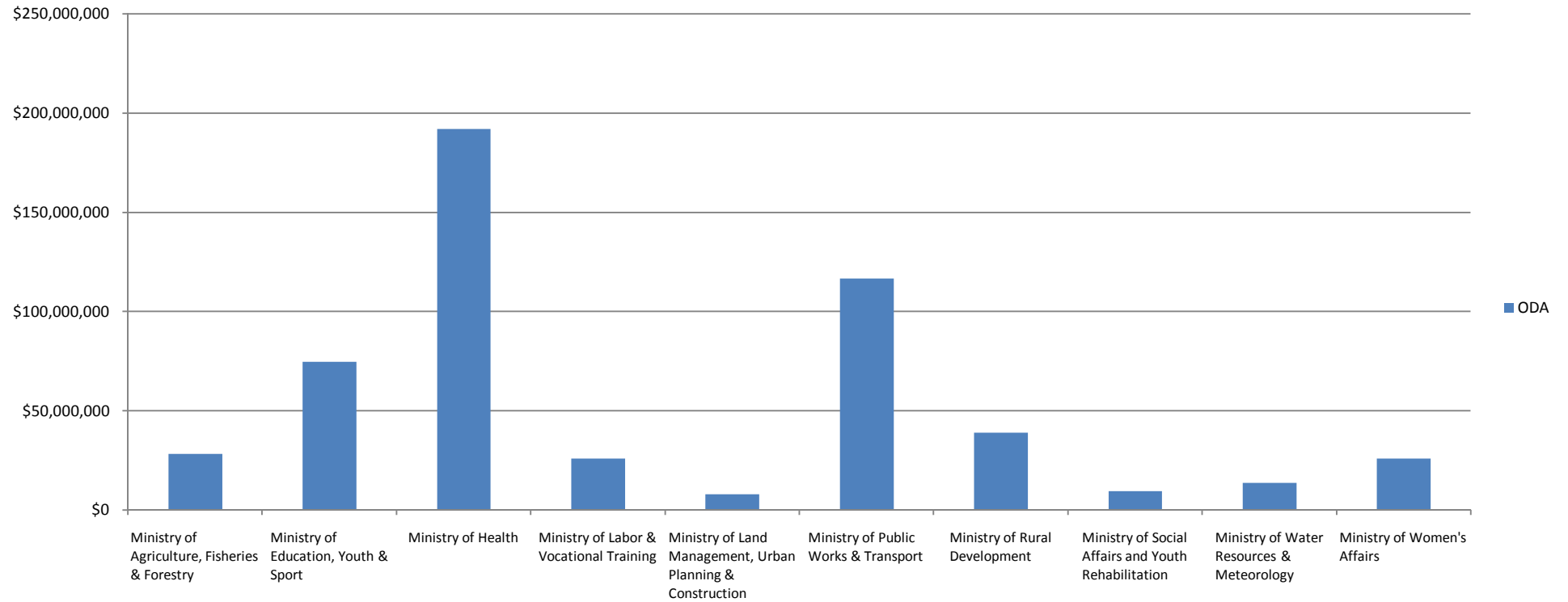
Part of the reason that health and education are relatively over-funded in Cambodia is because these are the two areas where some successful programmes have been developed. Health equity funds, for example, are considered to be well-developed even in comparison to other countries (Annear 2008). These provide resources to compensate health facilities for providing free services to the poor. 'Scholarship for the Poor' is another successful programme that was initiated in 2006 and one evaluation suggests that it has increased enrolment of the poor by 20 per cent (Filmer and Schady 2009). Success generates a positive funding—implementation cycle that sustains such programmes.

Beyond favoured sectors, implementation has proved to be a problem in almost all other sectors. While the most well-established social protection programmes are those which protect public sector workers, non-contributory programmes are relatively underdeveloped.

The gaps in social protection coverage caused by uneven financing are exacerbated by inefficient use of available resources. For countries where funding constraints are binding, the use of targeted programmes can increase resource efficiency by allocating greater benefits to a more restricted set of recipients. Until recently, targeting in Cambodia had been done on an ad hoc basis by whichever agency was disbursing funds. In 2006, the Ministry of Planning with the help of German funding, introduced the ID Poor Programme to identify poor households in rural villages. This has made inroads by completing surveys of more than 5,000 villages in eleven provinces with partner organizations extending this to other provinces.¹¹

¹¹ From Ministry of Planning Website 2011.

Figure 4: ODA disbursements by selected ministries (2009)



Source: Author's calculations based on Cambodian Development Council ODA database (accessed December 2010), conversion into US dollars.

Lack of implementation comes from a combination of competing priorities and also a lack of co-ordination within the government. As of 2010, there was no single ministry or group tasked with co-ordinating such a system. In addition, programmes are spread across different ministries, each with different objectives, resources and constituencies. This makes multi-donor pooled funding difficult.¹² As Figure 5 illustrates, the ministries with the greatest resources are largely those which do not target specific vulnerable groups, which can allow programmes to ignore needy groups.

