

Legal Protection of Construction Workers and the Right to Safe Working Conditions: Lessons from Cambodia

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1 Contextual Background

Increased globalization and norm diffusion since the late 1980s mean that businesses have a growing responsibility for the safeguarding of human rights (Mutua and Howse, 2001). However, the lack of concerted efforts to control the surge of privatization, deregulation, and liberalization of trade reflects the inability or unwillingness of states to establish a responsive system of governance to effectively tackle the increasing impacts of business activities on human rights (ibid.). The primary objective of economic development should be society-wide improvements, creating equal opportunities and empowering all people, so that they can become involved in the process and benefit from it (Dipholo, Tshishonga, & Gumede, 2014). The success of economic development must not be defined simply by economic indicators such as Gross Domestic Product, but should be seen as a holistic process that incorporates “economic, social, political, cultural and environmental needs of people to promote improvement in the quality of life for all” (ibid., p. 2926).

The impact of globalization on human rights has also been felt in Cambodia. In that context, 1993 can be seen as a significant milestone, with the adoption of a new constitution aimed at promoting liberal democracy and economic development, in an attempt to put the country’s violent past behind it. Economic and political development are closely linked: real economic growth is dependent on political stability, and high levels of political violence and human rights violations acted as a brake on Cambodia’s economic growth at first. It is only from 2000 onwards that Cambodian politics has been relatively stable (Un, 2011). Since then, the country has maintained a steady growth, averaging 7.7% annually (ADB, 2017), with the garment, tourism, agriculture, and construction sectors the main drivers of the economy. Nevertheless, Cambodia remains one of the poorest countries in Asia, which raises the question: does the country’s rapid growth actually serve the needs and interests of all people, especially those marginalized workers who participate in and contribute to

the development process? The adverse effects of business activities on human rights have become a reality and have grown ever more acute as economic growth continues.

Since the early 2000s, the construction sector has been one of the main pillars of the Cambodian economy; investment in the sector has escalated sharply, with a 267% increase to about \$1.65 billion in the first quarter of 2016, compared with \$448 million in 2015 (Phnom Penh Post, 2016a). In 2016, there were 473 construction projects affecting 3.7 million square metres of land (*ibid.*), requiring a labour force of between 175,000 and 200,000 construction workers (Cambodia Daily, 2014). However, construction is not only one of the most important sectors for contributing to the economy of Cambodia; it is also widely considered to be one of the most dangerous, highly prone to work-related injuries and fatalities. As part of the Decent Work country programme for Cambodia, the International Labour Organization (ILO) estimated that in 2009, about 1,500 workers died as a result of accidents at the workplace, mostly on construction sites. Poor working conditions and the lack of safety equipment and safety standards on construction sites are generally the main cause of incidents, which include falling from buildings, building collapses, electric shocks, and so on. In the words of a construction worker quoted in the Cambodia Daily (2014): “I need a harness belt, boots, and helmet to protect my life”. The risky nature of the work is arguably one of the main reasons why there has been a shortage of construction workers, in spite of their average earnings — between \$6 and \$7.5 per day — being higher than other industries, especially the garment sector (Khmer Times, 2015). According to Sovandeth, President of Cambodia Building Worker Confederation, “if there are suitable benefits and a safe job, there will be no shortage [of labour]” (Phnom Penh Post, 2012).

The government has recognized the appalling safety record of the construction industry and pledged to expedite the drafting of building codes, but it has not yet adopted a proper legal framework or monitoring mechanisms related to building and construction (Phnom Penh Post, 2016b). The government also acknowledges that even though building codes could help to protect workers’ safety, the implementation of any new laws will not be a quick process (*ibid.*).

Corruption in the sector, particularly in obtaining construction permits, and the limited sanctions which construction companies face for regulation violations, are further areas of concern and factors contributing to the infringement of construction workers’ rights. Most workers are paid by the day without an employment contract, a result of subcontracting labour for short periods, which makes regulating the sector extremely difficult (Cambodia Daily, 2014). “They stay at one site for a short time and then move to another”,

said a spokesman for the Ministry of Labour and Vocational Training (quoted in Khmer Times, 2015). Moreover, weak monitoring also results in accidents at construction sites often being kept hidden by construction contractors (ibid.).

This chapter examines the right of construction workers to safe working conditions under Cambodia's legal and policy framework as well as under relevant international instruments. It traces progress and challenges in the protection of these rights by looking at the effectiveness of monitoring and enforcement mechanisms, particularly within the ILO and Sustainable Development Goals (SDG) frameworks. The roles of relevant stakeholders, particularly the government, non-governmental organizations (NGOs), and civil society organizations (CSOs) are examined. These actors are seen as key for responding to the immediate and urgent need for systematic, comprehensive, and coordinated actions to deal with violations of this important right, as well as the root causes of such violations.

2 Linking the Sustainable Development Goals, Human Rights, and ILO Conventions

This chapter focuses on the detailed legal and regulatory framework of Cambodia with regard to worker safety, especially in the construction industry. It demonstrates that the effective implementation of the SDGs by countries will often depend on strengthening longer-term processes which have legally defined requirements for stakeholders and existing state enforcement institutions. For example, while SDG 8 calls for “decent work for all”, the implementation and realization of this broad goal is embedded in an ongoing process of creating and adapting Cambodian law to integrate it with existing human rights treaties and ILO conventions.

