



Labor Rights in Cambodia and Female Construction Workers

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Cambodia is a country in transition as a result of three decades of internal violence encompassing three critical periods: (1) the Khmer Rouge regime (“KRR”) (1975-1979); (2) a period of Vietnamese-backed socialist rule (1979-1989); and (3) the civic conflict that continued until the arrival of the United Nations (“UN”) Transitional Authority in 1992.¹ As a result, it is not surprising that this tumultuous history has resulted in a plethora of human rights challenges. However, some have argued that the impact on the population has not been proportionate from a human rights perspective. On the contrary, in Cambodia, and in the Southern Asia generally, women experience a disproportionate share of the disadvantages.² The vast majority result from gender inequality³ that manifests itself as entrenched discrimination in work and in life.⁴ It is against this challenging backdrop that Cambodia must measure the extent to which it adheres to Goal Five of the UN Sustainable Development Agenda—achieving gender equality and empower all women and girls.⁵

By way of background, in September, 2015, the UN adopted a series of Sustainable Development Goals in support of its 2030 Agenda. This far-reaching document prescribes a range of aspirational goals, from ending poverty to achieving sustainability.⁶ Chief among these is a global commitment to achieving gender equality and promoting the empowerment of women and girls, with clearly defined targets and expectations.

As a signatory to several human rights treaties,⁷ Cambodia has committed to not only advancing toward these goals but achieving the stated targets.⁸ Implicit is the recognition that gender equality is an essential component of universal human rights inherent in UN values as a whole. However, some have argued that upon closer examination, Cambodia’s current national development plan falls short in important respects.

First, critics argue that although the Cambodian government recognizes equity, in general, it does so as a normative macroeconomic goal, and it fails to specify gender equality as an objective.⁹ At the outset, the Cambodian Constitution¹⁰ articulates guarantees of gender equality and nondiscrimination.¹¹ However, the State’s labor

law does not explicitly define the act of discrimination to include both direct and indirect forms.¹² Moreover, the definition of sexual harassment fails to comply with international standards.¹³

But, the problem is more deep-rooted than the constitution and applicable laws would suggest. Critics argue that the source of this disconnect is the prevalence of traditional conservative factors within Khmer culture,¹⁴ where societal norms tolerate a social structure based on a strict hierarchy. Women find themselves at the bottom of the pyramid and, as a result, face a number of societal challenges.¹⁵

In Cambodia, women account for 47.2 percent of formal labor force.¹⁶ Yet, from the standpoint of wage rates, the evidence indicates that they are undervalued even though they perform the same, if not better than their male counterparts.¹⁷

Of particular interest is a relatively recent phenomenon. In the last two decades, Cambodia has observed the advent of the female construction workers (“FCWs”). Likely the practical consequence of Southeast Asia’s financial explosion in the 21st century, in which Cambodia has established itself as one of the Southeast Asia’s most consistent engines of growth¹⁸ data from 2016 reflects that

FCWs represented up to 30 percent of workers in the construction industry.¹⁹

Given the unusual nature of this phenomenon in a traditionally male dominated industry,²⁰ researchers have been keen to examine its origins.²¹ The data suggests that women migrate from the provinces to the capital, Phnom Penh.²² There, they join their husband, often a construction worker, on the jobsite. Side by side they are able to transform life on the construction site into a “*marriage liaison*.”²³ In those roles, FCWs not only earn money, but develop job skills. This changes them from unskilled or semi-skilled workers into *de facto* members of the construction site.²⁴

Yet, despite the fact that they perform ably side by side with their husbands, they fail to receive equal pay or worker protections.²⁵ Because FCWs tend to have a low level of education and literacy, often with only a primary school education, they are unable to demand greater recognition and worker protections.²⁶ Their options are limited since they have a rudimentary understanding of not only labor laws, but and human rights in general, and they become trapped in a cycle of poverty.

The Cambodian government has made some efforts to address these concerns but it is a long way to go. It tried to fix the problem of lack of protective measures with the intervention of Arbitration Council to fix disputes between construction workers and Companies and through NGOs.