Figure 5: Ministries involved in social protection disbursements

	Ministry	Targeted populations (where applicable)
Mandated to deliver social services	Social Affairs, Veterans and Youth Rehabilitation	Civil servants, veterans, homeless and destitute, victims of trafficking, children, the disabled, those affected by natural disasters
	Labour and Vocational Training	Private sector
	Women's Affairs	Women
related ministries	Health	(all)
	Rural Development	Rural population
	Education, Youth and Sport	Children
	Planning	(all)
	Public Works and Transportation	(all)
	Water Resources and Meteorology	(all)

Source: Sann (2010).

In this section, we highlighted the sources and causes of the gaps in social protection coverage in Cambodia that may serve as points of activism. While formal legislation supporting social protection is fairly comprehensive, donors favour ministries that do not target particular populations and the government favours entrenched public sector interest groups. This leaves many important intended beneficiaries—such as women or rural workers—uncovered.

Even in the face of these challenges, the labour rights regime in the garment sector has managed to target workers, fund on-going factory inspections and build permanent institutions. In the next section, we turn to this case and seek to understand how—given the limitations in social protection more broadly—did labour rights move so far ahead of other forms of protection so quickly?

4 The success of labour rights

The story of how Cambodia's labour rights regime moved so far ahead of other social protections begins with the design of its current labour law. In preparation for the country's first post-conflict elections, the UN Transitional Authority in Cambodia (UNTAC) helped to construct a domestic legal framework which covered some labour regulations; but which was largely seen as politically-oriented and inefficient (Hughes 1996). In 1996, the Ministry of Social Affairs, Labor and Veterans Affairs was established and tasked with rewriting the existing labour law in conjunction with the

¹² A Multi-donor Support Programme for Aid Co-ordination has been established, and all donors recognize the need for government ownership of programmes. However, a 2008 monitoring survey showed that only 44 out of 358 donor missions were co-ordinated (cited in RBMG 2010).

ILO, French Labor Ministry and an American labour group.¹³ The resulting 1997 labour law elevated existing regulations to the level of international standards of labour and worker rights.

At that time, the labour rights regime that prevailed in Cambodia reflected the state of the social protection system in general. A legal framework existed which technically met international standards, but implementation and enforcement was almost non-existent. When this author conducted garment factory inspections in the late 1990s, many owners expressed some surprise that a labour law even existed. And when presented with it, they often promised future compliance with the understanding that violations were tolerated and compliance was not expected by the labour ministry.

Cambodia's progressive new law alone proved unconvincing to global buyers who were concerned with labour rights. In 1998, an American garment factory owner had petitioned the Walt Disney Company to source from his Phnom Penh factory. His selling point was that a new labour law had been designed and implemented, and he could show that his factory met the requirements of that law and additionally had the best paid workers in the sector. Despite his efforts, the buyer explained that the reputation of Cambodia as a country where worker rights were regularly violated meant that they would not source from any factory there regardless of their credentials.¹⁴

The timing of Cambodia's new labour law coincided with an explosion of global anti-sweatshop activism. Increasing publicity of child labour and other worker rights abuses in factories in developing countries that supplied products to international brands mobilized activists to campaign for corporate responsibility and spurred a global trend towards ethical consumerism.¹⁵ Cambodian factories were caught up in the publicity through their production for some of the buyers being vilified in the international press.

The unexpected mechanism that changed the labour rights regime for garment workers was an obscure tariff preference conferred by the United States called the Generalized System of Preferences (GSP). While it did not cover garments, it did require beneficiary countries to show that they respected labour rights in order to remain eligible.¹⁶ In 1998, spurred by the global anti-sweatshop publicity and the pervasiveness of ongoing abuses, the AFL-CIO petitioned the US government to withdraw Cambodia's GSP eligibility based on evidence of violations of the labour rights eligibility provisions.

The submission of the petition led to a flurry of lobbying in Washington and publicity-generating strikes in Cambodian factories. Yet the petition itself did not cause any changes to GSP treatment. Instead, it prompted a coalition of like-minded government officials and labour interest groups to design an entirely new bilateral trade regime that

¹³ At that time, the AFL-CIO affiliated labour group was known as the Asian American Free Labor Institute (AAFLI), but in 1997 it was consolidated along with other regional groups by the AFL-CIO into the American Center for International Labor Solidarity (ACILS).

¹⁴ Author's interview with a factory owner and follow up, June 1998. See also, http://corporate.disney.go.com/corporate/cambodia_supporting.html

¹⁵ The ability of a social movement to link to international debates has been identified as an important determinant of success particularly in fragile states (Earle 2011). Della Porta and Tarrow (2005) call this the multilevel opportunity structure.