It is important to underscore the links between these various international agreements. For example, SDG 8 has a specific target (Target 8.8) which expresses the global goal towards worker safety in terms of the need to “Protect labour rights and *promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment*” (UN, 2015, emphasis added). This SDG target is inherently linked to existing human rights and ILO treaties and agreements and existing processes of monitoring and action (see DIHR, 2018). It can be linked at the broadest level to the Universal Declaration of Human Rights (UDHR), which states: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment” (UN, 1948, Section 23.1). In addition, the International Covenant on Economic,

Social and Cultural Rights (ICESCR) refers to the creation of “safe and healthy working conditions” (UN, 1967, Section 7.b).

The ILO’s Labour Inspection Convention of 1947, No. 81, contains the most specific commitments to worker safety and implementation of appropriate standards by states. It reads: “This ILO priority governance Convention requires ratifying states to maintain a system of labour inspection in industrial workplaces, to secure the enforcement of legal provisions relating to conditions of work and the protection of workers” (ILO, 1947). The more recent (2006) ILO Promotional Framework for Occupational Safety and Health Convention, No. 187, states that “This ILO Convention requires ratifying states to promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development of a national policy, national system and national programme” (ILO, 2006). In addition, human rights treaties provide for special protection with respect to woman and worker safety: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides for “The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction” (UN, 1979, Section 11.1.f). Thus, while SDG 8 contains a commitment to the global goal of “decent work for all” by 2030, its realization and implementation are part of a decades-long process developing more precise legal and institutional instruments.

3 Decent Work: Overview of the International Legal Framework

Guaranteeing the safety of construction workers is a complex undertaking. There are many factors contributing to the health and safety of workers on construction sites, including the intrinsically dangerous nature of construction work, workers’ behaviour and perceptions about safety, working procedures, workload, mental stress, worksite conditions, and safety management (Idrees, Hafeez, & Kim, 2017). For nearly a century, there have been global efforts, mostly led by the United Nations through its various specialized agencies, particularly the ILO, to develop and establish international legal instruments and policies in order to ensure decent work and safety for all workers.

In Cambodia, laws enacted at the national level apply to the whole Cambodian territory. Cambodia is a party to eight out of nine core human rights treaties, and to the eight fundamental ILO conventions, as well as the Employment Policy Convention, No. 122 (ILO, 1964). As a general rule, state parties to international treaties have an obligation not only to implement the treaties, but also to submit reports on implementation to the relevant

international committees. Cambodia upholds the principles of direct application of the human rights treaties it has ratified.

3.1 *Decent Work and the ICESCR*

Article 7 of the ICESCR reads:

The State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - ii. A decent living for themselves and their families in accordance with the provisions of the present Convention;
 - (b) Safe and healthy working conditions;
 - (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
 - (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
- (UN, 1967)

Within the context of Article 7, this section focuses on remuneration, and safe and healthy working conditions, which are essential for construction workers. In principle, however, human rights are interdependent and interrelated; thus the realization of Article 7, and in particular Article 7(b) depends on the implementation of other provisions of the convention. The Committee on Economic, Social, and Cultural Rights (CESRC) states that the right to work does not mean only the availability and accessibility of employment, but also the acceptability and quality of the employment, which includes safe and healthy working conditions and environment (CESRC, 2006, para 12).

3.1.1 Remuneration

The ICESCR requires that all workers receive “fair wages and equal remuneration” for work of equal value without discrimination. Fair wages go beyond minimum wage and include supplements to wages where workers are engaged in “precarious contracts” such as construction work (CESCR, 2016, para 10).

Equal value can only be determined through “ongoing objective evaluation” of factors such as “skills, responsibilities and efforts required by workers, as well as working conditions” within one company or across companies, rather than trying to compare whether types of work are exactly the same (ibid., paras 12–13, 18). Remuneration also includes other allowances such as contributions to “health insurance, housing and food allowances, and on-site affordable childcare facilities” (ibid., paras 7, 10). The remuneration must be sufficient for workers to afford social security, healthcare and an adequate standard of living (ibid., para 18), all of which have an impact on the occupational health and safety of workers.

3.1.2 Safe and Healthy Working Conditions

The CESCR notes the importance of preventative measures to avoid occupational accidents and disease (ibid., para 25). Rest, leisure, limitations on hours of work, and paid holidays help reduce “work-related stress, accidents and disease”, and must be ensured (ibid., para 34). The right to health is closely linked to safe and healthy working conditions (CESCR, 2000, para 11). Article 12.1 of the ICESCR “recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (UN, 1967). The convention requires companies to ensure good environmental and industrial hygiene at work sites, by adopting measures to prevent occupational accidents and diseases, minimize contact with harmful chemicals and substances, provide clean water and basic sanitation to workers, and reduce negative impacts on the environment (CESCR, 2000, para 15). The CESCR also takes the view that to prevent occupational disease, training is required on “behavior-related health concerns” and that “urgent medical care” should be available at work sites to deal with accidents (ibid., para 16). Construction workers can access available, acceptable, and quality healthcare outside the construction sites, only when they have economic resources to afford such healthcare (ibid., para 12). Workers must also be able to avail themselves of social security, especially when they are injured while working, regardless of the length of their employment (CESCR, 2008, para 17).

