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# Female Representation In Trade Unions: The Case Of The Cambodian Garment Industry

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# Abstract

The textile and garment industry is one of Cambodia's economic 'growth pillars' and it plays a key role in the country's economic development. Foreign enterprises contract Cambodian factories to manufacture goods, which will then be sold worldwide. International buyers include H&M, GAP, Marks & Spencer, Levi's, Adidas and Inditex. The demands required to suppliers are challenging and there is a widespread subcontracting practice. This weakens the enforcement of labour standards, as adequate monitoring is unlikely. Hence, the risk of human rights abuses increases as the supply chain gets more complex. This risk can disproportionately affect women, who constitute the majority of garment workers in Cambodia. The enforcement of labour rights should be a priority in improving women's status in the country, which will contribute to social and economic development. Trade Unions, through representation, collective bargaining and other forms of action can greatly contribute to this. However, women are underrepresented in trade union decision making, which affects their ability to demand their rights. Workers can only be effectively represented if all groups and their interests are adequately taken into account in the decision making process. Accordingly, women's representation in trade union membership and leadership is necessary. In Cambodia the labour movement is composed by women but led by men.

This thesis examines the extent to which an increase in trade union leadership can contribute to the promotion of gender equality and the improvement of working conditions. This is done with a focus on the Cambodian garment industry. Four questions are answered:

- (1) Why are gender equality and gender-balanced labour representation important;
- (2) What is the role of trade unions in this context;
- (3) Why should there be an increase in female trade union leadership and;
- (4) To what extent can an increase in such leadership contribute to the enhancement of working conditions and the achievement of gender equality.

# Abbreviations

AC	Arbitration Council
AHRD	ASEAN Human Rights Declaration
ASEAN	Association of Southeast Asia Nations
BFC	Better Factories Cambodia
CCTU	Cambodia Confederation of Trade Unions
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CKC	Constitution of the Kingdom of Cambodia
CLC	Cambodian Labour Confederation
CNC	Cambodian National Confederation
CPI	Corruption Perceptions Index
CSR	Corporate Social Responsibility
EU	European Union
FDCs	Fixed-Duration Contracts
FTUWKC	Free Trade Union of Workers of the Kingdom of Cambodia
GDP	Gross Domestic Product
GII	Gender Inequality Index
GMAC	Garment Manufacturers Association of Cambodia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
IFA	International Framework Agreements
ILC	International Labour Conference
ILGWU	International Ladies' Garment Workers Union
ILO	International Labour Organisation
KYFTU	Khmer Youth Federation of Trade Unions
LFLRA	Lowell Female Labour Reform Association
MFA	Multi Fibre Agreement
MoLVT	Minister of Labour and Vocational Training
MoU	Memorandum of Understanding
NACC	National Union Alliance Chamber of Cambodia
RWI	Raoul Wallenberg Institute of Human Rights and Humanitarian Law

SIDA	Swedish International Development Cooperation Agency
SOMO	Stichting Onderzoek Multinationale Ondernemingen
UDCs	Unfixed-Duration Contracts
UDHR	Universal Declarations of Human Rights
UN Charter	United Nations Charter
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNDP	United Nations Development Programme
UNGP	United Nations Guiding Principles on Business and Human Rights
US	United States
WB	World Bank
WRC	Workers Rights Consortium
WTUL	Women's Trade Union League

# 1 Introduction

## 1.1 Context

With a population of 15.33 million people (World Bank, 2014) and a Gross Domestic Product (GDP) of 16.78 billion USD (World Bank, 2014), Cambodia is considered a low-income country and one of the poorest in Asia.<sup>1 2</sup> In spite of the noteworthy progress made, almost 20 per cent of the population still lives under the poverty line (World Bank, 2014).

The first export-orientated garment factories in Cambodia emerged around 1994, financed by foreign investors mostly coming from other Asian countries.<sup>3</sup> Along with tourism, construction and agriculture, the textile and garment industry is one of Cambodia's four economic 'growth pillars' (World Bank, 2009).<sup>4 5</sup> It is a vital part of the economy and it represents the largest manufacturing sector in the country.<sup>6</sup> Thus, this sector plays a key role in the country's economic development.<sup>7</sup>

Furthermore, export gains are directly related to the garment sector, which accounts for almost 80 per cent of Cambodia's export revenues<sup>8</sup> and represents almost a third of the country's GDP.<sup>9 10 11 12 13</sup>

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<sup>1</sup> Günseli Berik and Yana Van Der Meulen Rodgers, 'Options for Enforcing Labour Standards Lessons from Bangladesh and Cambodia' (2010) Volume 22 Journal of International Development 56, at p. 61.

<sup>2</sup> Asian Development Bank (ADB) and International Labour Organisation (ILO), *Cambodia – Addressing the Skills Gap* (Employment Diagnostic Study) (2015), at p. 6.

<sup>3</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia* (2012), at p. 12.

<sup>4</sup> Dennis Arnold, *Worker's Agency and Re-Working Power Relations in Cambodia's Garment Industry* (2013), at p. 4.

<sup>5</sup> Dennis Arnold and Toh Han Shih, 'A Fair Model of Globalisation? Labour and Global Production in Cambodia' (2010) Volume 40 Journal of Contemporary Asia 401, at p. 404.

<sup>6</sup> ILO, *Labour Standards in Global Supply Chains – A Programme of Action for Asia and the Garment Sector* (2015), at p. 1.

<sup>7</sup> Dennis Arnold and Toh Han Shih, 'A Fair Model of Globalisation? Labour and Global Production in Cambodia', at p. 401.

<sup>8</sup> Better Factories Cambodia, 'The Garment Industry', <[http://betterfactories.org/?page\\_id=25](http://betterfactories.org/?page_id=25)>, accessed 18-03-2016.

<sup>9</sup> Better Factories Cambodia, *Garment Industry 32<sup>nd</sup> Compliance Synthesis Report* (2015), at p. 6.

<sup>10</sup> World Bank, 'Data – Cambodia' <<http://data.worldbank.org/country/cambodia>>, accessed 10-05-2016.

For more than ten years the industry benefited from the Multi Fibre Agreement (MFA), a bilateral agreement between garment producing countries and the European Union, the United States and Canada, which expired in 2003.<sup>14</sup> In fact, between 1995 and 2006 the garment industry grew 40 per cent per year.<sup>15 16</sup> However, the 2008 global financial crisis severely affected Cambodia and the number of exports decreased.<sup>17</sup>

The garment and footwear sector is estimated to employ between 400.000 and 700.000 workers.<sup>18 19 20 21</sup> Nevertheless, the employment generated by the growth in the garment industry cannot be viewed as an overall positive accomplishment. “Although official unemployment in the country is low, a large proportion of those who do work are in vulnerable employment.”<sup>22</sup> Working conditions in factories comprise numerous problems, which are exacerbated as the supply chain expands.

Foreign enterprises contract Cambodian factories to manufacture goods, which will then be sold worldwide. International buyers include H&M, GAP, Marks & Spencer, Levi’s, Adidas and Inditex.

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<sup>11</sup> Allan K. Lowenstein, International Human Rights Clinic Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry* (2011), at p. 7

<sup>12</sup> World Bank, *Sustaining Rapid Growth in a Challenging Environment – Cambodia Country Economic Memorandum* (Poverty Reduction and Economic Management Sector Unit – East Asia and Pacific Region) (2009), at p. 8.

<sup>13</sup> According to governmental statistics, textile exports accounted for 86 per cent of total exports. See in Ministry of Economy and Finance, *Monthly Bulletin of Statistics* Volume 15, No. 170 (2010).

<sup>14</sup> Fair Action, *A Short-Term Solution – A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry* (2015), at p. 7.

<sup>15</sup> Ibidem.

<sup>16</sup> Tuomo Poutiainen, Sukti Dasgupta, David Williams, *From Downturn to Recovery: Cambodia’s Garment Sector in Transition* (International Labour Office) (2011), at p. iii.

<sup>17</sup> Fair Action, *A Short-Term Solution – A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry* (2015), at p. 7.

<sup>18</sup> BFC, *Garment Industry 32nd Compliance Synthesis Report* (2015).

<sup>19</sup> Michael Arria, 'Thousands Of Garment Factory Workers Across Cambodia Are Fainting On The Job'

<[http://inthesetimes.com/working/entry/18222/garment\\_factory\\_workers\\_across\\_cambodia\\_are\\_fainting\\_by\\_the\\_hundreds](http://inthesetimes.com/working/entry/18222/garment_factory_workers_across_cambodia_are_fainting_by_the_hundreds)> accessed 07-04-2016.

<sup>20</sup> Gillian Kane, 'Facts on Cambodia’s Garment Industry'

<<https://www.cleanclothes.org/resources/publications/factsheets/cambodia-factsheet-february-2015.pdf>>, accessed 12-04-2016.

<sup>21</sup> Fair Action, *A Short-Term Solution – A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry* (2015), at p. 7.

<sup>22</sup> ILO, *Decent Work Country Programme Cambodia* (2011-2015), at p. 10.

The demands required to suppliers are challenging. Large orders in diminutive time frames make it difficult for factories to comply. Hence, there is a widespread subcontracting practice. This weakens the enforcement of labour standards as adequate monitoring is unlikely.<sup>23</sup> Hence, the risk of human rights abuses increases as the supply chain gets more complex.

In 1997, Cambodia passed what can be considered as an adequate labour law.<sup>24</sup> Despite room for legal improvement, enforcement problems remain one of the country's key issues. Also, monitoring and inspection lack in both efficiency and independence, as corruption remains problematic. In Transparency International's 2015 corruption perceptions index, the country was ranked in the 150<sup>th</sup> place, out of 168 countries.<sup>25</sup> <sup>26</sup> According to the organisation, the judiciary is the institution perceived as the most affected. Still, corruption is widespread in both the public and private sectors and it has a noteworthy effect on the enforcement of workers' rights. Labour inspectors are susceptible to bribes and experience has shown that labour inspection is one of main reasons for the poor enforcement of the labour law.<sup>27</sup> According to Human Rights Watch, out of thousands of inspections carried out from 2009 to 2013, only 10 fines were imposed.<sup>28</sup>

In 2011 a Decree<sup>29</sup> was issued, ordering export oriented factories registered with the Garment Manufacturers Association of Cambodia (GMAC) to declare their subcontracted factories.<sup>30</sup> However, even after the passing of the Decree, subcontracted factories often do not hold export licences from the Ministry of Commerce, which means they are not included in national

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<sup>23</sup> Stichting Onderzoek Multinationale Ondernemingen (SOMO), *Fact Sheet: Hidden Subcontracting in the Garment Industry* (2015), at p. 1.

<sup>24</sup> Labour Law, *Royal Order No. CS/RKM/0397/01 of March 1997 (amended in 2007)*

<sup>25</sup> Transparency International <<https://www.transparency.org/country/#KHM>> accessed 13-03-2016.

<sup>26</sup> The Corruption Perceptions Index scores countries according to the perceived level of public sector corruption. The scores awarded go from 0 (meaning highly corrupt) to 100 (very clean). In 2015 Cambodia was awarded a score of 21. See Transparency International, 'Corruption Perceptions Index 2015' <<http://www.transparency.org/cpi2015>> accessed 17-05-2016.

<sup>27</sup> Human Rights Watch, *Work Faster or Get Out – Labour Rights Abuses in Cambodia's Garment Industry* (2015), at p. 16.

<sup>28</sup> Ibidem.

<sup>29</sup> Ministry of Commerce, 'Prakas on Sub-Contract Management in Garment and Textile Industry No. 3896 MOSC/SM (2011)' <<http://www.gmac-cambodia.org/document/data/2012/prakas/MOC/3896/3896-eng.pdf>> accessed 17-05-2016.

<sup>30</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia* (2012), at p. 15.

statistics and are not monitored by national inspection programmes.<sup>31</sup> <sup>32</sup> Also, they are generally not formally included in the buyer's supply chain and therefore corporate social responsibility (CSR) monitoring programmes do not cover them.<sup>33</sup>

The Better Factories Cambodia (BFC) programme contributes to monitoring efforts but it only covers export-licensed factories, which are obliged to agree to be monitored by the BFC in order to receive an export licence.<sup>34</sup> Since most subcontracted factories do not possess such licences, BFC cannot monitor them.

The risk of abuse can disproportionately affect women<sup>35</sup> who constitute the vast majority of garment workers. There are approximately 699.000 women in Cambodia in the 19 to 24 age gap and almost one third of them are employed in the garment industry.<sup>36</sup> According to the International Labour Organisation (ILO), 90 to 92 per cent of the industry's workers are women.<sup>37</sup> The majority of them are young (i.e. between 18 and 25 years old), come from rural areas and use part of their earnings to help supporting their families.<sup>38</sup>

Women face different forms of discrimination throughout their lives, which has a negative impact for them, their families, as well as society.<sup>39</sup> Both governments and social partners have recognised the need to take action in

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<sup>31</sup> Stichting Onderzoek Multinationale Ondernemingen (SOMO), *Fact Sheet: Hidden Subcontracting in the Garment Industry*, at p. 1-2.

<sup>32</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia* at p. 15.

<sup>33</sup> Stichting Onderzoek Multinationale Ondernemingen (SOMO), *Fact Sheet: Hidden Subcontracting in the Garment Industry*, at p. 1.

<sup>34</sup> Better Factories Cambodia, 'Monitoring' <[http://betterfactories.org/?page\\_id=90](http://betterfactories.org/?page_id=90)> accessed 07-04-2016.

<sup>35</sup> CARE Cambodia, 'Industrial Labour Day: Women's Labour Rights in Cambodia's Garment Industry' <<http://www.care-cambodia.org/#!/International-Labour-Day-women's-labour-rights-in-Cambodias-garment-industry/c1ekd/5542d7700cf2adc1ad00d539>> accessed 13-03-2016.

<sup>36</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 16.

<sup>37</sup> Better Factories Cambodia, *Twentieth Synthesis Report on Working Conditions in Cambodia's Garment Sector* (2008), at p. 5.

<sup>38</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 16.

<sup>39</sup> International Labour Office, *Gender Equality at the Heart of Decent Work* (2009), at p. vii.

order to address these inequalities.<sup>40</sup> Hence, globally, there have been improvements in policy and legislative efforts in the topic of gender equality. Labour rights are particularly important in this context. However, like in Cambodia, one of the main obstacles refers to the lack of enforcement.<sup>41</sup>

The enforcement of labour rights should be considered a priority in improving women's status in the country, which ultimately contributes to the achievement of social and economic development.<sup>42</sup>

Trade unions can greatly contribute to this. They play a fundamental role in achieving a stable and lasting democracy and development. They are essential democratic institutions and reflect the importance of voting and assembly.<sup>43</sup> The high number of garment workers in Cambodia increases the relevance of the union movement in improving working conditions.

“Trade unions, through their power of representation, collective bargaining and other forms of labour action, can push for better working conditions for the overwhelmingly women workforce in the garment industry. Equally important, trade unions can give voice to women workers at the workplace and empower them to challenge the discrimination they face at the workplace and beyond.”<sup>44</sup>

However, women are underrepresented in trade union decision making, which affects their ability to demand their rights. Workers can only be effectively represented if all groups and their interests are adequately taken into account in the decision making process.<sup>45</sup> Accordingly, women's representation in trade unions in both membership and leadership is necessary. In Cambodia, the fact that at least 90 per cent of garment workers

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<sup>40</sup> Ibidem.

<sup>41</sup> Ibid, at p. ix.

<sup>42</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 5.

<sup>43</sup> William E. Todd, 'The Importance of Trade Unions'

<<http://www.thecambodiaherald.com/cambodia/the-importance-of-trade-unions-8652>> accessed 12-04-2016.

<sup>44</sup> Veasna Nuon, Melisa Serrano and Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry* (2011), at p. 4.