¹⁶ Specifically, it required that in the designation of a beneficiary country, it must be taken into account: 'whether such country has taken or is taking steps to give to workers internationally recognized worker rights'.

explicitly linked labour rights and garment manufacturing (see DiCaprio 2005 for a discussion). The result was the 1999 Agreement Relating to Trade in Cotton, Wool, Manmade Fiber, Non-Cotton Vegetable Fiber and Silk Blend Textiles and Textile Products Between the Government of the United States of America and the Royal Government of Cambodia (hereafter, the Bilateral Textile Agreement). It was not until the conclusion of this agreement that Cambodia's labour law was translated into de facto changes in working conditions (Guimbert 2010).

The regime change catalyzed by the petition was facilitated by three characteristics of the international economy. The first was that the United States was Cambodia's most important export market. This meant that the Cambodian government was sensitive to demands made by the US Government. The second was that the Cambodian government saw the GSP as an important signal to potential investors that Cambodia was a legitimate production site. The third was that international trade in textiles and apparel was largely governed by a quota system known as the Multi-Fiber Agreement (MFA). Under this regime, export markets, such as the United States could choose to change these levels at any time. Any change in quota levels would give manufacturers a price advantage over other countries that also exported to the United States.

The Bilateral Textile Agreement was unique because it offered Cambodia the incentive of increased quota caps if the country could show that producers substantially comply with Cambodian labour law. This recognized that a satisfactory labour law existed, and that the challenge was enforcement. After almost two years of negotiations, the United States convinced the ILO to oversee a monitoring mechanism and the precursor to what is now known as 'Better Factories Cambodia' began operation in 2001. In countries with a more diversified export base, such an agreement would have had a more limited impact. Cambodia was an unusual case where the clothing industry completely dominated manufacturing exports.¹⁷

The formal agreement expired with the end of the international quota system in 2005. But the monitoring programme continues today under the multi-stakeholder Better Factories Cambodia (BFC) programme. Both the government of Cambodia and the manufacturing association supported this because they recognize the benefits to be gained from being able to verify labour standards for branded apparel companies that are sensitive working conditions in their suppliers. It is this ability that attracts companies like Disney and the GAP, which explicitly brand their clothing as socially responsible, to buy from Cambodia.¹⁸

Beyond domestic implications of the factory monitoring programme, in 2006 the ILO in conjunction with the International Finance Corporation (IFC) decided to extend the BFC concept to other countries under the Better Work Programme. So far, pilot programmes have been introduced in Vietnam, Jordan, Haiti, and Lesotho. Other programmes are coming on line in Indonesia and Nicaragua. Like Cambodia, these programmes are largely focused on the garment sector, however, the greater vision

¹⁷ As Beresford (2009) points out, from 2001-06 clothing took a 95 per cent share of Cambodia's exports.

¹⁸ Salinger et al. (2005) notes that as much as one-third of Cambodia garment exports were destined for the GAP.

is to become more cross-sectoral.¹⁹ Evaluations conclude that the BFC programme has designed a good blueprint, though it is not without problems (see e.g. Hall 2010).

Today, Cambodia's worker rights regime in the garment sector no longer mirrors the shortcomings of the broader social protection system. But as in any heavily aid-dependent country, the changes can only be deemed a success if they have become embedded in the domestic governance structure. In the next section we look at whether this experience has opened up any political space for citizens to demand the rights to which they are entitled. We measure this in the extent to which the labour movement has created institutions and norms that can be used for purposes beyond labour rights.

5 Changes labour made to the political opportunity structure

The BFC sought to introduce political space in Cambodia's labour governance structure in two ways—by creating institutions that would give effect to the labour law, and by empowering workers to use them.²⁰ In this section, we look at how these two goals were accomplished, and whether, ten years later and after the official expiration of the programme, they have had a sustained impact. In addition, we evaluate both the institutions and norms that developed around the labour governance programme in terms of their potential to have spillovers into other types of rights and other sectors.

5.1 Institutions for rights enforcement

By creating or improving institutions that would give effect to the existing labour law, the BFC programme was attempting to bridge the implementation gap created by the government's failure to enforce its own legislation. Such gaps are typical in fragile states where resource constrained governments are often unwilling to divert resources to rights enforcement. In Cambodia, the labour law offered a solid framework on which to build a strong governance structure, but before the BFC was introduced, it was only being applied to promote labour peace for smooth production.²¹ The BFC programme approached the institution-building problem from three angles. First, a monitoring mechanism was designed to address information asymmetries that existed between factory owners and the labour ministry. Second, an Arbitration Council was established to process purported violations. And third, it attempted to increase stakeholder participation by loosening constraints on collective bargaining.²²

The monitoring mechanism introduced by the project was the core element in extending enforcement of the existing legal structure. Garment factories are often highly secure areas and beyond the assurances of owners, it was difficult to know if labour regulations were followed. The ILO created a tripartite committee that engaged all stakeholders in

¹⁹ Interview with Tuomo Poutainen, BFC, November 2010.