3.2 *Decent Work and the ILO*

The CESCR encourages states parties to incorporate the ILO conventions into their domestic laws in order to strengthen the “effectiveness of measures taken to guarantee the right to work” (CESCR, 2006, para 49). The purpose of this section is to suggest how international labour standards might positively impact the working conditions of construction workers. The ILO’s fundamental

conventions and other construction worker-related recommendations will be the primary guiding materials.

The ILO (2018b) lists some of the benefits of national compliance with international labour standards; these benefits include the creation of paths to decent work, improving country-specific economic performance, enhancing the global economy, and poverty reduction. The implementation of international labour standards can be especially useful to countries that lack certain labour laws of their own. Cambodia does not currently have sufficient laws protecting the rights of construction workers: it is therefore possible that the application of international labour standards could help to protect potentially vulnerable workers.

That said, the use of international labour standards has limitations. It can be difficult to force governments to uphold international standards — even those they have ratified. While international standards can help to shape national laws, they can sometimes act more as guidelines for social policy. However, there are countries in which international labour standards apply to cases on which national law is silent (ILO, 2018a).

It is also important to keep in mind that international labour standards will not apply exactly as written to every country. Individual nations have unique legal frameworks, which means that the application of international standards may require certain aspects to be amended. Likewise, international standards may need to be altered to better adhere to the diverse needs of a country's citizenry. While it is possible that international labour standards could positively impact the lives of Cambodian construction workers, caution is needed when suggesting that any government adopt standardized recommendations. Cambodia has a unique political climate and Cambodian construction workers also have diverse needs. It would be unrealistic to assume that every international standard related to construction work that has been applied successfully elsewhere could feasibly be implemented in Cambodia. The ILO itself recognizes that international labour standards must be treated flexibly when they are translated into national laws and practices (ILO, 2018a).

3.2.1 ILO and the Decent Work Agenda

Decent work has been defined as productive work for women and men in conditions of freedom, equity, security, and human dignity (ILO, 2008). During the UN General Assembly in September 2015, decent work was adopted as an element of the 2030 Agenda for Sustainable Development. The Decent Work Agenda consists of four pillars: employment creation, social protection, rights at work, and social dialogue. The ILO has published several resources related to decent work, including some that are country- and industry-specific.

The *Toolkit for mainstreaming employment and decent work* (ILO, 2008) provides a conceptual approach to the application of decent work, and gives a detailed overview of the four pillars, under the headings of (1) employment creation and enterprise development; (2) social protection; (3) standards and rights at work; and (4) governance and social dialogue. The Toolkit also includes a self-assessment checklist and guidelines for self-assessment.

One of the region- and industry-specific resources for the Asia-Pacific is the ILO's Regional model competency standards: Construction (ILO, 2015). These standards include skills and knowledge related to construction throughout the Association of Southeast Asian Nations (ASEAN) member states. Emphasis is placed on labour mobility and the need for skills recognition, as well as training systems and the need for improvement in the construction industry. These standards were developed to help identify the competencies needed in construction workplaces to enable the development of training resources. The standards can also be used as reference material for processes such as recruitment and the development of job descriptions. It is recognized that individuals will have varying needs according to personal and cultural circumstances, and so the standards must be flexible (*ibid.*). The standards include both generic competencies and vocational and technical competencies. While the standards define a general framework for the construction sector, the ILO does not consider them to be all-encompassing (*ibid.*).

The ILO has also published Cambodia-specific documents related to decent work, including the decent work country profile for Cambodia (ILO, 2012) and the Cambodia decent work programme (ILO, 2016). Cambodia's decent work programme focuses on three priorities: (1) improving industrial relations and rights at work; (2) promoting an enabling environment for decent employment growth and sustainable enterprises, with a particular focus on young people; and (3) improving and expanding social protection and occupational safety and health (*ibid.*). Although this programme was designed to focus primarily on decent work for garment workers, all of these goals are directly relevant to the Cambodian construction industry, and may help to promote the rights of construction workers.

MacNaughton and Frey (2011) examine the ways in which the ILO Conventions and Decent Work Agenda can work in tandem. Their article explores the potential of using a holistic human rights approach to achieve decent work for all. This approach reframes decent work as a set of specific legal obligations under both international and human rights laws in an effort to move beyond political committees. Three principles from the human rights framework embraced by the UDHR and the ICESCR are key: universality, interdependence, and the equality of all human rights. Applying these three principles

to work rights would arguably serve to integrate the ILO's Conventions and Decent Work pillars into a holistic framework (MacNaughton & Frey, 2011). Such a framework could potentially be of use to countries such as Cambodia.