<sup>45</sup> Council of the European Union, *Gender Equality in Power and Decision-Making – Review of the Implementation of the Beijing Platform for Action in the EU Member States* (2015).

are women is a strong indicator regarding the profile of union membership in the industry.<sup>46</sup>

Yet, men hold most of the decision making positions.<sup>47</sup> Union leaders are mostly male.<sup>48</sup> In 2012 there were 132 men in union leadership positions but only 25 women.<sup>49</sup> Thus, the labour movement is composed by women but led by men.<sup>50</sup>

Improvements in labour standards are often directed at the protection of those working with low wages and under poor conditions at the end of a supply chain in developing countries. This is the case of garment workers in Cambodia and female workers in particular. These female workers have the “most to gain from improvements in labour standards”.<sup>51</sup> Nevertheless, discussions often fail to address specific female concerns adequately.<sup>52</sup> Women workers particular concerns are a result of their specific features but also of the way they are viewed in the labour market. Women are often seen as a way of acquiring cheap labour. Also, they are typically viewed as more passive workers, accepting poor working conditions and low salaries without demanding human rights.<sup>53</sup>

Hence, this problem involves a societal dimension that cannot be ignored. Gender issues in Cambodia are present in education, access to health care, social status and representation in decision making.<sup>54</sup> While a higher number of employed women contributes to their empowerment, independence and helps weakening the patriarchal mentality, Cambodia is still a patriarchy. The cultural norms defining what is appropriate for

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<sup>46</sup> Veasna Nuon, Melisa Serrano and Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, at p. 19.

<sup>47</sup> Keasa Khun, 'Gender Issues in Cambodia' (2006), Session 11 "Contesting within/out Gender and Sexuality", Asian Youth Culture Camp "Doing Cultural Spaces in Asia", at p. 4.

<sup>48</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement' (2016) <<https://www.cambodiadaily.com/news/lack-of-lady-leaders-hinders-labor-movement-105826/>> accessed 13-03-2016.

<sup>49</sup> Ibidem.

<sup>50</sup> Bennett Murray, 'Garment Unions: The Call for Women to Represent Women' *The Phnom Penh Post* <<http://www.phnompenhpost.com/7days/garment-unions-call-women-represent-women>> accessed 13-03-2016.

<sup>51</sup> Juanita Elias, *Women Workers and Labour Standards: The Problem of 'Human Rights'* Volume III (Gender Issues and Human Rights 2007), at p. 419.

<sup>52</sup> Ibidem.

<sup>53</sup> Ibid.

<sup>54</sup> Keasa Khun, 'Gender Issues in Cambodia'.

women (*Cha'p*) still restrict their opportunities.<sup>55</sup> Nevertheless, female employment increases women's status in society and in the household, which helps rising their bargaining power and decision making ability in and beyond the household. In fact, the development of the garment industry has led women to enter formal employment at a faster rate than men.<sup>56</sup>

Still, the patriarchal culture is present in all spheres of women's lives, including employment.<sup>57</sup> Women are often confined to the so-called female occupations and still feature disproportionately among the employed workforce in many countries.<sup>58</sup> "Traditional attitudes towards girls' education and 'appropriate' occupations for women and men have shaped existing inequalities and continue to perpetuate disparities in employment."<sup>59</sup>

Article 31 of the Constitution of the Kingdom of Cambodia (CKC) states that all Khmer<sup>60</sup> citizens are equal before the law and enjoy the same rights and freedoms, regardless of sex. Nevertheless, in practice, traditional gender roles and conducts affect women's standing in society and place them in disadvantage in the social, economic and political life.<sup>61</sup> Women's opinions are not given the same weight as men's and they are seen as less capable.<sup>62</sup> Likewise, in the union movement there is an imbedded tradition of male leadership and women keep voting for men in elections.<sup>63</sup> Addressing the topic of female under representation in trade union decision making requires taking into account the existent patriarchal culture. Accordingly, even though this paper does not investigate the root causes and context surrounding Cambodian patriarchal society such a factor is taken into account when answering the questions that are raised. Including these aspects in the paper was done through a two month stay in Cambodia, which was only possible thanks to the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI).

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<sup>55</sup> World Bank (WB), United Nations Entity for Gender Equality and the Empowerment of Women (UNIFEM), Asian Development Bank (ADB), United Nations Development Programme (UNDP), Department for International Development (DFID) UK, *A Fair Share for Women: Cambodia Gender Assessment* (2004), at p. 3.

<sup>56</sup> Ibidem, at p. 4.

<sup>57</sup> Ibid.

<sup>58</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 5.

<sup>59</sup> WB, UNIFEM, ADB, UNDP, DFID UK, *A Fair Share for Women: Cambodia Gender Assessment*, at p. 4

<sup>60</sup> The word 'Khmer' refers to people from Cambodia.

<sup>61</sup> Milana Plischuk, 'Women and the Law in Cambodia' (2012) Introduction to Cambodian Law 383, at p. 383.

<sup>62</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

<sup>63</sup> Ibidem.

## 1.2 Purpose

The importance of women in trade unions has become progressively recognised. Still, information regarding the link between female representation in the union movement and its contribution to gender equality and the improvement of labour conditions is incomplete. The same goes for the relation between female representation and the way gender-specific issues are dealt with.

The aim of this thesis is analysing the extent to which an increased female representation, particularly at the decision making level in trade unions, can contribute to gender equality and the improvement of labour rights in the garment industry for workers in general and women in particular.

Focusing on the Cambodian context, four questions are answered:

- (1) Why are gender equality and gender-balanced labour representation important;
- (2) What is the role of trade unions in this context;
- (3) Why should there be an increase in female trade union leadership and;
- (4) To what extent can an increase in such leadership contribute to the enhancement of working conditions and the achievement of gender equality.

Furthermore, this paper examines specific problems in the Cambodian garment industry (i.e. fixed-duration contracts (FDCs), maternity issues, hygiene conditions and sexual harassment) by looking at the legal framework and its implementation. This is done in order to demonstrate how these issues have been dealt with and justify they are particularly relevant for women workers and have not been given sufficient attention.

## 1.3 Delimitation

Both men and women benefit from actions and policies aimed at the achievement of the Decent Work Agenda. Promoting gender equality is a central part in accomplishing this goal.<sup>64</sup> The fact that more women are accessing employment has not decreased the gender gap in the world of work.<sup>65</sup> In fact, women workers are usually in a more vulnerable situation. They face more obstacles in numerous aspects of working life, which include the employment they are able to access, whether they can access

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<sup>64</sup> ILO, *Facts on Investing in Decent Work for Women* (2008), at p. 1.

<sup>65</sup> *Ibidem*.

employment at all, payment issues, the existence of maternity support and benefits (i.e. before and during pregnancy, as well as after giving birth), the unequal division of household chores and the lack of knowledge regarding the enforcement of their labour rights.<sup>66</sup> Furthermore, women might work more hours when compared to men but are less likely to be promoted, receive training or become a union leader.<sup>67</sup> The decision to write about a topic related to women's rights was based on these factors. Similarly, the choice to focus on the garment industry was based on the industry's tremendous importance in the Cambodian economy and the fact that women make up most of the workforce.

The chosen topic and the problems analysed require taking into consideration several factors in order to avoid reaching narrow and unrealistic conclusions. Accordingly, these factors are taken into account but they do not constitute the issues selected to investigate.

Furthermore, the content of this paper is constrained for a number of reasons. Reliable and available data regarding the garment industry is limited, particularly when it comes to information concerning the workers and the number of factories operating. Also, statistics on the types of contracts, causes of dismissal, length of employment and types of leaves have to be analysed with caution.<sup>68</sup>

Regarding the industry's problems chosen to analyse it is relevant to note that the objective is to give an overview of these specific issues affecting female workers. Hence, this paper does not aim to be a comprehensive examination regarding the legal standards and practice on fixed-duration contracts, maternity issues, sexual harassment and hygiene problems in factories. In particular, the topic of hygiene in the workplace refers to toilet's hygiene and its connection to menstrual hygiene. Hence, it is not an all-inclusive study regarding the topic of hygiene, security and safety in factories.

Also, notwithstanding some useful references, this paper does not intend to examine female political representation in Cambodia.

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<sup>66</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. viii.

<sup>67</sup> Better Work, 'Focus On Women' <[http://betterwork.org/global/?page\\_id=3550](http://betterwork.org/global/?page_id=3550)> accessed 03-04-2016.

<sup>68</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 7.

Likewise, it does not aim at pursuing a detailed analysis regarding the cultural aspects constraining women's participation and representation at the workplace.

Women's participation in the union movement includes both membership and leadership but this paper will focus on the role of female leadership in the union movement, which is more problematic in Cambodia.

Finally, the political issues restricting the trade union movement in Cambodia are considered in the analysis. However, they do not comprise the examined topic.

## **1.4 Methodology, Materials and Outline**

The thesis is based on a qualitative method. Primary and secondary sources of law are particularly relevant to answer the first research question (i.e. (1) why are gender equality and gender-balanced labour representation important). Nevertheless, they are also helpful when answering the second research question (i.e. (2) what is the role of trade unions in this context). These materials include a number of international instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its correspondent Committee's General Recommendation No. 25 are particularly important. The Beijing Declaration and Platform of Action are also resorted to. Furthermore, several ILO Conventions are referred. Additionally, non-legal sources are used to answer the two first research questions. These include documents and reports, particularly from the International Labour Organisation and non-governmental organisations (e.g. Human Rights Watch and Clean Clothes Campaign).

The answer to the third and fourth research questions (i.e. (3) why should there be an increase in female trade union leadership and (4) to what extent can an increase in such leadership contribute to the enhancement of working conditions and the achievement of gender equality) is mostly based in non-legal sources. These include reports from the International Labour Organisation and official governmental documents. Academic articles and newspaper articles (i.e. Phnom Penh Post and Cambodia Daily) are also used. Additional information was gathered through the attendance of lectures in Paññāsāstra University and the interviews carried out in Cambodia.

Answering the fourth research question presupposes a previous analysis on the topics of fixed-duration contracts, maternity issues, sexual harassment and hygiene at work. Hence, resort to international and national law is necessary. These include the Cambodian Constitution and labour law,<sup>69</sup> as well as some relevant *prakas* (Ministerial Decrees). Arbitration Council awards regarding the chosen topics are also included. These serve to illustrate different interpretations of legal provisions and the problems originating collective disputes.

The use of these instruments serves the purpose of examining the situation of female garment workers in the Cambodian union movement from a *de jure* and *de facto* perspectives. The same is done for the specific problems chosen to analyse.<sup>70</sup>

The thesis writing scholarship awarded by RWI allowed a two month stay in Phnom Penh, Cambodia. This minor field study provided a unique insight into Cambodian culture. Also, the time spent in the country handed the possibility to attend lectures at Paññāsāstra University of Cambodia concerning a number of relevant topics. In particular, the lectures about ‘Labour Law and Human Rights’ and ‘Occupational Safety and Health’ gave a valuable overview regarding the labour situation in Cambodia. The fact that some of the lectures were given by a Senior Programme Officer from the ILO Better Factories Cambodia Programme provided practical knowledge. Also essential for the writing of this paper was the attendance of a lecture focused on the Arbitration Council (AC). Presented by one of the Council’s arbitrators, it provided a priceless assessment of the Council’s working method when dealing with (collective) labour disputes.

Additionally, it was possible to attend a lecture about ‘Corruption and Human Rights’, which was carried out by Transparency International and provided a theoretical and practical understanding about the problem of corruption in the country.

Moreover, it was possible to engage in interviews with female trade union leaders from an independent trade union (i.e. Free Trade Union of Workers of the Kingdom of Cambodia - FTUWKC). Despite being aware of the fact that this does not constitute a quantitative sample, it contributed greatly to the elaboration of this paper. It gave an irreplaceable and practical view regarding the state of the union movement in Cambodia and women’s stand in trade unions. It confirmed some of the information comprised in published reports and made it possible to access documents that would

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<sup>69</sup> Labour Law, *Royal Order No. CS/RKM/0397/01 of March 1997 (amended in 2007)*.

<sup>70</sup> Mark Van Hoecke, *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?* (European Academy of Legal Theory Monograph Series, Oxford: Hart, 2011).

otherwise not have been considered. These include an article written by the General-Secretary of the Union<sup>71</sup> and an interview that has not been publicly published.

The garment industry encompasses a number of problematic issues. The selection of particular concerns was based on repeated references in academic articles, non-state actors' reports and news articles. The interviews carried out in Phnom Penh confirmed the significance of these matters, which have been identified as specific concerns to women.<sup>72</sup>

This thesis is divided into seven chapters. The first chapter (i.e. 'Introduction') offers a contextual overview about Cambodia and the state of the garment industry. Furthermore, it presents the problem by providing overall information regarding the situation of women in the industry and in the union movement. Additionally, it denotes what is the aim of this paper, presents the research questions and delimits the topic. It also includes the methodology used to answer the research questions.

The second chapter (i.e. 'Gender-Balanced Representation at Work') is divided into two sub-sections. The first sub-section includes an overview of the international standards on gender equality and representation with a focus on the trade union context. The second sub-section answers the question regarding the importance of gender equality and gender-balanced representation at work.

The third chapter (i.e. 'The Role of Trade Unions in Gender Equality and Gender-Balanced Representation: An Overview') provides an initial answer to the second research question, explaining what is the general role of trade unions in gender equality and representation.

Chapter four (i.e. 'Gender-Balanced Representation at Work in Cambodia') specifically deals with representation at work in Cambodia. First, it comprises a short background section, referring to the general profile of a Khmer garment worker. The second sub-section includes the international and national standards on gender-balanced representation in Cambodia. The third sub-section is divided into two parts. First, it develops the information provided in chapter three, explaining what is the role of trade unions in the Cambodian setting. Second, it comprises a summary and short explanation regarding the role of other relevant stakeholders in the industry.

The fifth chapter covers four specific concerns for female workers. These include fixed-duration contracts, maternity issues, sexual harassment and hygiene at work. The chapter demonstrates why these issues are particularly

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<sup>71</sup> Sokny Say, 'A Hungry Life: Protests, Violence, Killing and Prison' (2015) Volume 22 International Union Rights 10.

<sup>72</sup> Better Work, 'Focus on Women'.

relevant for women. Also, by describing the applicable law applied and the practice in factories it shows the existing problems and how much room there is for improvement.

Chapter six contains the key analytical portion of this paper. Hence, the chapter answers the two final research questions (i.e. why should there be an increase in female trade union leadership and to what extent can it improve working conditions and contribute to gender equality).

Finally, chapter seven summarises and presents the conclusions reached.

## 2 Gender-Balanced Representation at Work

### 2.1 International Standards on Gender Equality and Gender-Balanced Representation at Work<sup>73</sup>

*“In the promotion of equality of opportunity and treatment between women and men in economic and social life, full account shall be taken of the principles contained in international resolutions, declarations, covenants, Conventions and Recommendations adopted by the United Nations and by the specialised agencies relation to the prevention of discrimination against women.” (Article 2 of the Declaration on Equality of Opportunity and Treatment for Women Workers, 1975)*

Dealing with the issue of gender-balanced representation entails a brief and more general reference to gender equality and women’s rights, particularly in the context of female participation in public life.

Several international instruments have highlighted the relevance of these matters. In fact, a non-discrimination clause is present in the major international instruments and there are several references to gender equality of rights.

The Charter of the United Nations (UN Charter) contains a non-discrimination clause in Article 1 (3), stating that one of the purposes of the United Nations is the promotion and encouragement of respect for human rights and fundamental freedoms, with no distinction based, namely, on sex.

Likewise, Article 2 of the Universal Declaration of Human Rights (UDHR) states that everyone is entitled to the rights comprised in the Declaration, without distinction of any kind, such as sex.

A non-discrimination clause is also comprised in Article 2 (1) of the ICCPR and Article 2 (2) of the ICESCR. Furthermore, Article 3 of the ICCPR and the ICESCR mention that State Parties undertake to ensure the equality of rights between men and women.