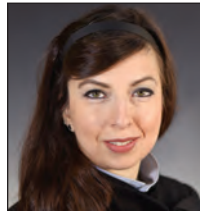
Yet, despite these efforts, the country has failed to close the gap in gender inequality. The system lacks adequate protection for FCWs rights, since it does not provide for either equal and fair pay as the Cambodian minimum wage is notoriously low,²⁷ or equal opportunity for training and promotion, such as health and safety/gender trainings. Moreover, written employment contracts are almost non-existent and most FCWs fail to have even a verbal one.²⁸ Even access to paid leave²⁹ including pregnancy and maternity leave, are unavailable.³⁰ As a result, there are rampant violations of equal labor standards such as effective workplace.

However, even more concerning is the failure to provide for protection from gender-based violence (“GBV”).³¹ FCWs are highly vulnerable at construction sites, especially as regards sexual harassment. This problem is exacerbated by the fact that the vast majority of the company-provided housing areas are not on the actual construction site. As a result, this has led to many instances of sexual harassment and violence, particularly in the public bathrooms and bathing facilities.³²

Once again, the problem of violence is challenging to address because the FCWs often have limited awareness, understanding, and recognition of the issue, and as a result do not report incidents to the police or pursue redress through the judicial system. Perpetrators often go unpunished. In addition, the stigma associated with reporting episodes especially to a stranger, contributes to the lack of protection. In sum, these women work and live in a male dominated work environment that tolerates such behaviour if they want to continue working they risk retaliation or could lose their job.³³

There is no doubt that Cambodia’s historical, economic, and socio-cultural conditions have all contributed to the significant challenges facing women on in terms of gender-related protections. But, as the country continues to progress upon its path of economic development, the extent to which the governing bodies address the rights of and protections for women, will provide an opportunity to examine their commitment to achieving this SDG.³⁴ Every element of

the government, as well as the civil society and private sector businesses have an important role to play in advancing toward this goal. To the extent that these entities take their responsibilities seriously as to promoting implementation of fundamental labour rights and protections in the construction sector, Cambodia will be that much closer to catching up to the other developing nations in their efforts to end gender inequality. However, in the meantime, legislative measures while no doubt important, are insufficient to achieving gender equality, and the leaders need to, adopt more proactive measures to address gender discrimination, *de facto* inequalities and close the gap between legislation and practice. ☉



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Endnotes

¹ILO (“International Labour Organization”) and ADB (“Asian Development Bank”), *Gender equality in the labour market in Cambodia*, (2013) at 1.

²Rodrigo Montero Cano, United Nations Development Programme, *Going back to our roots: A ‘new’ pilot approach for gender equality in Cambodia*, (October 2, 2017).

³Based on ILO and World Economic Forum studies, gender inequality in the labor market is ascertained by reference to seven gender gaps (or deficits for women): labor force participation, human capital, the unpaid domestic and care work burden, vulnerable employment, wage employment, decent work, and social protection.

⁴ILO and ADB, *Gender equality in the labour market in Cambodia*, (2013) at vii.

⁵The 17 Sustainable Development Goals of the 2030 Agenda for Sustainable Development was adopted by world leaders in September 2015 at the UN Summit and on 1 January 2016 officially came into force.

⁶*Id.*

⁷The Convention on the Elimination of all Forms of Discrimination Against Women (“CEDAW”), G.A. res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, (Sept. 3, 1981), art. 10, 11. Cambodia has ratified CEDAW in October 1992. Cambodia has also ratified 13 ILO conventions (only 12 are in force) and several international covenants on social, cultural, economic and political rights.

⁸*Id.*

⁹ILO and ADB, *Gender equality in the labour market in Cambodia*, (2013) at xi, 25.

¹⁰Constitution of the Kingdom of Cambodia dated 24 September 1993. Modified by Kram dated 8 March 1999 promulgating the amendments to Articles 11, 12, 13, 18, 22, 24, 26, 28, 30, 34, 51, 90, 91, 93 and other Articles from Chapter 8 through Chapter 14 of the Constitution of the Kingdom of Cambodia which was adopted by the National Assembly on the 4th of March 1999 (“Cambodian Constitution”).