3.2.2 Safety and Health in Construction: A Code of Practice

In *Safety and health in construction* (ILO, 1992), the ILO provides recommendations that can be used by both the private and public sectors to help ensure safety and health in construction work. It is recognized that local circumstances and technical possibilities will determine how far it is practical to follow these guidelines. The ILO offers guide on both general and specific aspects of a variety of construction activities. It also provides “a free, comprehensive, international, and digital training package in occupational safety and health for the construction industry” entitled ILO Construction and OS&H.¹

4 Cambodia's Legal and Policy Framework on Safe Working Conditions Related to Construction

It is important to state from the outset that the Constitution of Cambodia makes no specific provision for decent work for all; rather, the intention to promote decent work must be inferred from or read into the content of other provisions in the Constitution. A starting point is Article 31 of the Constitution, which can be construed to incorporate or recognize decent work.

4.1 1997 Labour Law

In principle, labour rights of Cambodian workers are protected under the Labour Law of the Kingdom of Cambodia adopted in 1997.² Specifically, this law sets the minimum standards for occupational safety and health (OSH) of workers that are required of private entities (Chapter VIII). For instance, Article 229 imposes obligations on private entities to maintain standards of hygiene and sanitation at the workplace while Article 230 focuses on appropriate measures to prevent accident risks such as falling, moving heavy objects, handling dangerous apparatus, and fire prevention. The Labour Law also demands that employers provide workers with primary health services (Articles 239–45). For enterprises employing at least 50 workers, a permanent infirmary

1 See https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/instructionalmaterial/wcms_161768.pdf.

2 Labour Law of the Kingdom of Cambodia, 1997. Adopted on 10 January 1997 by the National Assembly during its 7th session of its first legislature and promulgated on 13 March 1997.

equipped with adequate materials, bandages, and medicines, and capable of providing emergency care in the event of accidents or illness at the workplace, is compulsory. The cost of providing such basic healthcare should be borne by the employer.

Although the Labour Law does not precisely specify legal consequences or liability incurred by employers for failing to adhere to health and safety standards, it does state that employers are liable for all work-related accidents regardless of the personal status of workers (Article 249). According to Article 248, a work-related accident is defined as one that “happens to a worker during the working hours, whether or not the worker was at fault ..., inflicted on the body of the worker ... in whatever capacity or whatever place”. Every manager of an enterprise has a legal obligation to take appropriate measures to prevent occupational accidents (Article 250). The employer may be exempt from paying compensation in the event that the victim deliberately causes the accident, and compensation may be reduced “if it is proved that the accident was the result of an inexcusable mistake of the victim” (Articles 253–255). One can thus conclude that the Labour Law generally guarantees OSH of workers, and compensation in case of infraction.

However, it can be argued that the Law only provides protection to workers in the formal sector, particularly those in employer–employee relationships. This argument is based on Article 1, which broadly states the purpose and scope of the Law as follows: “this law governs relations between employers and workers resulting from employment contracts”. The term “worker” is defined as “every person of any sex and nationality, who has signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private” (Article 3).

In practice, there are many informal economy workers in Cambodia, as employers resort to this form of labour relation in order to bypass costly bureaucracy and adherence to labour standards. Construction workers are reported as informal economy workers because they usually do not have employment contracts. They work and get paid by the day. For this reason, they are considered as being particularly vulnerable to workplace accidents and poor standards of OSH.

4.2 *Regulations Concerning Construction and Safe Workplaces*

The 1997 Labour Law entrusts the Ministry of Labour and Vocational Training (MoLVT) with the power to issue special regulations or sub-decrees (Prakas) relating to certain professions or certain types of work (Article 231). Although the MoLVT spearheads the campaign to regulate and govern OSH, other

ministries are also authorized and obliged to issue special regulations to ensure OSH within their mandate and specialty. For instance, in relation to OSH on construction sites, the Ministry of Land Management, Urbanization and Construction issued two key regulations: Anukret No. 86 dated 19 December 1997 concerning construction permits; and Prakas No. 32 dated 20 March 2001 concerning the administration of construction sites, issued with the intention of maintaining public order and security and safety on construction sites.

In addition, the Ministry of Economy and Finance issued a joint Prakas with MoLVT — Prakas No. 659 on monetary fines for violations of the labour law, which is also applicable to workers in the construction sector. The annex to this joint Prakas consists of a list of 105 labour offences which are subject to fines, including absence of employment contract, exploitation by labour contractor, mass layoff without complying with legal procedures, failure to guarantee hygiene and safety of workers at the workplace, non-response to work-related accidents and compensation, restrictions on joining union, and lack of cooperation with labour and medical inspectors.

To be eligible to receive a construction permit, these regulations require construction companies to ensure public safety and well-being, including controlling environmental impact, on construction sites. During the construction period, inspectors from the municipal and provincial administration visit the sites: if the inspectors observe that the construction company is failing to meet its obligations to ensure public safety and well-being, the construction permit may be suspended or withdrawn completely (Anukret No. 86). However, there seems to be no regulation that holds the construction company accountable for failing to protect worker safety and well-being. Although there are some existing mechanisms regulating OSH standards in the construction sector, they are vague and confusing in nature. As a consequence, it is difficult to translate these ambiguous provisions from words into deeds. Clearly, a new law is needed which deals specifically with OSH of workers in the construction sector, and which sets out a range of specific conditions on construction companies which apply for a construction permit, such as providing safety gear, lifting equipment or proper safety training to workers. Such a new law is also needed to consolidate all relevant existing regulations and to standardize them into one comprehensive construction law. The government has acknowledged this shortcoming and has been working on a draft law on construction since 2014.