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<sup>73</sup> See page 36 (Chapter 4.2) for “Cambodia And The Standards On Gender Equality And Gender-Balanced Representation At Work”.

CEDAW is “the most significant international agreement on the rights of women”.<sup>74</sup> Article 2, 3 and 3 clearly refer to non-discrimination and States’ obligation to ensure “the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”. Additionally, the Convention refers that ‘special measures’ meant to accelerate *de facto* equality are not considered discrimination (Article 4 (1) of CEDAW).<sup>75</sup>

Besides non-discrimination provisions, international recognition regarding the significance of ensuring equal participation and adequate representation of women in decision making has boosted, especially in the past decades. Such recognition has been formally included in international instruments and goals. Most of these decision making standards refer to political decision making. However, the idea of women’s participation in the public life goes far beyond politics and can be applied in the union context. Accordingly, the understanding according to which governmental representation can only be effective when all groups and interests are reflected in the decision making process<sup>76</sup> can be applied beyond the scope of politics.

The right of women to participate in decision making is recognised in the Universal Declaration, which states that everyone has the right to take part in the government of his/ her own country (Article 21 (1) of the UDHR). Article 23 (4) in particular refers to the right to form and join trade unions for the protection of one’s interests.

Referring to the fundamental right to political participation, Article 25 of the ICCPR expressly mentions the right to vote and the right to run for elections, for every citizen.

Article 7 of CEDAW refers to women’s right to participation and representation, by affirming that “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country”. The provision expressly mentions women’s

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<sup>74</sup> Cambodian Centre for Human Rights, *Politics in the Kingdom: Increasing Female Representation* (2013), at p. 9.

<sup>75</sup> The Committee’s General Recommendation No. 25 explains what can be understood as ‘special measures’.

<sup>76</sup> European Institute for Gender Equality, *Gender Equality in Power and Decision-Making – Review of the Implementation of the Beijing Platform for Action in the EU Member States* (2015), at p. 9.

equal right “to participate in non-governmental organisations and associations concerned with the public and political life of the country”.

When referring to Article 7, the Committee on the Elimination of All Forms of Discrimination against Women has stated that the concept of ‘political and public life of a country’ comprises several aspects of civil society, including the activities of trade unions (paragraph 5 of General Recommendation No. 23). Hence, female representation at work is placed in this context. Also in its General Recommendation No. 23, the Committee has highlighted that women’s representation in decision making is a vital element for achieving a “full and complete development of a country”.

Likewise, Article 8 of CEDAW explicitly mentions women’s right to represent their country at the international level.

In 1993, the Vienna Declaration and Programme of Action took a step further in this context. Paragraph 18 of the Vienna Declaration refers to the “full and equal participation of women in political, civil, economic, social and cultural life” as a primary objective of the international community. Furthermore, the integration and full participation of women were identified as a key factor in the development process (paragraph 36).

Two years later, in 1995, The Beijing Declaration and Platform for Action, adopted at the Fourth United Nations World Conference on Women, set out the first international agenda for the advancement of women’s rights and gender equality. The topic of ‘women and power and decision making’ was identified as one of 12 priorities to be addressed (i.e. G) for the promotion of gender equality.

The commitment to empower women is based on the conviction that women’s full participation in all spheres of society, including in the decision making process, are vital for achieving equality, development and peace (paragraph 13 of the Beijing Declaration).

The Beijing Platform encompasses several strategic objectives, which are derived from the 12 defined priorities. It aims for a 50-50 gender balance in all areas of society and parity in decision making is present throughout the Platform.<sup>77</sup>

Paragraph 181 of the Platform for Action, referent to ‘women in power and decision making’, states that women’s equal participation in decision making can be perceived as a necessary condition “for women’s interests to be taken into account”. Thus, the Platform of Action aims at achieving equal

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<sup>77</sup> Alison E. Woodward, *Going for Gender Balance - A Guide for Balancing Decision-Making* (Council of Europe 2002), at p. 10.

access and full participation of women in power structures and decision making, as well as increasing female leadership.

The Platform also comprises a number of references to trade union organisation. Paragraph 192 encouraged “efforts by trade unions to achieve equality between women and men in their rankings, including equal participation in their decision making bodies and negotiations in all areas and at all levels”.

Additional references can be found, when the Platform refers to the priority concerning ‘women and the economy’ (i.e. F). The Platform for Action calls for governments to support the establishment of labour laws ensuring protection of all female workers, to safeguard and respect basic workers’ rights such as the freedom of association and the right to organise and bargain collectively, as well as equal remuneration for work of equal value. Strategic objective F5 expressly asks for governments, employers, employees, trade unions and women’s organisations to “promote the election of women trade union officials and ensure that trade union officials elected to represent women are given protection and physical security in connection with the discharge of their functions”.<sup>78</sup>

In 2011 the United Nations General Assembly passed a Resolution on Women’s Political Participation (A/RES/66/130), which states “that the active participation of women, on equal terms with men, at all levels of decision making is essential to the achievement of equality, sustainable development, peace and democracy”.

Very recently, at the United Nations Sustainable Development Summit in 2015, world leaders adopted the 2030 Agenda for Sustainable Development, comprising 17 Sustainable Development Goals. Gender equality and the empowerment of all women and girls constitute the fifth goal. “Providing women and girls with equal access to education, health care, decent work and representation in political and economic decision making processes will fuel sustainable economies and benefit societies and humanity at large.”<sup>79</sup>

Similarly, in the ILO framework, the ILO Constitution states that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions

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<sup>78</sup> Kate Holman, *Women Workers: Reaching for the Sky – Trade Unions & The Beijing Platform for Action* (2000), at p. 30.

<sup>79</sup> United Nations, 'Goal 5: Achieve Gender Equality and Empower all Women and Girls' <<http://www.un.org/sustainabledevelopment/gender-equality/>> accessed 05-05-2016.

of freedom and dignity of economic security and equal opportunity”.<sup>80</sup> Furthermore, gender equality is comprised in the ILO’s Decent Work Agenda and is considered to be a key element.<sup>81</sup>

The ILO’s focus on gender equality goes hand-in-hand with the organisation’s four strategic goals (i.e. the promotion of fundamental principles and rights at work, the creation of employment and income opportunities for men and women, enhancing the coverage and effectiveness of social protection and strengthening social dialogue and tripartism).<sup>82</sup>

Gender concerns are comprised in ILO Conventions, policies and programmes. In 1999 the organisation’s Director-General announced the establishment of a Policy on Gender and Mainstream, which was applied through an Action Plan on Gender Mainstreaming for Gender Equality. One of the plan’s elements refers to balance between women and men among staff at all levels.

Particularly relevant ILO Conventions in this context are the Equal Remuneration Convention (No. 100), the Discrimination (Occupation and Employment) Convention (No. 111), the Workers with Family Responsibilities Convention (No. 156) and the Maternity Protection Convention (No. 183).

Trade unions have the goal of, through collective action, improving the situation of workers, both men and women. The right to form and join trade unions without discrimination is encompassed in the ILO’s Freedom of Association and Protection of the Right to Organise Convention (no. 87) and the Right to Organise and Collective Bargaining Convention (No. 98). Together with governments and employers’ organisations they constitute the tripartite structure of the ILO, which takes on social dialogue.<sup>83</sup>

Tripartism requires the existence of freedom of association and the right to collective bargaining. The promotion of tripartism is encompassed in the Tripartite Consultation Convention (No. 144), its associated Recommendation No. 152 and Consultation Recommendation No. 113. In particular, Recommendation No. 113 states that the promotion of effective

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<sup>80</sup> ILO, *Declaration Concerning the Aims and Purposes of the International Labour Organisation (Declaration of Philadelphia)*, 1944.

<sup>81</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*.

<sup>82</sup> ILO, ‘Gender: Equality between Men and Women’

<<http://www.ilo.org/public/english/gender.htm>> accessed 19-04-2016.

<sup>83</sup> International Labour Office, *ABC of Women Workers’ Rights and Gender Equality* (2007), at p. 181.

consultation and cooperation should be done without discrimination against the organisations on the basis of, namely sex.

Representation and participation of both men and women on an equal basis is a prerequisite for the effective functioning of tripartite bodies. However, that has not been achieved in any of the tripartite structures, which are still mostly composed by men.<sup>84</sup>

In sum, non-discrimination is reiterated throughout international obligations. Likewise, gender equality and the right to participation and representation are encompassed in various international instruments, binding and non-binding. However, the right to equal participation and representation is often referent to the political sphere. Still, the concept of ‘political and public life of a country’ includes trade union activities. Also, there seems to be international agreement regarding the importance of female participation and representation in decision making and its contribution to development.

## **2.2 Are Gender Equality and Gender-Balanced Representation at Work Important?**

*“Socially constructed gender roles, the biological differences between men and women and how these interact in the world of work are therefore at the core of decent work.”<sup>85</sup>*

Examining whether gender equality and gender-balanced representation in the labour context are important requires looking at the concept of decent work. The notion was introduced in 1999 by Juan Somavia, who was the ILO Director-General at the time. In his first report to the International Labour Conference, the Director stated that “the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work under conditions of freedom, equity, security and human dignity.”<sup>86</sup>

Hence, the decent work concept comprises six dimensions: (1) opportunity to work, (2) productive work, (3) freedom at work, (4), equality at work, (5) security at work and (6) dignity at work. The six dimensions are based on four components, namely (1) employment, (2) social protection, (3)

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<sup>84</sup> Ibidem, at p. 185.

<sup>85</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 1.

<sup>86</sup> Martin Godfrey, Dharam Ghai, Bob Hepple, Sarosh Kuruvilla and Ashwani Saith, *Pedagogical Materials on Decent Work* (International Institute for Labour Studies, 2006), at p. 15.

workers' rights and (4) social dialogue.<sup>87</sup> Based on this perception of decent work, this paper emphasises the equality at work dimension and the social dialogue component.<sup>88</sup>

Gender equality refers to equality between men and women. In other words, it refers to equal rights, responsibilities and opportunities for both men and women. "It does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female."<sup>89</sup>

Gender equality at work is a human rights issue but it is also an instrument for the achievement of socio-economic growth and development and reduction of poverty.<sup>90</sup> In fact, female empowerment has been connected to enhanced child nutrition, health and education and reduced infant mortality.<sup>91</sup>

Accordingly, pursuing gender equality is justified for human rights and justice reasons (rights-based rationale), as well as economic grounds (efficiency rationale).<sup>92</sup> The first is founded on the existence of gender-based discrimination and the continuous disadvantages faced by women. The second relies on the fact that women can act as "economic agents capable of transforming societies and economies".<sup>93</sup> Hence, equality is a value and goal in itself but it is also a way of achieving women's economic empowerment and socio-economic development.<sup>94</sup>

In one way or another, women have always been part of the workforce. However, they could not access the same employment as men. It was not until the Industrial Revolution that women truly entered the labour market. This contributed to women's empowerment and independence but it was never based on equality and social justice goals. On the contrary, having women (and children) as factory workers was a way of reducing costs and therefore obtaining higher profits.

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<sup>87</sup> Ibidem, at p. 16.

<sup>88</sup> Ibid.

<sup>89</sup> United Nations Entity for Gender Equality and the Empowerment of Women, 'Concepts and Definitions' <<http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>> accessed 18-05-2016.

<sup>90</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. vii.

<sup>91</sup> Ibidem, at p. 5.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

Nowadays, the fact that the labour force is becoming more and more feminine has not improved women's condition. "Job quantity has not been matched with quality".<sup>95</sup> Employers often prefer to contract women because they are seen as more submissive and obedient.<sup>96</sup> Accordingly, the fact that the majority of garment workers are women is connected to cultural stereotypes, which perceive women as passive and flexible.<sup>97</sup> Hence, labour related disadvantages are accumulated with other inequalities faced by women throughout life.<sup>98 99</sup>

Promoting gender equality is important at an individual level, in the workplace and at a societal level.<sup>100</sup> Particularly, at the workplace, discriminatory practices increase the possibility of labour disputes and decrease productivity.<sup>101</sup>

Most revised labour codes and statutes around the world now include sex discrimination prohibitions and measures for the promotion of gender equality at work. Enforcement has also improved, with both public and private bodies applying policies and programmes monitoring the application of these provisions.<sup>102</sup> Nevertheless, there are still serious deficiencies that need to be addressed.

Enhancing tripartism and social dialogue<sup>103</sup> is one of the ways through which labour rights enforcement and gender equality at work<sup>104</sup> can be achieved. This requires giving a voice to female workers.<sup>105</sup> However, most of the attention given to the subject has dealt with the topic of female participation and representation in politics and specifically in parliaments. The same emphasis has not been given as regards to social dialogue institutions and trade unions in particular.<sup>106</sup> "This is a 'decent work deficit'

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<sup>95</sup> Ibid.

<sup>96</sup> ILO Regional Office for Asia and the Pacific, *Practical Challenges for Maternity Protection in the Cambodian Garment Industry* (2012), at p. 20.

<sup>97</sup> Clean Clothes Campaign, 'Gender: Women Workers Mistreated' <<http://www.cleanclothes.org/issues/gender>> accessed 15-05-2016.

<sup>98</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 6.

<sup>99</sup> Ibidem, at p. 5.

<sup>100</sup> ILO Regional Office for Asia and the Pacific, *Equality and Non-Discrimination at Work in Cambodia: Manual* (2013), at p. 3.

<sup>101</sup> Ibidem.

<sup>102</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. viii.

<sup>103</sup> Dharam Ghai, *Pedagogical Materials on Decent Work*, at p. 108.

<sup>104</sup> Ibidem, at p. 109.

<sup>105</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. ix.

<sup>106</sup> Tracy Breneman-Pennas and Marleen Rueda Catry, *Women's Participation in Social Dialogue Institutions at the National Level* (International Labour Office, 2008), at p. 1.

that needs to be addressed by governments and social partners.”<sup>107</sup> Hence, increasing women’s participation and status in dialogue processes is essential. This is connected to the introduction of a gender perspective in the context of the social dialogue agenda.<sup>108</sup>

Globally, and despite the increasing number of women in the workforce, they are poorly represented as union members in most countries.<sup>109</sup> This can be explained by a number of factors, such as lack of knowledge and understanding regarding the benefits of being a union member, fear of reprisals from employers, family responsibilities, the male dominated culture, the fact they are working in the informal economy, lack of confidence to join the union, the fact that unions might not be sensitive to the women’s specific needs, among other reasons.<sup>110</sup>

Also, there is a general misconception regarding gender roles and leadership. Leadership is often perceived as a male feature and men are seen as better leaders. ”Research consistently demonstrates that current society sees leadership traits as closely resembling those which are usually attributed to men.”<sup>111</sup>

When it comes to leadership roles, particularly in the trade union context, one should ask if male leaders are not able to address female concerns properly. Men can do it but the presence of both men and women is necessary. Also, male union leaders are often unable to link the specific needs of women workers to the working context.<sup>112</sup>

Decent work is a vital objective for both men and women. It allows them to “build a more promising future for themselves, their families and their communities”.<sup>113</sup> However, it can only be achieved in a sustainable way through the contributions of both men and women.<sup>114</sup> The so-called ‘universality of the decent work concept’ means that it includes all forms of works and all of those who preform, both men and women.<sup>115</sup>

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<sup>107</sup> Ibidem.

<sup>108</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. ix.

<sup>109</sup> Annemarie Reerink, *Report on a Survey of Women and Gender Issues in Trade Union Organisations in Indonesia* (2006), at p. 14.

<sup>110</sup> Ibidem.

<sup>111</sup> Dee-Ann Schwanke, 'Barriers for Women to Positions of Power: How Societal and Corporate Structures, Perceptions of Leadership and Discrimination Restrict Women's Advancement to Authority' (2013) Vol. 3 Earth Common Journal .

<sup>112</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

<sup>113</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 1.

<sup>114</sup> Ibidem.

<sup>115</sup> Ibid., at p. 6.