²⁰ This was in response to the Bilateral Textile Agreements requirement to 'to foster transparency in the administration of labour law, promote compliance with, and effective enforcement of, existing labour law, and promote the general labour rights embodied in the Cambodian labor code' (para. 10(A)).

²¹ In the latter 1990s, the Cambodia government was well-aware of the importance of this export sector and worked closely with the manufacturers to ensure the conditions for continuous production were met. During this author's factory inspections, factories where the labour law was applied were almost exclusively those where workers had resorted to violence in response to abuses.

²² The BFC actually set out five objectives overall, which are distilled here to three. See ILO (2001) for the list.

the monitoring process. Every year a sample of Cambodia's garment factories were visited, workers were interviewed, and an annual synthesis report was produced. These reports produced the information needed to determine if the law was implemented. It had an additional positive effect of creating a niche market for Cambodian producers. Since buyers could refer to regular reports about their suppliers, those interested in ethical sourcing could make decisions with full information. This served to increase sales as such a mechanism was not in place in other low-cost countries. Though the Bilateral Textile Agreement and its associated monitoring requirements expired in 2005, interest by buyers has kept this institution in place and reports and monitoring continue today.

The second institution-building effort focused on the Ministry of Labor. It has been historically underfunded and was not a 'priority' ministry. The resulting lack of bureaucratic capacity to engage in labour governance introduced a significant gap in the implementation of the labour law. When this author was in Cambodia there were two labour inspectors for hundreds of garment factories. Efforts to build capacity have had mixed results. In the early years following implementation, a US government official voiced the concern that while the Bilateral Textile Agreement was successful in increasing compliance, it had not increased the capacity of the Ministry of Labor to actually monitor.²³ Rather, the job was done by a third party, which was efficient, but failed to embed the notion of labour rights domestically.

While the Ministry of Labor continues to be beset by problems, it has made advances that have opened political space for workers. In particular, while it has failed to create the labour court provided for in the labour law, it has participated in the establishment of an arbitration council which has given ministry officials the skills to mediate collective labour disputes (for an evaluation of the its role see Adler et al. 2009). This council is a tripartite mechanism which hears collective disputes and issues jurisprudence publicly.²⁴ According to an industry insider, the Arbitration Council is one of the only institutions in Cambodia that can be considered to be almost free of corruption. This is particularly important in a country that lacks credible and independent judicial institutions. The spillover potential from the Arbitration Council is in its ability to hear cases from all sectors of the economy. While garment factory cases make up the bulk of the caseload, other sectors are increasingly using this tool.

The third feature of the implementation gap addressed by the BFC programme was the capacity of workers to engage in labour governance. Here the institution that was needed—collective bargaining—already existed, but was largely inaccessible to workers. BFC made efforts to loosen the constraints to collective bargaining. In the late 1990s, the labour ministry would regularly block union registration and or install their own representatives as union officials. Through a combination of education, capacity building and information sharing, the BFC opened political space by allowing for workers to gain a voice in governance that they would otherwise not have given Cambodia's slowly growing democratic tradition. Figure 6 illustrates the significant growth in both the number of unions and membership over the past decade.

²³ Author's interview, USTR 2005.

²⁴ Public information is particularly lacking in Cambodia where, as one author puts it, 'Though there is no law restricting access to court judgments, they are not publically available in any form, nor are they available for third parties to inspect through the court registries' (Adler 2005).

Figure 6: Union growth in Cambodia (1997-2007)

	1998	2004	2007
Enterprise-level unions	20	658	1203
Union federations	4	15	28
Membership	39,000	337,000	

Source: Lerner et al. (2007). Table 2.

But even as union power has grown, both the government and manufacturers have shown that they will sometimes continue to pursue self-interest rather than tripartite governance. On the government side, while Shea et al. (2010) detail the role unions play in the monitoring process maintained by the BFC, the ITUC (2007) points out that it was not until 2003 that proper collective bargaining agreements were concluded in the garment sector. On the manufacturer's side, after a recent living wage rally in 2010, 261 union leaders were fired for their participation. The government, after a delay, advocated for their reinstatement, which factory owners largely ignored.²⁵

These three developments suggest that officially, room has been made for garment workers in the labour governance structure. Transparency has increased, worker representatives are allowed to sit at the table, and labour ministry officials are more highly trained and able to participate in governance rather than collusion.

5.2 Norms of entitlement

Officially, Cambodia's current labour governance structure creates room for workers to participate. But in practical terms, are they able? If workers have not developed a sense of entitlement around their rights, or if their chosen vehicle for representation is constrained, then the de jure opening of political space is inadequate.

The importance of entitlement is related for the need for empowerment. In order for individuals to be empowered to take advantage of the political space open to them, they must move beyond simply being aware of the rights afforded to them by law. It is when consciousness becomes a sense of entitlement that workers are more likely to become active participants in governance.