The enforcement of such a law, once enacted, will be another big challenge in terms of resources and time for implementation. First, the costs implicit in implementing the new law could become so high that contractors and developers are discouraged from complying, and instead continue to adopt unsafe practices. Second, the government must prepare a significant number of

trained personnel or experts in a number of fields who can provide the necessary training about OSH standards not only to construction workers themselves but more importantly to employers or developers, to make sure that their practices comply with the law.

4.3 *Occupational Health Standard in the Construction Sector*

The MoLVT has the main responsibility for ensuring OSH standards in the workplace, and three departments are mandated with OSH roles under the MoLVT: Department of Occupational Health and Safety, Department of Labour Inspection, and Department of Social Security which has now become the National Social Security Fund. Between 2001 and 2005, it is reported that the three departments jointly conducted 48 investigations, including some involving construction sites, and found serious OSH concerns such as insufficient ventilation and hot dust in the workplace, injury by falling objects, and falling from buildings (MoLVT, 2011). Current data seem to be unavailable.

In cooperation with the ILO, the MoLVT also developed and established the first OSH Master Plan 2009–2013, which was officially launched on 28 April 2009. The Master Plan (MoLVT, 2009) aims to promote OSH standards by identifying six priority action points:

1. Strengthen national OSH systems
2. Improve safety and health inspection and compliance with the Labour Law
3. Promote OSH activities by employers' and workers' organizations
4. Implement special programmes for hazardous occupations
5. Extend OSH protection to small enterprises, and rural and informal economy workplaces
6. Promote collaborative actions in the fields of hazardous child labour and HIV/AIDS projects to achieve stronger compliance.

As a result of the Master Plan, a number of ministerial regulations relating to OSH have been issued under MoLVT, four of which specifically focus on OSH standards on construction sites:

- Prakas No. 077 dated 30 March 2011 concerning information at the construction site
- Prakas No. 075 dated 30 March 2011 concerning sanitation at the construction site
- Prakas No. 076 dated 30 March 2011 concerning the prevention of risks associated with changing weather conditions at the construction site
- Prakas No. 078 dated 30 March 2011 concerning storage, waste management and cleanliness at the construction site.

In addition, a Department of Labour Inspection was created under the 1997 Labour Law (Chapter VIII, Section 2), with a key role in ensuring good working

conditions and providing training concerning health and safety of workers. There are 91 OSH inspectors (19 based in the ministry and 72 based in municipalities and provinces) who undertake inspection visits (MoLVT, 2011). Whereas in the past, regular inspection visits were made only in Phnom Penh City, since 2010 OSH inspections have been extended nationwide. During these visits, the role of the OSH inspector is to:

- conduct technical inspections on industrial hygiene (level of lighting, noise, dust, vibration and other harmful physical hazards)
- build an OSH network in the company
- promote medical check-ups for workers
- provide OSH protection to workers and prevent workplace accidents and occupational diseases
- advise employers and workers on OSH-related regulations and ministerial orders (ibid.).

If labour inspectors identify potential health and safety concerns and standards which do not meet the requirements of the Labour Law, they can issue a prior notice as a warning to managers of the company in question to address the problems (1997 Labour Law, Article 233). The notice should contain details of the specific violations of health and safety standards and demand that the employers address such infractions within a given deadline. The OSH inspector will write up an official report to the MoLVT for further action against the employers if they fail to respond by the deadline (Article 236). If the concern is particularly serious or requires immediate action, the inspector can issue an official report in writing directly without serving prior notice (Article 234). It is the mandate of the National Social Security Fund to hold employers accountable for occupational accidents and injuries. To regulate this matter, the MoLVT issued Prakas No. 243 dated 10 September 2002 concerning the notice for work-related accidents, formula for compensation and degree of disability.

4.4 *Cambodia's Obligations under the SDGs to Guarantee Decent Work for Construction Workers*

The term 'decent work' was coined by the ILO in 1999 as a strategic approach to fight poverty by improving working conditions and providing more social protections for all workers including those in the informal economy (ILO, 1999). Simply put, decent work is indispensable to a quality life with human dignity, which allows workers to meet basic needs for food, education, health-care, housing, and clothing (Frey and MacNaughton, 2016). This newly emerging norm failed to make its way into the eight Millennium Development Goals (MDGs) established in 2000, according to which leaders from 189 countries pledged their collective commitment to protect human rights, promote global

peace, and halve poverty globally by 2015. Despite significant success in reducing poverty (Sachs, 2012), it was strongly felt that the MDG framework missed a key piece of poverty's jigsaw puzzle, namely full employment and decent work. The ILO led a campaign to include decent work in its fight against poverty by establishing a monitoring and reporting system within the MDGs which adopted indicators for decent work. As a consequence, the decent work norm was eventually adopted within the SDGs — the successor of the MDGs — as Goal 8 on decent work and economic growth (Frey and MacNaughton, 2016).