“Decent work sums up the aspirations of people in their working lives.”<sup>116</sup>  
This is true for both men and women and it requires workers to participate in the defence of their interests. This means that both genders must be adequately represented, which entails a gender-balanced representation. In fact, the ILO has recognised that increasing female membership and leadership in social dialogue partners and prioritising gender issues in the agenda is essential for the achievement of gender equality and decent work.<sup>117</sup>

In conclusion, achieving decent work for both men and women requires the involvement and representation of both genders in decision making. Nevertheless, women face extra obstacles when compared to men. This is also true in the labour context, which explains why gender equality and gender-balanced representation at work are important if the goal of attaining decent work is to be achieved.

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<sup>116</sup> ILO, 'Decent Work', <<http://www.ilo.org/global/topics/decent-work/lang-en/index.htm>> accessed 05-05-2016.

<sup>117</sup> ILO, 'Gender Equality & Decent Work' <[http://www.ilo.org/moscow/areas-of-work/gender-equality/WCMS\\_249141/lang-en/index.htm](http://www.ilo.org/moscow/areas-of-work/gender-equality/WCMS_249141/lang-en/index.htm)> accessed 05-05-2016.

### 3 The Role of Trade Unions in Gender Equality and Gender-Balanced Representation: An Overview

*“Their (trade unions’) long standing democratic structures and clear mandate to fight oppression and discrimination in the workplace give them a clear role in the promotion of gender equality, importantly through the collective bargaining process.”<sup>118</sup>*

Initially, equality matters were perceived as non-collective, individual concerns, which could weaken trade union solidarity if pursued.<sup>119</sup> In fact, even today, and despite the fact that women constitute a significant portion of the workforce, the idea of trade unions as a brotherhood of men at the workplace is still very much alive. Still, “unions are perfectly positioned to be strong advocates for gender equality”.<sup>120</sup>

An adequate reference to the beginning to the trade union movement entails a brief overview of the British and American context.

The origins of the union movement are linked to the Industrial Revolution. The poor working conditions in factories, as well as the development of technology which decreased the need for skilled labour, led to several trade disputes in the 18<sup>th</sup> century and in 1799 and 1800 the Combination Acts determined strikes to be illegal. The Acts were repealed in 1824 and 1825 and in 1871 the Trade Union Act recognised unions protection under the law.

Unions grew rapidly in the following decades, with an unprecedented number of strikes. Women played a key role in the growth of the movement but they were generally excluded from unions. In 1914 the number of

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<sup>118</sup> ILO – International Confederation of Free Trade Unions (ICFTU), *The Role of Trade Unions in Promoting Gender Equality* (2002), at p. 29.

<sup>119</sup> Ibidem.

<sup>120</sup> Ibid.

women in trade unions had increased but 90 per cent of its members were still men.<sup>121</sup>

In the United States, the Lowell Female Labour Reform Association (LFLRA), created in 1844, is often considered as the first union of working women. The US Civil War (1861-1865) had important implications for women's role in the labour market, as they were required to replace men in their occupations. During this time women played an important role in various unions.

In 1920, after pressure from a number of female labour leaders and activists, a Women's Bureau intended to legislate on female labour issues was created. The progress made faced a setback when the American Federation of Labour, created in 1886, started gaining weight. Hence, women formed the Women's Trade Union League (WTUL), which represented women from all classes and helped them starting unions in several industries and locations across the US. The WTUL and other comparable movements highly improved women workers' position in the country. Still, the Great Depression represented another hindrance in advancing women's significance in the union movement.

The Second World War was an essential moment in advancing women's role in the labour movement. Approximately six million women entered the workforce and took jobs in sectors previously dominated by men (e.g. heavy industries).<sup>122</sup> After the end of the war, several women were forced to renounce their jobs to veterans. Nevertheless, women's presence and influence in the workforce had changed forever.

As history demonstrated, women were a vital part of the labour and union movements. Trade union's influence is dependent on a number of factors, namely its membership.<sup>123</sup>

There are numerous advantages in being a union member<sup>124</sup> and the general increase in trade union membership is associated with the rise in female

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<sup>121</sup> Striking Women, 'Claiming Rights: Role of Trade Unions in the UK' <<http://www.striking-women.org/module/rights-and-responsibilities/claiming-rights-role-trade-unions-uk>> accessed 05-05-2016.

<sup>122</sup> Striking Women, 'World War II: 1939-1945 - The Impact of WWII on Women's Work' <<http://www.striking-women.org/module/women-and-work/world-war-ii-1939-1945>> accessed 05-05-2016.

<sup>123</sup> Bernard Harcourt, Ada Garcia and Isabelle Dumont, *Women in Trade Unions: Making the Difference – Research on Women and Decision-Making in Trade Union Organisations* (2002), at p. 21.

<sup>124</sup> International Trade Union Confederation (ITUC) CSI IGB, *Achieving Gender Equality – A Trade Union Manual* (2008), at p. 17.

employment.<sup>125</sup> Nevertheless, in most countries and sectors, the number of women enrolled in trade unions is still lower than men's.<sup>126</sup> There are a number of reasons for this, namely lack of knowledge, fear of reprisals or concerns regarding the time a union membership could take out of household chores.<sup>127</sup> Also, a number of women are unable to join trade unions<sup>128</sup> (e.g. women working in the informal sector and under precarious conditions). Furthermore, the rate of women's participation in the labour market tends to vary according to their life cycle, something that does not usually happen with men.<sup>129</sup> Thus, the lower number of female members is more linked to sociological causes than lack of interest or desire to improve working conditions. "The lack of trade union protection is intensified through patriarchal attitudes and excluding behaviour by traditional (overwhelmingly male) trade unionists, which in turn reflects societal cultural attitudes and behaviour."<sup>130</sup>

Women face obstacles in society but also at the union structural level. "Women compared to men continue to be disadvantaged and vulnerable to exploitation and in need of organisation, representation and social protection."<sup>131</sup> There are deep cultural perceptions regarding the role each gender plays in society. In the union movement, women have to deal with the still-existent male union culture. This constitutes a serious obstacle, as they might feel uncomfortable to enter such settings.<sup>132</sup>

As previously stated, the number of women entering the labour force has increased over the years. However the quality of women's work is still generally lower than men's.<sup>133</sup> Gender-based discrimination at the workplace is still widespread. Also, women are often working in sectors where freedom of association is deficient.<sup>134</sup> Women's "generally lower

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<sup>125</sup> Bernard Harcourt, Ada Garcia and Isabelle Dumont, *Women in Trade Unions: Making the Difference – Research on Women and Decision-Making in Trade Union Organisations*.

<sup>126</sup> Ibidem.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid, at p. 22.

<sup>129</sup> Jo Portillo, Karen Douglas, Patricia Chong, Akua O. Britwum, Kim Mijeoung, Joel Odigie, Ramon Certeza, Melisa Serrano, Janet Munakamwe, Gaye Yilmaz, Sue Ledwith and Crispin Chinguno, *Gender and Trade Unions* (2001), at p. 3.

<sup>130</sup> Ibidem.

<sup>131</sup> ILO Gender Promotion Programme, 'Promoting Gender Equality – A Resource Kit for Trade Unions' <[http://www.workinfo.com/free/links/gender/cha\\_1.htm](http://www.workinfo.com/free/links/gender/cha_1.htm)> accessed 13-03-2016.

<sup>132</sup> Dee-Ann Schwanke, 'Barriers for Women to Positions of Power: How Societal and Corporate Structures, Perceptions of Leadership and Discrimination Restrict Women's Advancement to Authority'.

<sup>133</sup> Annemarie Reerink, *Report on a Survey of Women and Gender Issues in Trade Union Organisations in Indonesia*, at p. 11.

<sup>134</sup> Ibidem.

status in the labour force”<sup>135</sup> demonstrates the importance of trade unions but it also constitutes an obstacle for trade unions to take improvement actions.<sup>136</sup>

In fact, male union leaders have lacked to understand the importance of increasing female membership, which is necessary for the sustainability of the movement.<sup>137</sup> Women comprise one fifth of the International Confederation of Free Trade Unions (ICFTU) membership and 35 per cent of the global trade union membership. Hence, the future of trade union movement depends on whether trade unions are able to promote women’s participation and include women’s concerns in their agendas.<sup>138</sup>

Women have not only been neglected in membership, but also in decision making bodies and leadership. “Union strength is based on treating workers as equals. But the higher up the union you go the more men you will find making decisions.”<sup>139</sup> Trade union power and influence is anchored on the idea of equality among its members, who together build a collective voice.<sup>140</sup> However, even in countries and sectors where women represent a high percentage of trade union membership (e.g. as in the garment sector in Cambodia), they are frequently unable to play a strategic role in decision making and collective bargaining.

The lack of women in decision making bodies is also generally based on sociological factors such as prejudice, women’s lack of confidence and the so-called ‘trade union culture’, which is male dominated.<sup>141</sup> Unions ought to include a gender perspective in their agenda. This means organising around the needs of those they represent.<sup>142</sup>

“As increasing numbers of women join the formal workforce, more and more women joining trade unions or are potential members. Women are approximately 33 per cent of the global trade union membership yet they represent a mere one per cent of the governing bodies of unions. Clearly women have not achieved equal status with men within the trade union

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<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

<sup>138</sup> Annemarie Reerink, *Report on a Survey of Women and Gender Issues in Trade Union Organisations in Indonesia*.

<sup>139</sup> ITUC CSI IGB, *Achieving Gender Equality - A Trade Union Manual*, at p. 24.

<sup>140</sup> Ibidem, at p. 22.

<sup>141</sup> Bernard Harcourt, Ada Garcia and Isabelle Dumont, *Women in Trade Unions: Making the Difference – Research on Women and Decision-Making in Trade Union Organisations*, at p. 22.

<sup>142</sup> ITUC CSI IGB, *Achieving Gender Equality - A Trade Union Manual*, at p. 11.

movement. If trade unions are to be credible to women regarding their commitment to promoting equality through collective bargaining they must be able to show that equality is an integral part of their own policies and structures.”<sup>143</sup>

The parties involved in tripartite consultation can “ensure that the voices of both women and men are heard during consultations, by promoting the balanced representation of both (...) in the consultative bodies and in the inclusion of issues of specific concern to women and to men”.<sup>144</sup> Also, tripartite consultation can contribute to the awareness of discrimination and the need for equality between men and women.<sup>145 146</sup>

There has been an increasing awareness regarding the fact that women have different “perspectives, concerns and priorities to bring to the collective bargaining table”.<sup>147</sup> Accordingly, the inclusion of gender issues in collective bargaining requires their involvement. Women should be consulted and demonstrate their concerns and priorities.<sup>148</sup> As stated in an ILO – ICFTU report, this is important for two reasons.<sup>149</sup> On the one hand, the content of collective agreements is usually based on past agreements, which often omit particular gender concerns. On the other hand, female workers are frequently unable to make their concerns heard.<sup>150</sup>

From a global perspective, it is positive to observe different measures intended to increase women’s participation in collective bargaining. Quotas, fixed numerically or through a percentage, demanding that the composition of bargaining teams should reflect the proportion of female membership or including women in collective bargaining when there are gender specific issues constitute some examples.<sup>151</sup>

Also, trade unions have an obligation to identify and combat discriminatory practices.<sup>152</sup> In order to do this, unions should promote the introduction or extension of policies at workplace and negotiate the inclusion, in collective

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<sup>143</sup> ILO – ICFTU, *The Role of Trade Unions in Promoting Gender Equality*, at p. 15.

<sup>144</sup> International Labour Office, *ABC of Women Worker’s Rights and Gender Equality*, at p. 186.

<sup>145</sup> *Ibidem*.

<sup>146</sup> *Ibid*, at p. 185.

<sup>147</sup> ILO – ICFTU, *The Role of Trade Unions in Promoting Gender Equality*.

<sup>148</sup> *Ibid*, at p. 29.

<sup>149</sup> *Ibid*.

<sup>150</sup> *Ibid*, at p. 33.

<sup>151</sup> *Ibid*, at p. 31.

<sup>152</sup> International Labour Office, *ABC of Women Worker’s Rights and Gender Equality*, at p. 181.

bargaining, of clauses concerning gender specific issues.<sup>153</sup> Additionally, they should provide information regarding their rights and obligations under the national law, collective bargaining agreements and internal work policies.<sup>154</sup> Similarly, unions should promote women's membership and encourage the election of female representatives.<sup>155</sup>

In sum, the inclusion of “women in decision making positions is key for promoting gender equality in the world work”.<sup>156</sup> Unions should promote gender equality by involving women in membership and leadership, as well as by recognising women's particular needs and interests, which should be identified and properly addressed.<sup>157</sup> The improvement of working conditions can only be achieved through an active and strong membership and adequate representation. Making women's concerns visible and discussing the issues affecting specific groups of workers should be a basic part of unions' activities.<sup>158</sup> Hence, union membership, agenda and leadership should reflect the changes in the labour force, which includes an increasing number of women.

Also, trade unions have a mandate to promote and protect workers' rights, which awards them a vital role in promoting gender equality and fighting discrimination.<sup>159</sup> Ultimately, they can have an essential part in achieving social change. In fact, it has been shown that “in workplaces where women are organised into trade unions and know their rights, it has been shown that they win higher pay and better conditions”.<sup>160</sup>

Trade unions cannot be considered reliable defendants of women's rights and concerns if they do not include female representatives in their structures, namely in top positions.<sup>161</sup>

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<sup>153</sup> Ibidem.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid, at p. 182.

<sup>156</sup> Ibid.

<sup>157</sup> ILO – ICFTU, *The Role of Trade Unions in Promoting Gender Equality*, at p. 15.

<sup>158</sup> ITUC CSI IGB, *Achieving Gender Equality - A Trade Union Manual*, at p. 17-18.

<sup>159</sup> ILO Gender Promotion Programme, 'Promoting Gender Equality – A Resource Kit for Trade Unions'.

<sup>160</sup> Kate Holman, *Women Workers: Reaching for the Sky - Trade Unions & The Beijing Platform for Action*, at p. 31.

<sup>161</sup> ILO Gender Promotion Programme, 'Promoting Gender Equality – A Resource Kit for Trade Unions'.

# 4 Gender-Balanced Representation at Work in Cambodia

## 4.1 Women and the Garment Industry

*“The face of the Cambodian garment worker is that of a young, rural female.”<sup>162</sup>*

Globally, out of 60 million garment factory workers, 80 per cent are women. The majority are young, with low education and come from rural areas, which means that factories constitute their first contact with formal employment.<sup>163</sup>

Likewise, in Cambodia, women comprise the majority of the labour force in the garment industry. “Owing to their docility, patience and efficiency, young rural Khmer women have been in high demand for the manual workforce engaging in machine operation – the most numerous and lowest segment of the production line.”<sup>164</sup> As stated, 90 to 92 per cent of the industry’s workers are women.<sup>165</sup> <sup>166</sup> Most of them come from rural areas and migrate because of food insecurity and lack of livelihood options.<sup>167</sup> These women normally come from large families and migrate in order to help supporting their relatives.<sup>168</sup> Around 74 per cent are under 25 years old, and more than 70 per cent are single.

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<sup>162</sup> Allard K. Lowenstein International Human Rights Clinic Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry* (2011), at p. 8.

<sup>163</sup> Better Work, 'Focus On Women'.

<sup>164</sup> Kasumi Nishigaya, 'Living Away From Home – Premarital Sex and Covariates – Factory Women in Phnom Penh, Cambodia' (2010) Volume 6 Asian Population Studies, at p. 218.

<sup>165</sup> Better Factories Cambodia, *Twentieth Synthesis Report on Working Conditions in Cambodia's Garment Sector*, at p. 5.

<sup>166</sup> World Bank, 'Garment Sector Competes and Thrives in Cambodia' <<http://www.worldbank.org/en/news/feature/2007/08/05/garment-sector-competes-thrives-cambodia>> accessed 13-03-2016.