In the late 1990s, a sense of entitlement around labour rights was clearly missing. The majority of factory workers, both then and now, were rural migrants who had never been exposed to a formal sector job. This inexperience, coupled with a Buddhism-based acceptance of suffering as part of life, exacerbated the susceptibility of the workforce to abuse and intimidation by unscrupulous managers. While today this argument sounds anachronistic in the early 1990s one of the tasks of the UN Transitional Authority in Cambodia (UNTAC) was to explain the meaning of 'human rights' to a nation that had never been exposed to such a concept. As the head of the Human Rights Component of UNTAC puts it, one of the goals of the comprehensive educational effort was to 'change the belief that ordinary people have no option other than to endure abuses'. (cited in Pokempner 1992: 23).

²⁵ <http://www.cleanclothes.org/news/over-200-cambodian-trade-union-leaders-suspended-or-illegally-dismissed-after-mass-strike-ends>

In addition to a missing sense of entitlement, the traditional vehicle for labour rights—unions—had been largely co-opted by politics in that period. In 1997, there were 20 registered unions in Cambodia (Sibbel 2004). At that time, the labour ministry refused to register unions that existed in more than one factory, which forced each new factory to organize alone.²⁶ Of the 20 officially recognized unions, only one was unaffiliated with a political party. This suggests that registration was fast-tracked where the union could also act as a party mechanism. Unofficial barriers were also high as factory owners selected their own worker representatives, held public votes, beat up union activists and otherwise intimidated those workers who tried to organize unions.

Awareness about labour rights spread quickly once the GSP complaint became public in 1998. The charges made in the document and the government's attempts to address them facilitated the transmission of information through NGO interest, US government investigations, and union activism. The international labour interest group which wrote the petition began to publicize it among their NGO partners. Exploratory factory inspections by the US embassy signaled that the allegations of worker rights violations were being taken seriously.

And finally, existing unions, in particular those affiliated with opposition parties, used the petition as an organizing tool. In 1998 there were numerous worker rallies in the capital city of Phnom Penh where workers repeated slogans that GSP enabled factory managers to abuse workers. When asked by this author what GSP meant, workers were universally unable to define it as a tariff preference programme, but rather explained that it was something that enabled factory owners to benefit at their expense.²⁷ Together these activities increased worker consciousness that the intimidation and abuse they endured during factory work did not have to be tolerated and that they could advocate for change.

Following that period of initial unrest, the environment created by the factory monitoring programme appears to have built the foundations needed for awareness to transform into a sense of entitlement. First, in contrast to the 20 unions in 1998, today as Figure 6 illustrates, there are about a thousand unions organized into a number of confederations. These numbers suggest that unofficial barriers and factory-level intimidation has decreased, although political affiliation and yellow unions continue to be a problem. And while official barriers to union registration have clearly relaxed, unofficial barriers such as violence to union representatives and workplace intimidation remain a part of factory life.

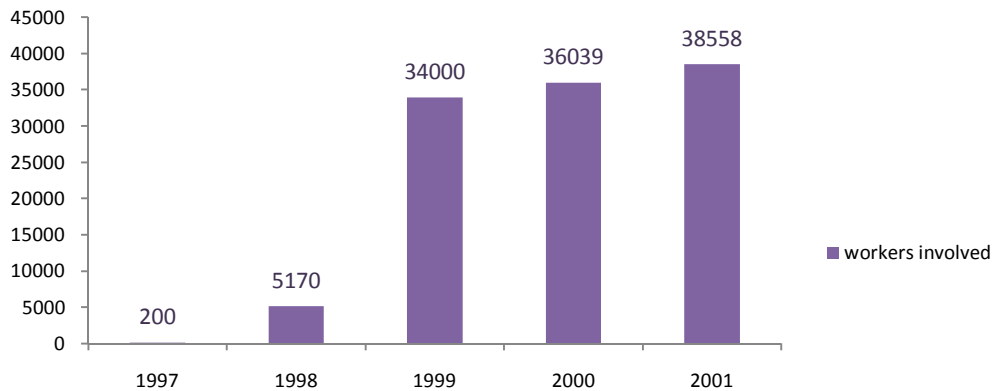
Another indicator that garment workers feel entitled to rights is that activism has increased, both in terms of strikes and in terms of number of cases brought before the Arbitration Council. As Figure 7 illustrates, the number of workers involved in strikes in Cambodia increased dramatically after the systematic application of the labour law and has continued to rise year by year. In 1998 only about 5,000 workers went on strike in the manufacturing sector. By 2001 (the last date for which data is available) more than 38,000 workers participated in strike activity. In terms of arbitration activity, in the

²⁶ This was specifically aimed at the Free Trade Union of the Workers of the Kingdom of Cambodia (FTUWKC) which was affiliated with an opposition party and maintained unions in various factory sites. Author's interviews, 1998.

²⁷ Author's interviews with workers at various rallies, Phnom Penh, June-August 1998.

first year the arbitration council heard cases, 18 were resolved. Six years later, in 2009, 125 cases were resolved, the vast majority of which were garment factory cases.²⁸

Figure 7: Strike activity by number of workers (1997-2001)



Source: ILO Laborsta Database (at www.laborsta.ilo.org).