Cambodia committed itself to the MDGs and realized four of the eight targets in child care, communicable diseases, maternal health, and partnership, which was considered a remarkable achievement given its struggle to transition from decades of civil wars. Although Cambodia's poverty goal of 19.5% was not met, there was a steady improvement and poverty was reduced from 47.8% in 2007 to 19.8% in 2011 (RGC, 2013). However, it is not possible to see how this poverty reduction benefited vulnerable groups such as construction workers, since there were no specific indicators to show this.

Given its success with the MDGs, Cambodia fully committed to the SDGs. As with other countries, the transition from the Cambodian Millennium Development Goals to the Cambodian Sustainable Development Goals (CSDGs) is an ongoing and challenging process. The main challenge is the localization process, determining how each SDG is integrated into national and local policies, plans, and strategies, which requires significant resources, and complex coordination between line ministries and local authorities. Poch Sovannady, Deputy Director General of Planning at the Cambodian Ministry of Planning, acknowledged the complexities of the task in 2017: "It has been a long and challenging process but we are making good progress. We had a lot of coordination with line ministries to review the goals and targets for their respective sectors but the main difficulty is the availability of data to establish the baselines and targets" (quoted in Khmer Times, 2017).

In 2015, the Cooperation Committee for Cambodia (CCC), an umbrella NGO bringing together many international and local civil society organizations, prepared a report on Cambodia's preparations for implementing the SDGs, noting that the challenge for the country is to adopt SDGs that "are feasible for the local context and that do not pose significant barriers to growth" (CCC, 2015, p. 3). NGOs have organized numerous events around implementation of the Cambodian SDGs; the Asia–Europe Foundation, for example, organized a workshop in Phnom Penh in 2015 on the SDGs and national implementation challenges. Tin Ponlok, Secretary General of the National Council for Sustainable Development in the Cambodian Ministry of Environment, spoke about the importance of sustainable development in Cambodia's future national planning.

Various ministries took part in the event, including the Ministry of Planning and the Ministry of Labour and Vocational Training (ASEF, 2015).

However, the localization process of CSDGs may be delayed or complicated further by other factors such as changing political and socio-economic priorities. The realization of the CSDGs requires considerable improvements in human rights, good governance, rule of law, corruption, transparency, and accountability — a common problem in many transitional countries such as Cambodia. Having escaped from protracted civil wars and mass killings, maintaining peace and security and achieving economic growth have been the overriding priorities of the Cambodian government (CCC, 2015).

With regard to the prosperity-related SDG targets, including Goal 8 on decent work and inclusive growth, approximately 70% of the targets have been addressed in the National Strategic Development Plan (NSDP). However, with regard to Goal 8, the priorities in the NSDP focus mainly on Target 8.5 to ensure gender equality between women and men and equal treatment between them in the workplace, and Target 8.7 to eradicate forced labour, modern slavery, child labour, and human trafficking. Improving working conditions and labour protection for workers in the informal economy sector, such as construction, do not feature in the NSDP or in other national policies. Given that the deadline for achieving the SDGs is 2030, it could be argued that it is too early to make an assessment of the Cambodian government's performance concerning Goal 8 as it might relate to construction workers; it is possible that this sector may be seen as more relevant and become a government focus at some future stage. That said, Cambodia faces many practical challenges if it is to realize all the SDG targets, including issues around the rule of law, governance, weak capacity of institutions and human resources, poor cooperation and strained relationships among development partners and stakeholders and, most importantly, the lack of localization of the SDGs (CCC, 2015).

5 Challenges Facing Cambodia in Guaranteeing Decent Work for Construction Workers

The continuing uncertainty about the ability of the labour law, regulations, and policies to protect labour rights of construction workers, described in the above analysis, has been exacerbated by a serious lack of concerted effort and attention from major actors — the government, NGOs, civil society, and donors. A retrospective view of growth in Cambodia since the early 2000s shows that the construction sector has contributed substantially to the country's economic transformation. Yet it is equally clear that regulating the sector to

protect construction workers has failed to keep pace with the growth. It is no exaggeration to say that construction workers receive virtually no attention from the key actors to address their poor working conditions.

5.1 *Power Relations and the Lack of Political Interest in Improving Decent Work in the Construction Industry*

In these decades of steady economic development, there is a risk that technical solutions to fix loopholes in laws, regulations, and practices to protect workers from getting harmed are thwarted by the political reality in Cambodia. Economic growth often breeds a human rights ‘governance gap’, especially in a developing economy with institutionalized corruption like Cambodia, where the government shows no real interest in imposing more regulations and obligations on businesses to guarantee decent work (CCHR, 2010). Furthermore, in their pursuit of national economic development, policy makers in any developing economy tend to adopt laws and regulations that attract investment and employment, while they also try to ensure that legal frameworks protect workers’ rights, directly or indirectly, to decent work and a safe working environment (ibid.). In Cambodia, the government seems to lack the capacity and the will to develop and apply such legal obligations for fear of losing investment; businesses are able to take advantage of this fear and exercise influence over the government and its policies (ibid.). This section therefore argues that the government’s economic approach and its relations with Cambodian business are the major bottlenecks in developing rigorous standards and laws that could protect construction workers from dangerous working conditions.