<sup>167</sup> UN Women, 'Cambodia – Factsheet' <<http://www.unwomen-eseasia.org/docs/factsheets/01%20CAMBODIA%20factsheet.pdf>> accessed 06-05-2016.

<sup>168</sup> Veasna Nuon, Melisa Serrano and Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, at p. 8.

Cambodia is classified as one of the world's least developed countries and women comprise the majority of the poor.<sup>169</sup> Approximately 92 per cent of the country's poor live in rural areas and are dependant on agriculture. Women's massive migration to urban areas has had a tremendous influence on social structures. "The cities have the potential of empowerment as in diverse urban context women can challenge the way how they have been raised."<sup>170</sup>

Still, these women lack knowledge regarding labour rights, which means they are particularly vulnerable to abuses.<sup>171</sup> "With little mobility and a dearth of other economic options, these women are especially vulnerable to pressure from their employers."<sup>172</sup> During the 2009 economic crisis approximately 30.000 garment workers (i.e. mostly women) lost their jobs, "with employers reportedly pressuring women to waive their benefits and severance knowing that they may not understand their rights or have the means to protect them".<sup>173</sup>

Despite the fact that the majority of unionised workers are women, this is not reflected in leadership positions in unions' internal structures. Similarly and despite slow improvement, female participation in politics is low. In the 2003 elections, out of 123 seats, only 12 women were elected to the National Assembly. In 2008 there were 17<sup>174</sup> and in 2013 the percentage of female national assembly members was 20.33, corresponding to 25 women.<sup>175 176 177</sup>

Such underrepresentation is very much related to women's low social status in society. "Cambodian culture, which is very restrictive and hierarchical, gives more value to men."<sup>178</sup> Culturally, women are required to be silent at

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<sup>169</sup> UN Women, 'Cambodia - Factsheet'.

<sup>170</sup> Anna Bednarczyk, 'Gender and Labour - Women Can Benefit from Trade Unions?' <<http://krytyka.org/gender-and-labor-women-can-benefit-from-trade-unions/>> accessed 07-05-2016.

<sup>171</sup> Veasna Nuon, Melisa Serrano and Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, at p. 9.

<sup>172</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 8.

<sup>173</sup> UN Women, 'Cambodia - Factsheet'.

<sup>174</sup> Keasa Khun, 'Gender Issues in Cambodia', at p. 4.

<sup>175</sup> Cambodian Centre for Human Rights, *Politics in the Kingdom: Increasing Female Representation*, at p. 17.

<sup>176</sup> *Ibidem*, at p. 5.

<sup>177</sup> However, exact figures and percentages vary from source to source.

<sup>178</sup> Keasa Khun, 'Gender Issues in Cambodia', at p. 3.

all times,<sup>179</sup> which discourages them from sharing their opinions and making demands.

## 4.2 Cambodia and the Standards on Gender Equality and Gender-Balanced Representation at Work

*“Although, the implementation of some provisions faces obstacles in the Cambodian reality, the legal framework adopted in Cambodia provides a certain basis for the elimination of discrimination of women as much as their protection.”<sup>180</sup>*

Cambodia is a party of all the major human rights treaties. These include the ICCPR and the ICESCR as well as CEDAW and its Optional Protocol.

The current Constitution of the Kingdom of Cambodia, also called the new Constitution of 1993, is the country’s sixth Constitution. Both the United Nations and the International Community influenced the development of the new Constitution.<sup>181</sup> Accordingly, it encompasses the characteristics of modern constitutionalism, namely the respect for human rights, democracy and the rule of law.<sup>182</sup> Article 31 of the Constitution determines that Cambodia recognises and respects the human rights present in the United Nations Charter, the UDHR as well the covenants and conventions regarding human rights, women’s rights and children’s rights. As a consequence of Cambodia’s ratification, these instruments have been directly incorporated in the domestic law and the Constitutional Council has confirmed this incorporation in 2007.<sup>183</sup> Hence, the constitutional catalogue of fundamental human rights includes those comprised in international human rights law instruments.<sup>184 185</sup>

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<sup>179</sup> Ibidem, at p. 4.

<sup>180</sup> Milana Plischuk, 'Women and the Law in Cambodia', at p. 384.

<sup>181</sup> Hor Peng, 'The Modern Era of Cambodian Constitutionalism' (2012) Introduction to Cambodian Law 23, at p. 39.

<sup>182</sup> Ibidem.

<sup>183</sup> Cambodian Centre for Human Rights, *Politics in the Kingdom: Increasing Female Representation*, at p. 7.

<sup>184</sup> Milana Plischuk, 'Women and the Law in Cambodia' at p. 44.

<sup>185</sup> Asian Human Rights Commission, 'Cambodia: National Congress where the ruled and rulers meet must not be a still-born constitutional institution' <<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-057-2009>> accessed 15-05-2016.

Based on its international obligations, Cambodia has to comply with a number of standards, which include promoting gender equality at work and prohibiting sex and pregnancy-based discrimination.<sup>186</sup>

Article 31 makes CEDAW directly applicable in the country.<sup>187</sup> CEDAW is not only a primary source of law in Cambodia, but also a secondary source. This means it is also an interpretative mean to read national legislation.<sup>188</sup> Yet, and despite progress, these instruments “are rarely direct applied by local courts”.<sup>189</sup>

Additionally, and despite CEDAW’s ratification in 1992, proper focus has only begun in 2006, with the submission of the country’s periodic reports.<sup>190</sup> Hence, the last years have known greater national efforts for the improvement of women’s situation in Cambodia.<sup>191</sup> In 2010 the country ratified CEDAW’s Optional Protocol, which came into force in 2011. The Protocol allows individuals and groups who consider their rights under CEDAW have been violated to submit complaints to the United Nations Committee on the Elimination of All Forms of Discrimination against Women.

Also, as stated in international standards, namely on Article 7 of CEDAW, States are required to take measures aimed at the elimination of discrimination against women in the political and public life of the country. Paragraph (c) determines that Parties shall ensure that women are able to participate in non-governmental organisations and associations on equal terms with men.

Accordingly, Article 35 of the Constitution of the Kingdom establishes that “Cambodian citizens of either sex have the right to engage actively in political, economic, social and cultural spheres of the nation”. The Constitution expressly refers that both men and women enjoy the same political rights, which includes participation and representation (Article 34 of the Constitution). In fact, gender equality is recognised as a significant constitutional principle.<sup>192</sup> <sup>193</sup> Article 45 determines that “all forms of

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<sup>186</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 127.

<sup>187</sup> Milana Plischuk, 'Women and the Law in Cambodia', at p. 384.

<sup>188</sup> *Ibidem*, at p. 385.

<sup>189</sup> Hor Peng, 'The Modern Era of Cambodian Constitutionalism', at p. 44.

<sup>190</sup> UN Women, 'Cambodia - Factsheet'.

<sup>191</sup> *Ibidem*.

<sup>192</sup> Milana Plischuk, 'Women and the Law in Cambodia', at p. 383.

<sup>193</sup> *Ibidem*, at p. 386.

discrimination against women shall be abolished”. Additionally, it states that “the exploitation of women in employment is prohibited”.

As for the right to representation at work, Article 36 of the Constitution determines that both male and female Khmer citizens shall be allowed to form and be members of trade unions.

Besides the Constitution, national and sub-national electoral laws reiterate an equal right to political participation and representation. Some contain provisions assigning certain decision making positions at the local level to be occupied by women.<sup>194</sup> There are no similar references to the right to representation at work. However, as stated, the non-discrimination provisions comprised in the Constitution and labour law entail equal rights for both men and women.

Cambodia is a part of the Association of Southeast Asian Nations (ASEAN). In 2012, the Association adopted the ASEAN Human Rights Declaration (AHRD), which also comprises a non-discrimination clause by affirming the equal rights of every person without distinction of gender. The document reaffirms the Declaration of the Advancement of Women in the ASEAN region, which was adopted in 1988 by the governments of Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand. Article 4 reaffirms the rights of women and Article 25 (1) upholds the right of every person to participate in government.

However, the Declaration has been broadly criticised for not including essential rights and fundamental freedoms and for its vague text, which can be used to undermine human rights.<sup>195</sup>

As for labour specific instruments, Cambodia has ratified all of the fundamental ILO Conventions. In the context of gender equality, these include Convention No. 111, which constitutes the most comprehensive instrument regarding the right of non-discrimination at work and Convention No. 100, which addresses equal remuneration between men and women. Both Conventions were ratified in 1999.

Convention No. 111 defines discrimination as “any distinction, exclusion or preference made on the basis of [...] sex [...] which has the effect of nullifying or impairing equality of opportunity or treatment in employment

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<sup>194</sup> Cambodian Center for Human Rights, *Politics in the Kingdom: Increasing Female Representation*, at p. 5-7.

<sup>195</sup> *Ibidem*, at p. 10.

or occupation”. Accordingly, Cambodia has the obligation to modify practices that are inconsistent of with an anti-discrimination policy.<sup>196</sup>

Cambodia has not ratified either Convention No. 156, concerning Workers with Family Responsibilities, nor Convention No. 183, which constitutes the latest Convention adopted by ILO on the topic of maternity protection.

Cambodia’s national labour law is considered to progressive in the range of rights it recognises.<sup>197</sup> Still, the biggest challenge for legislation refers to its implementation and enforcement. “Many laws that purport to protect women and uphold their rights have little de facto effect because of weak enforcement, the absence of sanctions for non-compliance, or the lack of effective monitoring mechanisms.”<sup>198</sup>

The country’s Gender Inequality Index (GII) demonstrates this. Cambodia has a GII value of 0.477 and is ranked in the 143<sup>th</sup> place, out of the 188 countries included in 2014 index.<sup>199</sup> The GII reflects gender-based inequalities in reproductive health, empowerment and economic activity. The GII ranges from zero to one and a higher GII indicates higher inequality levels.

## 4.3 Stakeholders

### 4.3.1 The Role of Trade Unions

*“The integration of gender/ women-related issues in collective bargaining remains a big challenge to unions in Cambodia. The fact that women’s involvement in union leadership and bargaining team still pales in comparison with men makes this challenge even more overwhelming.”<sup>200</sup>*

Cambodia experienced a rapid growth in the number of trade unions, which started in the 90s. The first garment factories also emerged around this time. These were characterised by extremely poor working conditions and

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<sup>196</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 188.

<sup>197</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 9.

<sup>198</sup> UN Women, 'Cambodia - Factsheet'.

<sup>199</sup> United Nations Development Programme, *The Rise of the South: Human Progress in a Diverse World – Cambodia* (Human Development Report, 2013).

<sup>200</sup> Veasna Nuon and Melisa Serrano, *Building Unions in Cambodia - History, Challenges, Strategies* (Friedrich-Ebert-Stiftung Office Cooperation in Asia, 2010), at p. 89-90.

repeated abuses.<sup>201</sup> Hence, the union movement started with the expansion of the garment, textile and footwear industry<sup>202</sup> and it improved the working situation in factories.<sup>203</sup> Also, the enactment of the 1993 Constitution the 1997 labour law provided the legal framework for the establishment and development of unions.<sup>204</sup>

The movement is young and mostly concentrated in the garment industry.<sup>205</sup> Similarly to their beginning, the increase in the number of trade unions can be linked to the expansion of this industry.<sup>206</sup> It is estimated that 7.7 per cent of the labour force is a trade union member.<sup>207</sup>

However, union membership in the garment and textile industry has been reported to be between 43 and 60 per cent.<sup>208</sup> This figure is clearly higher than in other industries,<sup>209</sup> even though it varies according to a factory's size.<sup>210</sup> Nonetheless, it is considered "the highest union density among all industries in any country in Asia".<sup>211</sup>

As a young movement, Cambodian trade unions face numerous challenges. These include lack of financial resources, political influences, and gender inequality, among others.<sup>212</sup> "Although freedom of association is protected by the Cambodian Constitution and labour law and is one of the key areas the ILO-BFC evaluates, labour unions operate within a complex and treacherous terrain in Cambodia."<sup>213</sup>

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<sup>201</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 14.

<sup>202</sup> ADB and ILO, *Cambodia – Addressing the Skills Gap*, at p. 69.

<sup>203</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 14.

<sup>204</sup> ADB and ILO, *Cambodia – Addressing the Skills Gap*, at p. 69.

<sup>205</sup> Veasna Nuon and Melisa Serrano, *Building Unions in Cambodia – History, Challenges, Strategies*, at p. 66.

<sup>206</sup> Danish Trade Union Council for International Development Cooperation, *Cambodia – Labour Market Profile* (2014).

<sup>207</sup> *Ibidem*, at p. 4.

<sup>208</sup> Veasna Nuon and Melisa Serrano, *Building Unions in Cambodia – History, Challenges, Strategies*, at p. 64.

<sup>209</sup> ADB and ILO, *Cambodia – Addressing the Skills Gap*, at p. 71.

<sup>210</sup> Jennifer Makin, *Cambodia – Women and Work in the Garment Industry* (2006), at p. 25.

<sup>211</sup> Veasna Nuon and Melisa Serrano, *Building Unions in Cambodia – History, Challenges, Strategies*, at p. 71.

<sup>212</sup> *Ibidem*, at p. 2.

<sup>213</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 13.

There are multiple trade unions in Cambodia<sup>214</sup> and several are politically affiliated.<sup>215</sup> In general, unions are considered to be aligned with the governing Cambodia People's Party or the oppositional Cambodia National Rescue Party.<sup>216</sup> Pro-management and pro-government unions are known as 'yellow unions'.<sup>217</sup>

Still, there are independent unions who indisputably fight for workers' interests. These have been able to unify and in the defence for workers' rights.<sup>218</sup>

"Independent unions play an important role in improving conditions through collective bargaining agreements, reporting labour rights violations and helping workers seek redress."<sup>219</sup>

With an average of four unions per enterprise, multiplicity of trade unions is a feature of the garment industry.<sup>220</sup> In general, multiplicity cannot be said to favour employees as it diffuses power and creates rivalry among unions.<sup>221</sup> This creates obstacles for cooperation and the improvement of working conditions.<sup>222</sup> Furthermore, many small unions are almost inactive and others are supported by employers in order to frighten unionists and create disturbances.<sup>223</sup> Still, the main confederations have been able to develop cooperation strategies for the achievement of mutual goals.<sup>224</sup>

Studies carried out have shown that in spite of union membership being mostly comprised by women (approximately 55 per cent),<sup>225</sup> male workers held most leadership positions. Also, women comprised less than 35 per

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<sup>214</sup> Veasna Nuon and Melisa Serrano, *Building Unions in Cambodia – History, Challenges, Strategies*, at p. 67.

<sup>215</sup> *Ibidem*, at p. 66.

<sup>216</sup> ADB and ILO, *Cambodia – Addressing the Skills Gap*, at p. 69.

<sup>217</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 35.

<sup>218</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 13.

<sup>219</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 35.

<sup>220</sup> Veasna Nuon and Melisa Serrano, *Building Unions in Cambodia – History, Challenges, Strategies*, at p. 68.

<sup>221</sup> *Ibidem*, at p. 67-70.

<sup>222</sup> ADB and ILO, *Cambodia – Addressing the Skills Gap*, at p. 71.

<sup>223</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 17.

<sup>224</sup> *Ibidem*.