The worker activism detailed here suggests that they have adopted a sense of entitlement to their rights. Using unions as a vehicle, garment workers have taken advantage of the political space open to them in the labour governance structure. Unionization allows workers to gain representation, strikes demonstrate their power, and arbitration gives them a role in how the labour law is interpreted.

Yet, despite these advances, problems remain. It is not clear that the governance process has convinced managers, factory owners or the government that labour rights are in fact, a right. The 2009 US Commercial Service report on Cambodia's business environment points out that labour disputes 'may involve workers simply demanding conditions to which they are legally entitled'.²⁹ And a culture of impunity for those who commit violence and intimidation against union officials continues. Even the most highly publicized cases of violence, such as the 2004 murder of prominent labour leader, Chea Vichea, remain unsolved due to official reluctance to pursue further investigation.³⁰

6 Assessing the possibility of social spillovers

The advances made in the garment sector are significant, but cannot balance the lack of social protection and labour rights throughout the rest of the economy. Earlier sections have detailed the extent of the dichotomy. Here, we seek to understand whether the new political structure induced by labour rights might be used to promote other types of protections.

On the one hand, the labour rights governance structure was not built with the intent that it would impact other areas. The establishment of the labour rights regime was highly dependent on the unique features of the garment industry. Section 4 detailed the

²⁸ Specific case information available from the Arbitration Council at www.arbitrationcouncil.org.

²⁹ US Commercial Service (2009) *Doing Business in Cambodia: 2009 Country Commercial Guide for US Companies*.

³⁰ The particulars of this case were so shocking that two documentary films have been produced. Films include: *Who Killed Chea Vichea?* (2009) and *The Plastic Killers* (2007).

importance of brand image, export concentration, and the international quota system to the success of the labour rights regime.

But, on the other hand, the institutions for labour governance that have been created are not sector specific. Collective bargaining agreements and the Arbitration Council are accessible to any organized labour group. In addition, emulation is possible where other movements identify their issues with those of the movement that offered the demonstration effect (McAdam et al. 2002). In this section we take a closer look at the two major vehicles of spillovers—overlapping communities and personnel—to see if and how they might extend their experience with labour rights to other sectors.

6.1 Overlapping communities

Workers themselves can facilitate knowledge spillovers either sectorally by taking a job in a non-garment related industry, or individually by simply talking to their friends and neighbours about their experiences. Social movement theory has called these ‘informal networks of politicized individuals’ (Buechler 1990). The idea is that once a person has become involved in a social movement, it changes their actions in other spheres as well. This occurs because of a change in the individual identity of the worker, which lasts even beyond the conclusion of the movement that instigated it. In fact, Oberschall (1975) has suggested that the participants in opposition organizations will, at least in the early stages, be those who were previously active.

There are two communities that overlap with garment workers that we might expect would be influenced by the labour rights movement. The first is other formal sector workers outside the garment industry. As garment workers move to other jobs, they bring their activist identity and information with them. Since worker rights education is one of the activities of the BFC programme, we expect that garment workers are, on the whole, more educated about their rights than other individuals might be. And factory loyalty is limited, so there is a good deal of movement among garment workers. A recent ILO (2010) survey reports that 49 per cent of workers surveyed had previously worked at a different factory.

However, there are important limitations to worker-worker spillovers. While garment workers transfer between garment factories, it is unlikely that they will change industries. A survey of laid-off garment workers revealed that, of those that were not successful in finding new garment work, most sought low-end service industry jobs such as tuk-tuk drivers, food vendors, or nail-manicurists (ILO 2010). These small-scale jobs are often casual or informal and so there is less opportunity for knowledge transfers to result in activism.

The profile of a typical worker in a Phnom Penh garment factory reveals the reasons that garment workers are unlikely to change industries easily. About 90 per cent of garment workers are female, and most are single, young and have recently immigrated from a rural area (Chandararot and Darnet 2009). Since they have limited skills and experience in the labour force, there are not many alternative employment opportunities available to them. Even with factory experience, the main group of workers is involved in low-skill assembly operations, which are not readily transferrable to Cambodia’s other growing sectors such as construction and services.

A second overlapping community is rural workers. Most unionized garment workers emigrated from rural areas and return from time to time. While garment workers do not often return permanently to rural areas, their contact with their families is a natural channel for information flows. This is important because farmers in Cambodia are a particularly vulnerable group. In terms of natural disasters, the number of people affected in Cambodia was the fourth highest in Southeast Asia from 1999-2008 (IFRC 2009). The frequency of natural shocks is highly significant since more than half of the labour force is employed in single-crop agriculture where yields are dependent on the weather.³¹

But while farmers have been increasingly active in their demands for government assistance, there yet exists little evidence that their activities are any more successful. A clear example of this comes from the contrast between two protests in the capital city and the government's response. In August of 2011, 120 Cambodian farmers travelled to the capital city of Phnom Penh to pray at a temple near government offices as a protest gesture against land losses that threatened their livelihood. Most of them were arrested for handing out flyers and the government issued no official response.³² Around the same time the year before, tens of thousands of garment workers marched on the capital on strike to protest low wages. They were relatively unmolested and did not disburse until the government agreed to consider the matter.³³ The differences illustrate the distance that remains to be closed.