By 2012, four-fifths of the construction companies in Cambodia were owned by Cambodian investors while the remainder belonged mostly to investors from ASEAN and China, with 5.5 per cent and 2.7 per cent from the Republic of South Korea and European countries, respectively (Bruni, Luch, & Kuoeh, 2013, p. 24). This raises serious questions as to the connections between the Cambodian construction industry and political power.

Despite the outward adoption of liberal democracy since 1993, in practice Cambodia is generally recognized as an authoritarian regime which maintains control through a powerful patronage system. According to John D. Ciorciari, in its ideal form, a patron–client relationship confers mutual benefit on both parties — a patron of higher authority and status whose influence is used to give protection and benefits to the client, in exchange for various forms of support and assistance (Ciorciari, 2013). In assessing the overall quality of democracy in Cambodia, Un Kheang asserts that democratization has been derailed and “has evolved from unstructured competitive authoritarianism toward an authoritarianism characterized by the presence of a stable hegemonic party

system”, following a coup d’état in 1997 and subsequent wins for the party in the 1998 general election (Un, 2011, p. 546). Kelsall and Heng (2014) argue that the ruling Cambodia People’s Party (CPP) has conducted a campaign for power consolidation, achieving almost absolute control over the country by establishing a political settlement between the government and business (see also Laws & Leftwich, 2014). This politico-economic strategy has enabled poverty reduction by providing mass employment, thereby gaining regime legitimacy through economic growth and political stability, but at the expense of human rights.

The CPP has built a patronage system involving close ties with an inner circle of local business associates, military generals, top politicians, and relatives and family members of the Prime Minister Hun Sen, and an outer circle of development partners and foreign investors (Kelsall & Heng, 2014). In some situations, it is difficult to distinguish between government and business figures, not only because of their close financial relationships (CCHR, 2010), but because the two roles are often played by the same individuals. Un Kheang (2015) contends that this patronage regime leads to corruption, as business tycoons (as clients) are expected to contribute financially to their patrons, usually top officials in the CPP, or to support government development projects in various forms such as donations for humanitarian causes, while in fact they are courting influence, favour, and protection for their businesses. The same applies to government officials at all levels of the hierarchical power structure, as they contribute part of their income — normally earned through corrupt practices — to the party, while trying to keep as much as possible for themselves. In this way, they become loyal protectors of the party: the CPP receives their political support, and they are rewarded in return. The CPP can thus maintain the status quo by using elements of the socio-political patronage system. In response to the trenchant criticism of enduring widespread human rights violations in the country, the CPP asserts that it has brought peace, stability, and rapid economic development. Un Kheang describes the political economy of the CPP as a balancing act performed by the party in order to just keep the democratic institutions functioning, while the party retains its grip on power (ibid.).

This view is further reinforced in a recent controversial report of the NGO Global Witness on the wealth of Cambodia’s ruling family (Global Witness, 2016). The report reveals that the ruling family has steadily accumulated its wealth based on “a huge network of secret deal-making, corruption and cronyism” (ibid., p. 3) in a wide range of business sectors such as trading, finance, tourism, energy, mining, media, transport, construction, and real estate, which helps to strengthen its political stronghold and hegemony. The ruling family

has interests in seven major construction companies, which are often involved in government development projects (ibid., p. 10). High-ranking government officials and ruling party law makers are also closely involved with big business, including the construction industry (ibid., p. 16). There are currently about 700 business tycoons in the country, compared to just 20 a decade ago. A business tycoon (“oknha”) is an honorary title given to business people who make donations of at least \$100,000 to the government. Ideally, this donation should be used to contribute to the country’s development and acts as a display of commitment from the business tycoon to run ethical and responsible businesses in a way that will help develop the country and its people. However, the role of business tycoons is more aspirational than actual; the majority of them are calculating and opportunistic business people who are seeking to secure government contracts or protection for the operation of their businesses (Global Witness, 2016).

In light of the above observations, the sluggish progress in developing rigorous regulations in the construction sector can be understood by a closer examination of the power relationship between the ruling party and the industry. It is axiomatic that strict construction laws will not be in the interests of the businesses and those in authority.

5.2 *Lack of Involvement from NGOs and Weak Civil Society*

Despite their widespread occurrence, violations of labour rights in the Cambodian construction sector remain largely undocumented and receive virtually no attention from local advocacy NGOs and CSOs. This raises a number of questions. What drives advocacy NGOs and CSOs to prioritize one particular human rights issue over another? Why do labour rights of construction workers (or the lack thereof) seem to be widely ignored? Do advocacy NGOs decide independently on the issues that should be addressed in the context of the priorities and demands of local people? This section argues that the selection of particular human rights issues by NGOs and CSOs is very much influenced and steered by the preference of donor countries or international NGOs (INGOs), which results in a widespread neglect of, or lack of interest in, issues perceived as less important — including the labour rights of construction workers.

NGOs play a crucial role in upholding key international human rights treaties through local empowerment, advocacy, and monitoring of implementation. Since the 1960s, the United Nations — through the Economic and Social Council — has officially granted consultative status to NGOs due to their increasingly significant role in providing information concerning human rights violations across the world (Stamatopoulou, 1998). NGOs can also mobilize social movements against governments and for democracy and human rights.