<sup>225</sup> Veasna Nuon, Melisa Serrano and Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, at p. 19.

cent of officer and bargaining team positions.<sup>226</sup> This is true for unionism in general and notably striking for the garment and textile industry in particular.<sup>227</sup>

Despite the high number of trade unions and the existence of a women organisation for women trade unionists, women are under represented in union leadership.<sup>228</sup> This is true for both union confederation leaders and intermediate leaders.<sup>229</sup> Structural reasons have pointed out as one of the main reasons for women's low representation at the leadership level in trade union federations.<sup>230</sup>

According to a 2011 survey report, female workers are highly involved in organising campaigns but on an average only 33 per cent of union officers were women.<sup>231</sup> For bargaining teams the percentage is even lower and collective agreements rarely include gender-related policies and programmes.<sup>232</sup> The fact that most union leaders are male has been pointed out as one of the key obstacles when addressing female factory workers' concerns.<sup>233 234</sup>

The six major union confederations and federations which, together represent the majority of workers<sup>235</sup> are the Cambodian National Confederation (CNC), the National Union Alliance Chamber of Cambodia (NACC), the Cambodian Confederation of Trade Unions (CCTU), the Cambodian Labour Confederation (CLC), the Cambodian Confederation of Unions (CCU) and the Khmer Youth Federation of Trade Unions (KYFTU). Only one of these leaders is a woman (Ms. Morn Nhim, President of the CNC). Thus, the movement is composed by women and led by men.<sup>236</sup>

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<sup>226</sup> Veasna Nuon and Melisa Serrano, *Building Unions in Cambodia – History, Challenges, Strategies*, at p. 88.

<sup>227</sup> Ibidem.

<sup>228</sup> Gender Helpdesk Stockholm University, *Gender Mapping of Cambodia* (2010).

<sup>229</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 18.

<sup>230</sup> Veasna Nuon Melisa Serrano Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, at p. 26.

<sup>231</sup> Ibidem, at p. 19.

<sup>232</sup> Ibid.

<sup>233</sup> Stockholm University, *Gender Mapping of Cambodia*, at p. 11.

<sup>234</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

<sup>235</sup> ILO, 'ILO Welcomes Landmark Agreement in Cambodia's Garment Industry' <[http://www.ilo.org/asia/info/public/pr/WCMS\\_145232/lang--en/index.htm](http://www.ilo.org/asia/info/public/pr/WCMS_145232/lang--en/index.htm)> accessed 14-04-2016.

<sup>236</sup> ILO and ADB, *Gender-Equality in the Labour Market in Cambodia* (2013), at p. 54.

Somewhat surprising, it has been show that, at the factory level, union leadership positions are mostly held by women.<sup>237</sup> These top positions include vice presidency, secretariat, secretariat assistance, as well as educational and women's offices.<sup>238</sup> Women are also very much involved in the organisation of campaigns by informing workers regarding the advantages of trade union membership, assisting workers in disputes settlement and meeting workers during free times to get information about complaints concerning the employer.<sup>239</sup> However, even when women are able to access leadership positions at the factory level they are challenged by the 'male-dominated system' in confederations.<sup>240</sup>

Promoting women's participation in the trade union movement can be through a number of policies, structures and mechanisms, such as allocating specific positions for women, establishing a women's committee, desk or conference, determining goals for women's representation in bargaining teams, conferences or union committees, among others.<sup>241</sup>

Lack of information regarding gender equality policies in leadership and bargaining team positions are part of the reason why women are under represented.<sup>242</sup> Even if trade unions comprise gender inclusive policies it is not uncommon that female workers are unaware of their existence.

Having a female labour force and mostly female union members does not mean women take a more active role in trade union leadership. Also, not all women will push for the inclusion of gender-related problems in the union's agenda. Hence, including gender-sensitive bodies in a trade union's organisational structure plays an essential part in promoting women's participation and involvement in leadership positions, as well as the inclusion of gender sensitive issues.<sup>243</sup>

In sum, despite concerns regarding political influence, independent trade unions can contribute to labour improvements in Cambodia. Hence, they constitute a noteworthy support for the achievement of gender equality.

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<sup>237</sup> Veasna Nuon, Melisa Serrano and Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, at p. 23.

<sup>238</sup> Ibidem, at p. 23-27.

<sup>239</sup> Ibid, at p. 24.

<sup>240</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

<sup>241</sup> Veasna Nuon, Melisa Serrano and Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, at p. 25.

<sup>242</sup> Veasna Nuon and Melisa Serrano, *Building Unions in Cambodia – History, Challenges, Strategies*, at p. 88-89.

<sup>243</sup> Veasna Nuon, Melisa Serrano and Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, at p. 25.

However, one of the problems is that the union movement is dominated by men.

### **4.3.2 Other Key Actors in the Cambodian Garment Industry**

*“Manufacturers, government officials, trade union representatives, international buyers and third-party monitors all influence labour practices in Cambodia’s garment industry.”<sup>244</sup>*

Unions play a key role in including female concerns as a priority for the movement in the garment industry, which will ultimately contribute to the improvement of working conditions at factories, for all workers and women workers in particular.

Still, other actors have essential roles to play in the ultimate goal of improving labour standards. Without others actor’s work and commitment, the goal of achieving a more balanced gender representation will not happen.

#### **4.3.2.1 The Cambodian Government**

The Cambodian government is the primary duty holder in terms of guaranteeing compliance with international human rights standards.

Cambodia has taken a first step by passing adequate legislation but ensuring a strong inspectorate is an essential part for the law’s enforcement.

According to the Kingdom of Cambodia’s Political Platform, entitled ‘Rectangular Strategies for Growth, Employment, Equity and Efficiency’, all the ministries should cooperate in order to promote gender equality.<sup>245 246</sup> The government has expressed its commitment in the promotion of gender equality and it has recognised that “women are the backbone of socio-economic development”.<sup>247</sup>

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<sup>244</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 34.

<sup>245</sup> Keasa Khun, 'Gender Issues in Cambodia', at p. 4.

<sup>246</sup> ILO, 'Rectangular Strategy for Growth, Employment, Equity and Efficiency Phase III' <[http://www.ilo.org/asia/info/WCMS\\_237910/lang--en/index.htm](http://www.ilo.org/asia/info/WCMS_237910/lang--en/index.htm)> accessed 06-05-2016.

<sup>247</sup> Chou Bun Eng, 'Statement of Her Excellency Mrs. Chou Bun Eng, Director-General in charge of Social Development, Ministry of Women's Affairs, Kingdom of Cambodia' (52nd Session of the Commission on the Status of Women), at p. 2.

In the labour context, the Minister of Labour and Vocational Training (MoLVT), the Ministry of Commerce and the Ministry of Industry are particularly relevant.

The Ministry of Commerce awards export certifications, which allow factories to export products. Hence, recommendations for this Ministry have included requiring the disclosure of international brand's names sourcing from Cambodia.<sup>248</sup> The Ministry of Industry issues licences and supervises factory plants.

The Ministry of Labour and Vocational Training (MoLVT), established to enforce labour law and regulations, is the institution responsible for labour affairs. It sets the labour policy and is responsible for its enforcement.<sup>249</sup> The domestic labour law covers all garment factories, regardless of their size (Article 2 of the labour law).<sup>250</sup> <sup>251</sup> The Ministry of Labour fulfils its obligations through the department of labour inspection, which monitors factories, supervises occupational safety and health, releases health certificates to workers and helps resolving labour disputes.<sup>252</sup>

Besides enforcing labour law, labour inspectors provide information and advice to workers and refer to problems not specifically addressed in the law to the competent bodies. However, it is worth noting that Cambodia has not ratified the ILO Convention regarding Labour Inspection (No. 81).

“Even though the law has strong protections for workers on many subjects, its enforcement (...) has been abysmal, in large because of an ineffectual labour inspectorate crippled by corruption and outpaced by factory growth.”<sup>253</sup> <sup>254</sup> Cooperation, namely with trade unions could improve these deficiencies.

“National women's machinery”<sup>255</sup> has been reinforced in Cambodia. In particular, the Ministry of Women's Affairs, created in 1998, has an important part to play in promoting gender equality and women's

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<sup>248</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 22.

<sup>249</sup> Ibidem, at p. 34.

<sup>250</sup> Ibid.

<sup>251</sup> Labour Law (Royal *Kram* CS/RKM/0397/01), adopted by the National Assembly on January 10, during the 7th Session of the First Legislature.

<sup>252</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 17.

<sup>253</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 35.

<sup>254</sup> Better Factories Cambodia, Thirtieth Synthesis Report on Working Conditions in Cambodia's Garment Sector (2015).

<sup>255</sup> UN Women, 'Cambodia - Factsheet'.

empowerment among public institutions and civil society. The Ministry's third action plan, entitled *Neary Rattanak III* (2009-2013) focused on the improvement of women's political participation and economic empowerment, as well as eliminating discrimination in particular areas such as education, legislation and health care.<sup>256</sup> Also, the Cambodian National Council for Women, presided by the Minister of Women's Affairs, set up 'A Five-Year Strategic Plan' to combat gender disparities. Established in 2001, the Council coordinates and provides advice to the government on issues regarding the promotion of Cambodian women's status, roles and welfare.<sup>257</sup>

Still, discussions and interviews carried out with trade union members and leaders have brought into question the efficiency of the Ministry's work.<sup>258</sup>

#### **4.3.2.2 The Garment Manufacturers Association In Cambodia**

"GMAC is the most powerful, well-organised employer association influencing labour conditions."<sup>259</sup> It was created in 1996 and it comprises more than 300 companies, which makes it "the most important voice representing Cambodian garment manufacturers."<sup>260</sup>

Garment exporters are required to be registered with GMAC, which represents these employers at a governmental level. Given the importance of the garment and textile industry, the GMAC is an influential lobbyist. The association works closely with the government and cooperates with the labour movement to guarantee the respect for labour standards.<sup>261</sup>

GMAC states that one of its missions is to embrace corporate social responsibility in order to achieve sustainable business development.<sup>262</sup>

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<sup>256</sup> Ibidem.

<sup>257</sup> Cambodian National Council for Women, *A Five-Year Strategic Plan 2010-2014* (2010), at p. 10.

<sup>258</sup> Sokny Say, *Interview* (2016).

<sup>259</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 35-36.

<sup>260</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 12.

<sup>261</sup> Garment Manufacturers Association in Cambodia, 'The Development of the Apparel Industry in Cambodia' <[http://www.gmac-cambodia.org/gmac-version2/about\\_gmac/default.php](http://www.gmac-cambodia.org/gmac-version2/about_gmac/default.php)> accessed 07-005-2016.

<sup>262</sup> Garment Manufacturers Association in Cambodia, 'Introduction' <<http://gmac-cambodia.org/intro/default.php>> accessed 07-05-2016.

In 2012, several key stakeholders in the Cambodian garment industry (i.e. non-governmental organisations, unions and the GMAC) signed a Memorandum of Understanding (MoU) accepting the Arbitration Council's awards over rights disputes as binding ("Where an arbitration decision on dispute of rights is given, the employer and workers and their representatives accept that the decision is final and binding on them").<sup>263</sup> Furthermore, the parties agreed to cooperate in order to resolve the issues concerned with fixed and undetermined duration contracts.<sup>264</sup> However, the MoU expired in 2014 and a new agreement has not been signed.

#### 4.3.2.3 The International Buyers

International brands have responsibilities in safeguarding workers' rights throughout their supply chains.<sup>265</sup> Some of these supplying factories may, however, subcontract without the international brand's consent or knowledge. Such occurrences should not be used as an excuse to evade brand's obligations. As stated in the United Nations Guiding Principles on Business and Human Rights (UNGP), businesses should respect human rights. In order to do this, they should avoid infringements and should address adverse human rights impacts with which they are involved (i.e. prevention, mitigation and remediation).

"Buyers are important to efforts to protect workers' rights in the Cambodian garment industry, both because they help fund the ILO-BFC's monitoring and training programs through the fees they pay to the ILO-BFC for its factory reports and because of the immediate attention they receive from garment manufacturers when they take a strong position on a labour issue."<sup>266</sup>

Well known brands such as H&M, Marks and Spencer, Adidas, Gap and Inditex contract factories in Cambodia to produce their products. Through codes of conduct as well as internal and external audits brands attempt to demonstrate their commitment to the enforcement of labour rights. Also, these brands have an important role in advocacy and pressure the government into compliance with national and international standards.<sup>267</sup>

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<sup>263</sup> Memorandum of Understanding, *On Improving Industrial Relations in the Garment Industry* (2012), at paragraph 6.

<sup>264</sup> *Ibidem*, at paragraph 7.

<sup>265</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 4.

<sup>266</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 13.

<sup>267</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 38.

For example, H&M, as the largest buyer of apparel in Cambodia has demonstrated to have a significant influence in the improvement of working conditions and respect for labour rights in the garment industry.<sup>268</sup>

Also relevant in this context are the International/ Global Framework Agreements (IFA). These refer to agreements between multinational companies and global trade unions and are set to improve working standards in business operations of the contracting enterprises.<sup>269</sup> These instruments are different from codes of conduct because external parties frequently have an active role in the execution of the agreement.<sup>270</sup> In 2014, Inditex renewed an IFA with IndustriALL Global Union.<sup>271 272</sup> Also, in October 2015 IndustriALL Global Union, H&M and the Swedish trade union Industrifacket Metall signed a global framework.<sup>273 274 275</sup> This IFA covers 1.6 million garment workers in around 1.900 factories. Besides the agreement's coverage, IndustriALL has stated that the agreement has been "instrumental in resolving conflicts".<sup>276</sup>

#### 4.3.2.4 The Arbitration Council

"The Arbitration Council is the primary mechanism for adjudicating disputes arising under the 1997 labour law."<sup>277</sup> The Council is an independent national institution with quasi-judicial authority dealing with collective labour disputes, both rights and interests. A right dispute refers to

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<sup>268</sup> Fair Action, *A Short-Term Solution – A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry* (2015), at p. 6.

<sup>269</sup> Aalt G. Colenbrander, 'International Framework Agreements' (2016) 12 *Utrecht Law Review* 109, at p. 109.

<sup>270</sup> *Ibidem*.

<sup>271</sup> IndustriALL, 'International Framework Agreement between Inditex, ITGL WF and Industrial' <<http://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/Inditex/inditex-gfa-english.pdf>> accessed 20-05-2016.

<sup>272</sup> IndustriALL, 'Inditex' <<http://www.industrialunion.org/inditex>> accessed 20-05-2016.

<sup>273</sup> IndustriALL, 'Global Framework Agreement between H&M and IndustriALL Global Union and Industrifacket Metall' <[http://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/hm-industrial\\_gfa\\_agreed\\_version\\_09-09-2015.pdf](http://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/hm-industrial_gfa_agreed_version_09-09-2015.pdf)> accessed 20-05-2016.

<sup>274</sup> IndustriALL, 'IndustriALL Global Union and H&M sign Global Framework Agreement' <<http://www.industrialunion.org/industrial-global-union-and-hm-sign-global-framework-agreement>> accessed 20-05-2016.

<sup>275</sup> IndustriALL, 'Agreement with H&M proves instrumental in resolving conflicts' <<http://www.industrialunion.org/agreement-with-hm-proves-instrumental-in-resolving-conflicts-0>> accessed 20-05-2016.

<sup>276</sup> *Ibidem*.

<sup>277</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 10.

existing legal rights. An interests dispute refers to future benefits that are not legal rights or entitlements. The Council is not a Court but it possesses legal and equitable decision making authority in the labour context.<sup>278</sup> It was established by a *Prakas* (Ministerial Decree)<sup>279 280</sup> in 2004 it is provided for under the labour law (Articles 309 to 317). The Council bases its work in good governance principles (i.e. integrity, independence and neutrality, equity, stakeholder participation, transparency, predictability and responsiveness).<sup>281</sup>

If a collective dispute arises and it cannot be resolved through negotiation or conciliation, the conciliator refers the dispute to the Arbitration Council through the Ministry of Labour and Vocational Training. The dispute is settled by the Arbitration Panel, which is composed by three arbitrators. Each party selects one of the arbitrators and these two arbitrators together choose the third one.

If the case deals of a rights dispute the Arbitration Panel decides according to law. Differently, when dealing with an interests disputes the Council decides based on equity and fairness principles.

The decisions are named Arbitral awards, which can be binding or not. Before the decision is issued, the parties decide if they want a binding or non-binding award. If the parties agree to have binding arbitration they will not be able to oppose the award.