¹¹Cambodian Constitution, art. 31, 36, 45, 46.

¹²The 1997 Labor Law (“Labor Law”) was promulgated by Decree No. CS/RKM/0397/01 of March 1997 with the assistance of the ILO. The main source of labor and employment law in Cambodia is the Labor Law and its first amendment in 2007, and the 2002 Law on Social Security.

¹³Labor Law, art. 172 and Criminal Code, art. 250.

¹⁴Chbab Srey, Code of Conduct of Cambodian Women. In 2007, the Ministry of Women’s Affairs requested that the government pull the “Chbab Srey” from the school curriculum. These include rules such as “Happiness in the family comes from a woman,” “A woman’s poor character results in others looking down upon her husband,” and “Don’t go for a walk to somebody’s house.”

¹⁵ILO and ADB, *Gender equality in the labour market in Cambodia*, (2013) at xii.

¹⁶ILO Report Labor force Female (2016), using World Bank population estimates, (Jan. 25, 2018, 6:30 PM), <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS>. Cambodia Labour Force and Child Labour Survey 2012 – Labour Force Report (November 2013) ILO, at 35. Considering 10.8 million persons aged 15 years or older, 7.2 million of them (67 percent) were in employment or engaged in economic activity; 3.4 million of them (47.2 percent) were females. In 2015 a released survey by the ILO said that Cambodia had one of the lowest unemployment rates in the world with just 0.55 percent of the working-age population being without jobs, second only to Qatar (at 0.2 percent) in the race for the world’s lowest unemployment rate.

¹⁷UN Department of Economic and Social Affairs, *The World’s Women 2015. Trends and Statistics*, (2015), at xi.

¹⁸UNDP, *Human Development Report 2016*, and World Bank *2015 Cambodia Economic Update Report*.

¹⁹CARE Cambodia Report (2016), (Jan. 25, 2018, 6:30 PM), http://media.wix.com/ugd/ff000a_25eb252569984de2babc7267dba2d405.pdf

²⁰*Id.*

²¹In Cambodia, CARE International began the three-year Labour Rights for Female Construction Workers (LRFWCW) project (2016-2018) located in 7 districts in Phnom Penh, funded by the European

Union and the Austrian Development Agency in January 2016. CARE Cambodia has trained over 2000 workers and over 100 middle management staff from 57 companies. With the videos, stories and interactive activities included in these new packages, CARE hopes to reach more construction companies and ensure more women workers are valued for their skills. . On August 2017 with the assistance of CARE Cambodia I conducted interviews with seven FCWs. Average FCWs age: 24.8.

²²Different studies and researches show how the vast majority of female construction workers had migrated to Phnom Penh from 13 other provinces (in particular the interview with seven FCWs).

²³*Id.*

²⁴*Id.*

²⁵*Id.*

²⁶*Id.* The vast majority (78 percent) of women interviewed had some primary school education or less and almost half (48 per cent) of the respondents said they could not read or write at all, 43 percent said they could read and write a little while only nine per cent said they could read and write well.

²⁷Labor Law, art. 104 and ILO Equal Remuneration Convention 1951 (No. 100).

²⁸Data from interview with seven FCWs.

²⁹*Id.* Day off only for Pchum Ben, Khmer New Year and Water Festival.

³⁰*Id.* Problems regarding: dismissal or denial of return to work following maternity leave.

³¹The term gender-based violence refers to abuse inflicted upon an individual because of his or her gender. Violence against women is a form of GBV, but GBV by definition is broader.

³²Data from interview with seven FCWs. The overwhelming majority (90 percent) of women lived in company provided housing and on construction sites (seven percent), while the remaining three percent lived in their own family house or with relatives.

³³*Id.*

³⁴ILO and ADB, *Gender equality in the labour law market in Cambodia* (2016), at 56.

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