6.2 Shared personnel

Unions are another vehicle that can translate the experience with labour rights in the garment sector into other industries. They do this through diversification of existing unions to incorporate non-garment factories and through the demonstration effect whereby workers in non-garment industries form their own independent unions after observing the gains that are possible. This is the channel identified by Meyer and Whittier (1994) as 'shared personnel'. Here the personnel being the union umbrella groups that exist. Data from Arbitration Council cases (Figure 8) reveals several interesting features of union-level spillovers.

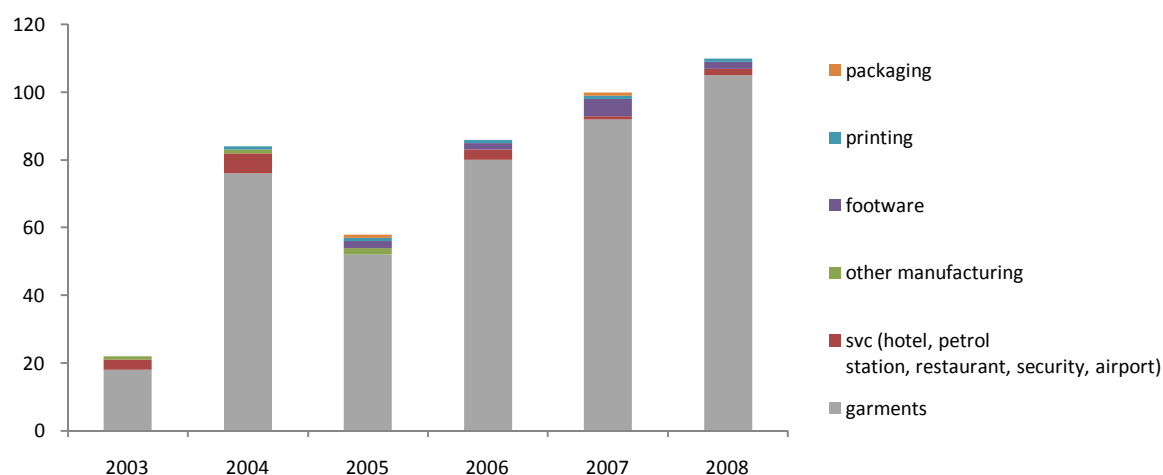
The first observation is that non-garment industries are organizing unions that are active in arbitration. While the vast majority of cases brought to arbitration are from garment factories, an average of 12 per cent of cases each year come from non-garment sectors. Many of these are in related industries, such as footwear and printing, which suggests that existing unions are diversifying their activities using the skills they gained in organizing garment workers. This is confirmed by a look at which union groups are most active in bringing cases to the Arbitration Council. Many of them, such as the Free Trade Union of the Workers of the Kingdom of Cambodia (FTUWKC) had their roots in the garment sector.

³¹ In the years around 2007, Cambodia was hit with droughts, typhoons and floods which disrupted crops and led to the spread of hunger, disease and loss of food stocks.

³² <http://www.voanews.com/khmer-english/news/social-issues/Cambodia-Villagers-Stage-Avatar-Themed-Protest-about-Land--Loss-128030568.html>

³³ <http://articles.latimes.com/2010/sep/19/world/la-fg-cambodia-garment-strike-20100919>

Figure 8: Arbitration Council Cases (by sector) 2003-09³⁴



Source: Arbitration Council Arbitral Awards, author's assessment.

The second observation is that the service sector constitutes a significant proportion of the non-garment cases for most years. Interestingly, the unions or workers who bring these cases to the arbitration are largely independent of the larger union federations. Or they are members of the tourism federation. This indicates that these unions were not the result of diversification of existing groups away from garments, but are in fact a different entity altogether. This suggests that there have been knowledge spillovers into other sectors from the observation of the experience of garments.

The fact that the service sector has been able to build up active unions may be the result of its interaction with customers who are more aware and interested in labour rights than domestic consumers. Adler et al. (2009) suggests that interaction with international clientele is particularly important for the tourism industry. Among domestic consumers, labour rights may be seen as a luxury good, whereas among world travellers, it is a basic right. This was clearly a driver for the garment sector, but may not exist in other sectors. As *The Economist* (2010) reported recently, in consumer surveys about wood products that 'barely a third of customers would pay a premium of 2 per cent for a certified product'.