Franz (1987) draws the distinction between governments reaching society at the macro level, and NGOs reaching it at the micro level. In other words, governments prepare national policies and measures for society as a whole, whereas NGOs represent the needs and interests of specific groups of civil society. Governments are highly susceptible to ineffectiveness, inefficiency, and subjectivity in addressing the issues of certain social groups (ibid.), whereas NGOs are in a better position to closely interact with local communities, especially in remote areas, and to understand the heart of their problems. As a consequence, NGOs are able to access more objective information at local level by using participatory methods, enabling them to carry out projects more effectively and efficiently compared to government agencies (ibid.).

Given the limited capacity of the government, due to its poor human resources, systems, and institutions, the reconstruction and rehabilitation process undertaken by Cambodia since 1993 has been donor driven in nearly all aspects, involving international development cooperation and assistance (Curtis, 1998). There are a number of studies that explain power relations between donors and NGOs and how they affect the credibility and accountability of NGOs' work, which could shed some light on the lack of attention to labour rights of construction workers in Cambodia. In general, advocacy NGOs and CSOs in Cambodia are highly donor driven, which undermines their autonomy in setting an agenda that responds to particular human rights violations. As a consequence, they tend to be more assimilated into the demands of donors rather than the actual needs of the local population (Chambers and Pettit, 2004). In assessing the accountability of local NGOs, Johnson and Prakash (2007) argue that some NGOs and CSOs conceive projects which follow the donors' agenda and resources, as these are strategically vital to the continued existence of the organizations and their activities. This attachment to donors reinforces the government's negative perception of the role and work of NGOs, as representing the donors' agenda (Marcussen, 1996), imposing foreign views, and overstating human rights issues in order to **securer** financial support from donors (Un, 2006). In turn, this affects the realization of human rights that depend heavily on a good relationship between NGOs and the government.

The vast majority of construction businesses in the country (80%) are owned by Cambodians, and the rest are owned by foreigners who are mostly Chinese and Korean. There is very little involvement in the construction sector from donor countries, making it very different to the garment sector in which many big brands from donor countries are involved, bringing extraterritorial obligations from their home countries to conduct socially responsible business. Data from the Ministry of Land Management, Urban Planning and Construction suggest that the construction industry employed

approximately 260,000 workers a day in 2017, an increase of about 30% compared to the year before (Phnom Penh Post, 2018b). Despite its importance as the second-largest driver of the country's economy, its high employment rate, and the dangerous nature of the work, the construction sector has failed to attract global attention for the improvement of working conditions as compared to the garment sector, which currently employs some 800,000 workers (Phnom Penh Post, 2018a).

The lack of general interest in improving working conditions on construction sites was highlighted by a protest of about 50 construction workers who demanded that the government and general public “pay more attention” to their “terrible conditions”. They also called on the government to ensure regular safety inspections at construction sites and “to treat all workers fairly”, referring to the different levels of attention paid by the government, NGOs, and donors towards other sectors, particularly the garment sector (Khmer Times, 2015). This protest yielded no substantial changes in the attitude of the government or other stakeholders, perhaps due to the small number of protesters taking part. Their concerns seemed peripheral to workers in other sectors, particularly the garment sector that could easily mobilize hundreds of workers, thereby attracting more attention. Finally, weak and disorganized labour unions in the construction sector have also contributed to the lack of effective representation of construction workers' rights and interests. This problem was extensively discussed in the report of a fieldwork assessment on the leading federation of construction unions, the BWTUC (Building and Woodworkers Trade Union Federation of Cambodia) which saw a fall in membership from 23 affiliated unions in 2010 to just 12 by 2011 (LO-Norway, 2012).

6 Conclusion

This chapter began with a brief overview of the existing legal protection related to occupational health and safety of construction workers, and institutional mechanisms for labour inspection and monitoring in Cambodia. These laws and institutions are critically important for the achievement of SDG 8, decent work for all. One clear lesson from the above analysis is the need to fully recognize construction workers as part of the formal economy with strong employment relations. NGOs and civil society remain weak in this area, with almost no groups advocating rights for construction workers or giving voice to their concerns.

The chapter has examined international labour and human rights standards in order to highlight some ways in which the health and safety of Cambodian

construction workers may be more adequately protected. There is a range of options that the government could take, from regulating foreign businesses and other employers to helping promote employee unionization. However, it is not only the Cambodian government that needs to take action. Workers, unions, governments, and businesses all need to come together to help implement health and safety standards within the Cambodian construction sector.

Finally, while it is possible that international labour and human rights standards could positively impact the lives of Cambodian construction workers, it is important to be cautious when suggesting that any government adopt standardized recommendations. Cambodia has a unique political climate and Cambodian construction workers also have a variety of diverse needs. It would be unrealistic to assume that every international standard related to construction work could feasibly be implemented in Cambodia. The goal of this chapter is to help promote the rights of Cambodian construction workers, not to suggest the implementation of standards that are inappropriate or that could end up hurting rather than protecting construction workers.

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