As referred, the Council deals with collective labour disputes. According to Article 302 of the labour law, a collective labour dispute is “any dispute that arises between or more employers and a certain number of their staff over working conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations with the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardise the effective operation of the enterprise or social peace”. Accordingly, trade unions can present disputes before the Council, which is often the case.

Contrary to the perception regarding the Cambodian judicial system, the Arbitration Council is seen as independent and impartial.<sup>282 283 284</sup> There has

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<sup>278</sup> Arbitration Council, 'Our Role'

<[http://www.arbitrationcouncil.org/en/about\\_us/arbitration\\_council/our\\_role](http://www.arbitrationcouncil.org/en/about_us/arbitration_council/our_role)> accessed 09-05-2016.

<sup>279</sup> ILO, 'Prakas on the Arbitration Council'

<[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=82037](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82037)> accessed 25-05-2016.

<sup>280</sup> *Prakas on the Arbitration Council (no. 99 MoSALVY)*, adopted on the 21th of April, 2004.

<sup>281</sup> Arbitration Council, 'Mission & Values' <<http://www.arbitrationcouncil.org/en/about-us/mission-values>> accessed 09-05-2016.

<sup>282</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 9.

been an increasing number of binding decisions and it is estimated that 92 per cent of the parties have high confidence in the service provided by the Arbitration Council.<sup>285</sup>

The Council can have a tremendous effect in the promotion of gender equality. In fact, the Arbitration Council has dealt with gender issues in the garment industry (e.g. denial of maternity leave) in several awards. Its tripartite structure and reputation has made the AC “a key standard-setter in the interpretation and application of the labour law”.<sup>286</sup>

#### **4.3.2.5 The International Labour Organisation Better Factories Cambodia Programme**

Better Factories Cambodia (BFC) is a body created within the International Labour Organisation in 2001. It monitors factories regarding their compliance with the international recognised labour standards as well as national legislation. Factories are required to submit to these audits in order to receive an export licence.

Despite some criticism requiring the programme’s lack pressure on international buyers, BFC has had an important role in the improvement of job and life quality in the garment industry.<sup>287</sup> In fact, according to a World Bank Report from 2015<sup>288</sup> female workers involved in Better Work programmes learn to negotiate even beyond the factory, which contributes to gender equality in and beyond the workplace.<sup>289</sup>

Also, the programme cooperates with other stakeholders, such as international buyers.<sup>290</sup> The result of its monitoring activities is compiled in reports, which are analysed by international buyers when making an order

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<sup>283</sup> ILO, *Working Paper No. 24, Cambodia’s Arbitration Council: Institution-building in a developing country* (2011).

<sup>284</sup> *Ibidem*, at p. 10-13.

<sup>285</sup> Arbitration Council, 'Statistics on Labour Dispute Resolution'

<<http://www.arbitrationcouncil.org/en/about-us/statistics>> accessed 09-05-2016.

<sup>286</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 10.

<sup>287</sup> World Bank, *How the Better Work Programme Improves Jobs and Life Quality in the Apparel Sector* (2015).

<sup>288</sup> *Ibidem*.

<sup>289</sup> Better Factories Cambodia, 'World Bank Study: BFC Programme Benefits all Key Stakeholders and Cambodian Garment Industry 2015' <<http://betterfactories.org/?p=372>> accessed 10-05-2016.

<sup>290</sup> ILO, 'Better Factories Cambodia – Framework' <[http://www.ilo.org/asia/whatwedo/projects/WCMS\\_099340/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/projects/WCMS_099340/lang--en/index.htm)> accessed 10-05-2016.

with a specific factory.<sup>291</sup> This makes the “ILO-BFC one of the most important actors in the Cambodian garment industry”.<sup>292</sup>

#### **4.3.2.6 The United Nations Entity for Gender Equality and the Empowerment of Women**

International organisations have a vital role in the improvement of women’s situation in the country. The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) works on increasing women’s participation in politics, decision making, economic and livelihood opportunities as well as knowledge, in order to empower them to claim their rights.<sup>293</sup>

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<sup>291</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 11.

<sup>292</sup> *Ibidem*, at p. 12.

<sup>293</sup> UN Women, 'Cambodia - Factsheet'.

## 5 Gender-Specific Concerns

*“Garment unions’ most visible public campaigns tend to revolve around the fight to raise the minimum wage. But female factory workers struggle to get traction for their concerns on maternity leave, reproductive health and workplace hygiene, even by unions that represent them.”<sup>294</sup>*

Although not perfect, Cambodia has enacted a strong labour law. Its enforcement, however, is weak. Working conditions and hiring practices in subcontracted factories are a clear example of this poor enforcement.

The topics discussed in the following section refer to particular issues that demonstrate the necessity of including gender-specific concerns in trade unions’ agendas. These matters were referred throughout the interview carried with the Secretary-General of the FTUWKC but are also continuously referred in a number of reports and academic articles.<sup>295</sup> These issues are inter-related and particularly relevant to female workers but their impact is much broader.

### 5.1 Fixed-Duration Contracts

*“The shift from UDCs to FDCs signalised a change in worker categorization, not worker utilisation.”<sup>296</sup>*

#### 5.1.1 The National and International Standards

The ILO key standards on the use of short-term contracts are comprised in the Termination of Employment Convention (No. 158) and its correspondent Recommendation (No. 166). Cambodia has not ratified

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<sup>294</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

<sup>295</sup> E.g. Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, Veasna Nuon Melisa Serrano Edlira Khafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, among others.

<sup>296</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 14.

Convention No. 158 but the standards constitute guidelines<sup>297</sup> and rules Cambodia should aspire to.

According to Recommendation No. 166, States should ensure that these types of contracts are not be used to avoid worker protection. The contract should be limited to the ‘nature of work’, the ‘circumstances under which it is to be effected’ or ‘the interests of the worker’. When short-term contracts are renewed one or more times or when they are not based in such situations they should be considered undetermined duration contracts.<sup>298</sup>

According to Article 67 of the Cambodian labour law, there are two types of contracts: fixed/ specific duration contracts (FDC/SDC) and unfixed/ undermined duration contract (UDC). As the name states, fixed-duration contracts comprise an ending date and unfixed-duration contracts are meant for permanent positions. A FDC cannot exceed the maximum period of two years. Otherwise, it will become a UDC.<sup>299</sup>

The labour law does not specify the type or nature of the work that can be preformed under a FDC. Likewise, it does not refer to the circumstances of the work. Hence, it does not deem that short-term contracts that are not necessitated by the ‘nature of the work’ or the ‘circumstances of the task’ should be considered indeterminate duration contracts. However, Article 9 makes a distinction between regular and casual workers. Regular workers are defined as “those who regularly preform a job on a permanent basis”. Casual workers are those performing a specific work, completed in a short period of time or preforming temporary, intermediate or seasonal work.

Workers continuously hired through FDC are more vulnerable<sup>300</sup> and less protected by law.<sup>301</sup> In practice, they are also more exposed to abuses, such as pregnancy-based discrimination, denial of maternity benefits and sick leave.<sup>302</sup>

In order to tackle this, Article 10 refers to equal rights for all workers, except for the clauses stipulated separately. These ‘separate standards’ are

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<sup>297</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 129.

<sup>298</sup> Ibidem.

<sup>299</sup> Milana Plischuk, 'Women and the Law in Cambodia', at p. 285.

<sup>300</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 4.

<sup>301</sup> Ibidem, at p. 9.

<sup>302</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*.

present throughout the labour law, which awards fewer protections to FDCs workers. This is particularly striking for contracts' termination and access to entitlements.

Regarding termination,<sup>303</sup> the labour law does not require any notice period for a FDC of less than six months. For a FDC of six or more months, the law requires a notice period of ten days before the contract's expiration or of its non-renewal. For FDC of more than one year the notice period is extended to fifteen days (Article 73 of the labour law). For a worker hired under a UDC the notice period is set between seven days and three months (Article 75 of the labour law).

Also, the law does not require the employer to provide any justification for the non-renewal of the fixed-duration contract. FDCs terminate on the ending stated and can be terminated before if both parties agree. Otherwise it is necessary the occurrence of serious misconduct or an act of God. Differently, for UDCs, Article 74 determines that "no layoff can be taken without a valid reason relating to worker's aptitude or behaviour". Furthermore, it is financially more advantageous to dismiss a FDC worker compared to a UDC (Article 73 and 77 of the labour law).<sup>304</sup>

Also, the in order to access paid annual leave,<sup>305</sup> workers are required to have one year of service (Article 167 of the labour law). However, Article 166 of the labour law state that "all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous services". The law's unclear formulation leads to different interpretations and labour disputes. However, AC awards show workers hired under FDCs face more obstacles in obtaining paid annual leave.<sup>306</sup>

Also, FDC workers are in a more unfavourable situation when trying to obtain seniority bonuses.<sup>307</sup> "The legislation regulating the payment of seniority bonuses does not describe how these bonuses can be paid to FDC

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<sup>303</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 19-23.

<sup>304</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 9.

<sup>305</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 23-24.

<sup>306</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 9.

<sup>307</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 25.

workers whose contracts have been renewed for than one year.”<sup>308</sup> <sup>309</sup> Moreover, workers often have problems in proving seniority.<sup>310</sup>

The Cambodian Constitution and labour protect comprise protection for women in the labour context. In particular, Article 45 of the Constitution prohibits discrimination against women and Article 46 protects women from pregnancy-based dismissal. Also, Article 182 of the labour law awards all women maternity leave of 90 days. However, it is still insufficient. The provision of paid maternity leave requires a minimum of one year of uninterrupted service (Article 183 of the labour law). The reference to ‘uninterrupted service’ means that women under FDCs are less likely to access paid leave.<sup>311</sup>

## 5.1.2 The Practice

Employers often resort to FDCs and it has been estimated that 80 per cent Cambodia’s exporting factories use this type of contract to employ the majority of their workers.<sup>312</sup> <sup>313</sup> <sup>314</sup> In fact, the use of these contracts has known a substantial increase since the ending of the MFA.<sup>315</sup> Three or six month contracts are the most frequent lengths of FDCs.<sup>316</sup>

Data has showed an increasing misuse of FDCs.<sup>317</sup> <sup>318</sup> The resort to these renewable, short-term, temporary contracts is recognised as a prevalent practice in the garment industry.<sup>319</sup> Bernt Gehrt, field director for the Workers Rights Consortium (WRC) has stated that the percentage of factories in compliance with the law in this context could be as low as 15

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<sup>308</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 10.

<sup>309</sup> Labour Ministry of Social Affairs, Vocational Training and Youth, *Notification 017/00* (July 18, 2000).

<sup>310</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 10.

<sup>311</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 26.

<sup>312</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 4.

<sup>313</sup> *Ibidem*, at p. 8.

<sup>314</sup> Worker Rights Consortium, *Update on Misuse of Temporary Employment Contracts in Cambodia* (2014).

<sup>315</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 8.

<sup>316</sup> *Ibidem*.

<sup>317</sup> *Ibid*, at p. 5.

<sup>318</sup> Better Factories Cambodia, *Thirty First Synthesis Report* (2014).

<sup>319</sup> ADB and ILO, *Cambodia – Addressing the Skills Gap*, at p. 71.

per cent.<sup>320 321</sup> “Despite international norms and Cambodian law stating exploitation of workers through short-term employment is illegal, misuse of FDCs continues.”<sup>322</sup>

Article 66 of the labour law establishes the difference between FDCs and UDCs. Article 10 comprises the principle according to which labour law protections are applied equally to casual and regular workers. (i.e. principle of equal rights for workers, regardless of their categorisation).<sup>323 324 325</sup> However, what happens in practice is much different. FDC workers’ constant lack of employment security makes them less likely to demand their rights under the law.

Also, factories have developed a practice of hiring workers on FDCs as a way to deny benefits.<sup>326</sup> In fact, BFC has found that almost a third of the industry’s factories used FDCs to avoid paying workers benefits they were legally entitled to.<sup>327 328</sup> These workers are regularly deprived of the right to leave, sick leave, maternity benefits and seniority benefits.<sup>329</sup>

The fear of not getting their contracts renewed makes it difficult for workers to decline working overtime.<sup>330</sup> “Excessive overtime is a rule rather than an exception in Cambodian garment sector.”<sup>331</sup> Workers might prefer to work overtime in order to supplement the income but they often face threats of contract non-renewal or dismissal if they do not agree to it.<sup>332</sup>

According to BFC, the labour law, which states that overtime work should be voluntary and never exceed 12 hours per week, is frequently not

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<sup>320</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 8.

<sup>321</sup> Bent Gehrt, *Fair Action Interview* (2015).

<sup>322</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 4.

<sup>323</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 18.

<sup>324</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 43.

<sup>325</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 18.

<sup>326</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 42.

<sup>327</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 5.

<sup>328</sup> Better Factories Cambodia, *Thirty First Synthesis Report*.

<sup>329</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 4.

<sup>330</sup> *Ibidem*, at p. 14.

<sup>331</sup> *Ibid.*

<sup>332</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 7.

observed.<sup>333</sup> In fact, between May 2013 and April 2014, 94 per cent of factories violated rules on extra working hours.<sup>334 335</sup>

Also, even though all workers have a right to paid sick leave (Article 166 of the labour law), FDC workers usually do not ask for it, for fear of being laid off.<sup>336</sup>

Article 36 of the Cambodian Constitution comprises the freedom to choose employment. Article 23 of the UDHR determines that everyone has the right to work and free choice of employment, as well as just and favourable conditions of work. Also, Article 7 of ICESCR establishes that State Parties recognise the right of everyone to the enjoyment of favourable conditions of work.<sup>337</sup>

The abusive use of FDCs promotes job insecurity and creates a fear among employees that their short-term contracts might not be renewed. This decreases their engagement in the trade union movement, which highly affects the freedom to form and to be a member of trade unions, stated in Article 36 of the Cambodian Constitution, Article 20 of the UDHR, Article 22 of the ICCPR, Article 8 of the ICESCR and Articles 266 to 271 and 279 of the Cambodian labour law.<sup>338</sup> Accordingly, workers employed under FDCs face more obstacles to unionising and union activity.<sup>339</sup>

“Employers are more likely not to renew the contracts of trade union leaders or activists, employees’ representative or employees who try to protest against any abuse of their right to employment.”<sup>340</sup>

Hence, employers’ misuse of FDCs is in breach of the standards comprised in the Cambodian Constitution, the labour law and the international standards.<sup>341</sup>

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<sup>333</sup> Better Factories Cambodia, *Thirty Second Synthesis Report* (2015).

<sup>334</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 14.

<sup>335</sup> Cambodia, *Thirty Second Synthesis Report*.

<sup>336</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 16.

<sup>337</sup> Community Legal Education Centre, ‘Legal Consequences of Fixed-Duration Employment Contract

<<http://www.clec.org.kh/publicationDetail.php?spID=9#.Vy9foGofRPM>> accessed 08-05-2016.

<sup>338</sup> *Ibidem*.

<sup>339</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 4.

<sup>340</sup> Community Legal Education Centre, ‘Legal Consequences of Fixed-Duration Employment Contract’.

<sup>341</sup> *Ibidem*.

In this context, female workers are in disadvantage, particularly pregnant women.<sup>342</sup> “A pregnant employee is at risk of non-renewal of her employment contract or of losing her employment because she is pregnant.”<sup>343</sup>

As stated, Cambodian law protects women against all forms of discrimination (i.e. Article 45 of the Constitution). Also, the labour law entails specific provisions referring to women’s entitlements in the labour context (i.e. Article 46 of the Constitution and 182 of the labour law). However, the labour law also requires women to have a minimum of one year of uninterrupted service in order to access the maternity wage benefits (Article 183). “Factories are not obliged by law to provide paid maternity leave when there has been a break in between FDCs.”<sup>344</sup> <sup>345</sup> Accordingly, employers avoid their obligations on paid maternity leave by rejecting to renew a pregnant worker’s contract.