The third observation is that the diversity of sectors bringing cases to the Arbitration Council remains small. This reminds us that while spillovers are possible and appear to be occurring, without the facilitation of outside interest, employer resistance and official obstruction still plays a large role in preventing the spread of worker protection. The construction industry is one where we might expect unions would form naturally—it is a highly dangerous profession where a worker can take home higher than the minimum wage, but is also subject to working in conditions where death from falls, machinery and electric shocks are common (Phnom Penh Post 2007; AFP 2008). Yet there have been only limited inroads made by the Cambodian Construction Workers Trade Union Federation. Even where their work is highly visible to international groups, such as in

³⁴ Data is available from 2003-10, however, for 2009 and 2010 most reports are only available in Khmer. We exclude them from this figure.

the restoration of the Angkor Wat complex, employers have refused to recognize unions (ITUC 2009).

Official obstruction to union registration has become more complex as the government has implemented greater transparency in the registration process. Yet it has still been able to prevent organizations such as the Cambodian Independent Teachers Association from concluding collective bargaining agreements on behalf of its members. Though this union has been active for many years, the government will not register it as an official union.³⁵

These observations suggest that the experience of the garment sector has had some important impacts on other parts of the economy. Unions have built out from their garment sector roots to encompass related industries. And new sectors have learned from the garment sector and established their own independent union groups. Most importantly, these unions are active in the Arbitration Council which suggests that labour rights are not just understood, but increasingly, being demanded.

While the expansion of labour rights has been slow but steady, attempts to diversify entitlement to other types of social protection have been less successful. The BFC programme has attempted to include social protection training in its educational component for example. The life-cycle approach to the education process includes education on more general social issues such as HIV/AIDS, entrepreneurial activities, and health initiatives. While health initiatives are seen as beneficial for both employers and workers, there has been official resistance to some of the life skills activities. This reminds us that the major roadblock to social protection expansion and diffusion remains the lack of understanding that social protection improves development indicators in the long run.

7 Conclusions

The objective of this paper was to address a missing link in the design of social protection systems in fragile states. Fragile states present additional challenges in terms of government capacity, political instability, conflict and weak financing capabilities. Efforts to build social protection systems under these conditions have focused almost exclusively on supply-side constraints. A recent report recommended suggested that a sustainable system would be promoted by expanding the range of instruments, harmonizing donor financing, and engaging with non-state actors for delivery (Harvey et al. 2007). To these, we would add the creation of spaces and opportunities for the expression of domestic demand.

A sustainable social protection system must ultimately be driven by domestic demand. In the short run, government decisions about social spending may be influenced by foreign assistance or by the idiosyncratic preferences of the ruling elite. But because of the redistributive nature of social protection, neither source of influence will guarantee a stable programme in the long run.

The demand component of social protection has been ignored for a number of reasons. Not least of them is the fact that the dynamics of social movements in fragile states are

³⁵ It is instead registered as a civic association by the Ministry of the Interior.

poorly understood and weakly conceptualized. It is here where the Cambodia case presented in this paper can provide some important insight. There are four lessons about how political space for social protection demand operates.

The first lesson is that there can be positive productivity impacts of social protection.³⁶ An early concern for the Cambodian government was that enforcing labour rights would raise costs in the sector to the point where it was no longer competitive. But rather than shedding jobs, firms created a niche, productivity improved. Having an example for governments that social protection can be resource-enhancing can remove some reservations governments have about allowing the creation of spaces for demand.

The second lesson is that links to international markets and consumers may offer an important source of leverage over a reluctant government. In fragile states, active attention by actors that are not subject to government coercion or repression may be an important catalyst. For labour rights, the global justice movement had an important leveraging effect on an otherwise unwilling government. For services in high end hotels, pressure comes from foreign clients. While labour and environment are two areas where external actors have had important impacts, the literature on social movements is positive about the role they can have in other areas (see e.g. Della Porta and Diani 2006).

The next two lessons are related to the fungibility of political space. A third lesson is that—even where governments are unsupportive—the demonstration effect of a single victory can activate social movements in other sectors. The importance of early quick wins in fragile states is already well-established. In terms of social protection, this suggests that visible sectors, or those with links across the country, may be the most effective way to start building networks that can sustain the system in the future.

The final lesson is that the natural linkages among activists can be used to spread information about entitlements which further cements the space that exists. In the case of Cambodia the links between farmers and garment workers for example was clear from the analysis, but has not been exploited.

The story we tell here about the role of political opportunities underscores a more fundamental message about state-society relations in fragile states. Open and inclusive relations can be a key driver of functioning democratic systems, stability, and poverty reduction. Thus by promoting the creation of political spaces available to interest groups in fragile states, donors can amplify the positive impacts of foreign assistance in these areas. Supply-side constraints in social protection are critical, but solutions should also pay attention to sustainability.

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³⁶ This has also been shown for the case of anti-sweatshop activism in Indonesia. Harrison and Scorse (2010) failed to find significant effects of anti-sweatshop activism on employment, though they found that wages did increase.

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