### 5.1.3 Different Interpretations of the Law

Employers argued for the necessity of using these flexible contractual arrangements as a way to attract foreign investment. However, unions state this promotes employment insecurity and denies them the rights they are legally entitled to.<sup>346</sup>

In particular, the GMAC argues that it is not possible to afford job security if the employers do not know when and even if the buyers will make new orders. The government has endorsed GMAC’s claims, arguing that the existence of a dispute regarding the interpretation of Article 67 of the labour law has led different parties to make different interpretations, according to their interests.<sup>347</sup>

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<sup>342</sup> Courrier International, 'Cambodge - Inde. Pour les ouvrières d'H&M... pas tomber enceinte' <[http://www.courrierinternational.com/article/cambodge-inde-pour-les-ouvrieres-dhm-mieux-vaut-ne-pas-tomber-enceinte?utm\\_campaign=Echobox&utm\\_medium=Social&utm\\_source=Facebook#link\\_time=1464179991](http://www.courrierinternational.com/article/cambodge-inde-pour-les-ouvrieres-dhm-mieux-vaut-ne-pas-tomber-enceinte?utm_campaign=Echobox&utm_medium=Social&utm_source=Facebook#link_time=1464179991)> accessed 26-05-2016.

<sup>343</sup> Community Legal Education Centre, 'Legal Consequences of Fixed-Duration Employment Contract'.

<sup>344</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 16.

<sup>345</sup> International Labour Organisation Office for Asia and the Pacific, *Practical Challenges for Maternity Protection in the Cambodian Garment Industry*.

<sup>346</sup> ADB and ILO, *Cambodia – Addressing the Skills Gap*, at p. 71.

<sup>347</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 44.

The Manufacturers Association has used contradictory arguments, stating that factories using FDCs to employ the majority of its workers constitute exceptions,<sup>348 349</sup> or that workers tend to prefer FDCs based on the severance payment they are entitled in the end of each contract.<sup>350</sup>

FDCs constitute a more a flexible type of contract. Employers can hire more workers for a limited amount of time, according to their buyers' demand and deadlines. It is a result of globalisation and it is not necessarily a negative development. It has been argued that this type of contracts in Cambodia "are essential to factories for flexibility in times of economic downturn and to handle season ordering peaks".<sup>351</sup> However, it has been shown that the abusive use of FDCs is also found in factories with a steady number of orders throughout the year.<sup>352</sup> Accordingly, if employers resort to this form of contract in order to escape their legal obligations it harms workers' rights and decrease their professional progression and security.

The GMAC has had a significant part in the debate surrounding FDCs. According to the GMAC, the national law is unclear and the association supports a governmental proposal to authorise an infinite renewal short-term employment contracts.<sup>353</sup>

In fact, the Cambodian government has failed to take adequate measures against the illegal use of FDCs.<sup>354</sup>

Additionally, BFC's compliance standards regarding FDCs became less strict in 2014.<sup>355</sup> According to the new criteria factories are considered to be compliant if workers have agreed to continue on FDCs for longer than two years.<sup>356</sup>

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<sup>348</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 10.

<sup>349</sup> Mary Kozlovski and Kong Meta, 'Workers Face Contract Woes' *The Phnom Penh Post* <<http://www.phnompenhpost.com/national/workers-face-contract-woes>> accessed 26-05-2016.

<sup>350</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 13.

<sup>351</sup> *Ibidem*, at p. 10.

<sup>352</sup> *Ibid.*

<sup>353</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 12.

<sup>354</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 10.

<sup>355</sup> *Ibidem*, at p. 14.

<sup>356</sup> *Ibid.*

## 5.1.4 Collective Disputes

The inappropriate use of FDCs and the controversy regarding the interpretation of Article 67 has originated several collective disputes and the matter has been presented before the Arbitration Council. “Despite the formulation in the labour law, affected parties have interpreted Article 67 differently.”<sup>357</sup>

Article 67 states that “the labour contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years”.

The Council has demonstrated to have a narrow interpretation of Article 67. Also, the Council’s awards are not always binding (i.e. the parties decide whether they want binding or non-binding arbitration). In fact, even after the signing of the 2012 MoU, where parties agreed to be bound by the arbitral awards concerning rights’ disputes, factory owners “failed to follow jurisprudence”. The MoU expired in October of 2014.

Based on Article 67 of the Cambodian labour law and the ILO’s guideline No. 166<sup>358</sup> the Council has stated<sup>359</sup> that fixed-duration contracts should not be used for long-term employment.<sup>360</sup> These types of contracts were created for short-term employment, such as substitution, occasional, seasonal or non-permanent employment.<sup>361</sup>

The Council has ruled that the provision does not allow factories to hire workers on FDCs for more than two years.<sup>362</sup> Otherwise, these workers will be entitled to the all of the benefits workers hired under UDCs are entitled. Hence, factories can renew contracts one or more times, as long as it does not exceed the two-year limit.

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<sup>357</sup> Ibid, at p. 9.

<sup>358</sup> Note that Guideline 166 is a supplement to the ILO Termination of Employment Convention (No. 158), which has not been ratified by Cambodia.

<sup>359</sup> Awards No. 36/06 and No. 10/03 (Arbitration Council).

<sup>360</sup> Community Legal Education Centre, ‘Legal Consequences of Fixed-Duration Employment Contract’.

<sup>361</sup> Ibidem.

<sup>362</sup> Awards 10/03, 02/04, 155/09(9), 70/11(1), 105/11(3) as cited by the ILO – Better Factories Cambodia, Labour Law Guide (2014), at p. 8 (Arbitration Council).

Based on this interpretation and despite its recognition regarding the negative effects FDCs have on workers, the Council has rejected unions' requests to convert FDCs into UDCs.<sup>363</sup>

In a case presented before the Council,<sup>364</sup> the workers' requested to have one year FDCs, instead of six months. The workers argued the employer would renew the six-month contracts a few days after they had expired. This would exclude them from receiving a number of benefits, including paid maternity leave.

According to Cambodian law, the entitlement to benefits is not dependent on a specific type of contract. Nevertheless, it is necessary that the worker has worked for a continuous period of one year. Factories make use of short-term contracts, which expire after the agreed period. After the termination, the worker takes a short break and is re-hired, through another short-term contract. This makes it possible for employers' to go around the legal norms and avoid paying benefits.

In the case mentioned, since none of the employees had exceeded the two year limit, the Council ruled in favour of the employers, stating that the resort to FDCs is encompassed in the law and can be justified. It is clear the Council limits itself to a literal interpretation of the law.

Another relevant matter refers to the provision of maternity benefits. The AC has been accused of not giving enough protection in cases concerning pregnant workers' non-renewal of contracts by placing the burden of proof on the workers instead of the employers.<sup>365</sup>

Furthermore, workers are often subjected to high pressure and a poor working environment so it not uncommon that pregnant workers resign when the pregnancy reaches an advanced stage.<sup>366</sup> Pregnant workers have decreased productivity. Employees have stated that, in these conditions, they feel pressured to resign.<sup>367</sup> Since the labour law does not specifically regulate the issue of maternity leave in case of resignation, the Arbitration Council has ruled in favour of the employers, stating that once the employment contract expires, so do the maternity benefits. Hence, it is not

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<sup>363</sup> *Award 123/07* (Arbitration Council).

<sup>364</sup> *Award 92/07* (Arbitration Council).

<sup>365</sup> International Labour Organisation Office for Asia and the Pacific, *Practical Challenges for Maternity Protection in the Cambodian Garment Industry*.

<sup>366</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 71.

<sup>367</sup> International Labour Organisation Office for Asia and the Pacific, *Practical Challenges for Maternity Protection in the Cambodian Garment Industry*, at p. 21.

necessary to examine whether the workers had been continuously employed in the factory for more than one year.<sup>368</sup>

### 5.1.5 Summary

A 2011 study has found that the widespread use of FDCs in Cambodia has five core negative consequences: (2) it creates job insecurity, (2) threatens the enforcement of labour rights, (3) hinders labour productivity, (4) affects the country's reputation and (5) originates tension in industrial relations.<sup>369</sup>

The same study also provides for a number of recommendations to the Cambodian government, international buyers, GMAC, the Arbitration Council, BFC and major trade partners.<sup>370</sup>

The widespread use of short-term contracts affects labour rights for both men and women.

Since men are repeatedly the ones involved in the decision making processes of trade unions, workers have said there were more men hired under FDC as a pretext to dissuade them from getting involved in the union movement.<sup>371</sup> As for women, the increasing number of women workers facilitated by the use of flexible contractual arrangements that promote inequality and job insecurity.<sup>372</sup> The BFC has revealed that approximately a third of all factories in each survey period used short-term contracts as a way of avoiding paying maternity and seniority benefits.<sup>373 374</sup> The misuse of these contractual arrangements is a basis for additional violations of workers' rights, particularly women. In fact, FDCs are used as a ground for employers to engage in gender based discrimination, particularly for pregnant workers.

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<sup>368</sup> Award 42/10 (Arbitration Council).

<sup>369</sup> Yale Law School, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, at p. 2.

<sup>370</sup> *Ibidem*, at p. 3-6.

<sup>371</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 45.

<sup>372</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 12.

<sup>373</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*.

<sup>374</sup> Better Factories Cambodia, *31st Synthesis Report*, at p. 7.

## 5.2 Maternity Issues

*“By safeguarding women’s employment and income security during pregnancy and after childbirth and promoting the equal sharing of unpaid care work between women and men, maternity protection and measures to support care responsibilities are also a precondition to the achievement of gender equality at work and in the home.”<sup>375</sup>*

As previously stated, female workers constitute the vast majority of the garment industry’s workforce. Most of these women are of reproductive age.<sup>376</sup> Accordingly, attention should be given to women’s specific concerns and needs, in particular for the case of pregnant women.<sup>377</sup>

### 5.2.1 The National and International Standards

Cambodia ratified CEDAW in 1992. Accordingly, it was required to introduce maternity leave with pay or comparable social benefits (Article 11 (2) (b) of the Convention). Furthermore, Cambodia had to put in place a prohibition regarding the dismissal of women based on pregnancy or maternity leave, which is comprised in Article 11 (2) (a) of CEDAW.

Despite room for improvement, Cambodian law meets CEDAW’s general requirements. Article 46 of the Cambodian Constitution states that “a woman shall not lose her job because of pregnancy”. Thus, the provision explicitly refers to dismissal but it is silent on discrimination in hiring pregnant women (i.e. or renewing contracts).<sup>378</sup> Article 12 of the labour law refers to decisions on hiring and prohibits discrimination based on a number of grounds, including sex. It does not expressly refer to pregnancy but pregnancy-based discrimination can be seen as a form of discrimination against women.<sup>379 380</sup>

Article 46 of the Constitution also determines that “women shall have the right to take maternity leave with full pay and with no loss of seniority or

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<sup>375</sup> Laura Addati, 'Extending maternity protection to all women: Trends, challenges and opportunities' (2015) 68 *International Social Security Review* 69, at p. 70.

<sup>376</sup> United Nations Population Fund, *Sexual and Reproductive Health and Rights: Migrant Garment Factory Workers in Cambodia* (2015).

<sup>377</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 45.

<sup>378</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 67.

<sup>379</sup> ILO, *Equality and Non-Discrimination at Work in East and South-East Asia: Guide* (2011).

<sup>380</sup> International Labour Organisation Office for Asia and the Pacific, *Practical Challenges for Maternity Protection in the Cambodian Garment Industry*, at p. 20.

other social benefits”. Article 182 of the labour law states that women are entitled to a 90 maternity leave and employers are prohibited from laying-off pregnant workers just before or during the maternity leave. However, according to Article 183, only women who have at least one year of uninterrupted service are entitled to paid maternity leave. Hence, all pregnant workers are entitled to three months of maternity leave but wage benefits require a year of uninterrupted service. Additionally, Article 183 awards only half of the wage, which falls short from the ‘full pay’ referred in the Constitution.

The Cambodian government has passed the ‘Fast Track Initiative Map for Reducing Maternal and New-born Mortality (2010-2015)’, which represents a progress in achieving the goal of improving women’s access to reproductive health care.

The ILO’s most recent standards regarding maternity protection are comprised in the Maternity Protection Convention (No. 183), which revised Convention No. 103, and Recommendation No. 191. According to these instruments, maternity protection refers to maternity leave, cash and medical benefits, protection of the mother and child’s health during pregnancy, childbirth and breastfeeding and protection against pregnancy-based discrimination.<sup>381</sup> As stated by the International Labour Conference in 2004, pregnancy and motherhood should not be causes of discrimination, particularly in the labour market.<sup>382</sup>

Cambodia has not ratified the ILO Maternity Protection Convention (No. 183). Still, the Convention establishes standards Cambodia should aspire to and they are worth looking into. This Convention highlights the link between maternal health, discrimination against women and employment security.<sup>383</sup>

According to the Convention and its correspondent Recommendation (No. 191) the elements of maternity protection are (1) the maternity leave, (2) cash and medical benefits, (3) the protection of the health of the mother and child during pregnancy, childbirth and breastfeeding, (4) the mother’s right

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<sup>381</sup> ILO, ‘Protecting Maternity in Cambodia’s Textile Factories (2009)  
<[http://www.ilo.org/global/about-the-ilo/multimedia/video/video-news-releases/WCMS\\_096989/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/multimedia/video/video-news-releases/WCMS_096989/lang--en/index.htm)> accessed 22-04-2016, at p. 9.

<sup>382</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 45.

<sup>383</sup> *Ibidem*, at p. 54.

to breastfeed a child after her return to work and (5) the employment protection and non discrimination.<sup>384</sup>

“Maternity leave is the leave from work to which a woman is entitled for a continuous period before and after giving birth.”<sup>385</sup>

Article 4 of Convention No. 183 determines that national legislation must afford maternity leave of a minimum of 14 weeks, six of each must be taken immediately after childbirth. The Maternity Protection Recommendation (No. 191) proposes that the mother’s rest period should be at least 18 weeks. However, in 2004, the length of maternity leave in the Asia and Pacific Region was less than 14 weeks for 86 per cent of the countries.<sup>386</sup>

The Convention determines that, while the mother is on maternity leave she is entitled to cash benefits ensuring that she can maintain herself and her new-born child in proper conditions. Additionally, she is entitled to medical benefits, including prenatal care, childbirth and postnatal care.<sup>387</sup>

According to Article 6, the provision of cash benefits is regulated in national laws and each Member can set the qualifying conditions. Still, States must ensure that the majority of women can satisfy these requirements. Also, if a woman does not qualify for cash benefits she must be entitled to ‘adequate benefits’, taken out of social assistance funds.

Also, international policy prescriptions have highlighted the importance of establishing a mixed system for the costs of maternity.<sup>388</sup> Hence, the responsibility for the payment of maternity benefits would not be solely and directly placed on employers. According to Convention No. 183, the provision of cash benefits must be done through compulsory social insurance or from public funds. Article 6 (3) determines that, when the benefits are based on earnings and provided through compulsory social insurance schemes, they should not be less than two-thirds of the woman’s previous earnings.

However, in Cambodia the responsibility to provide maternity benefits lays solely on employers. Article 183 of the labour law states that women are entitled to half of their wage, paid by the employer.

Article 8 of the Maternity Convention prohibits employers from terminating a worker’s employment during pregnancy or pregnancy leave. Women

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<sup>384</sup> International Labour Office, *ABC of Women Worker’s Rights and Gender Equality*, at p. 128.

<sup>385</sup> *Ibidem*, at p. 126.

<sup>386</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 50.

<sup>387</sup> International Labour Office, *ABC of Women Worker’s Rights and Gender Equality*, at p. 31.

<sup>388</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 48.

workers must be guaranteed the right to come back to the same or to an equivalent job. Also, the Convention places the burden of proving the reasons for dismissal on the employer's side. Recommendation No. 191 states that women should be entitled to return to their former position or equivalent.

Article 3 of the Convention determines that Member States must adopt appropriate measures to ensure that pregnant or breastfeeding women do not have to undertake work that is prejudicial to the health of the mother or the child.

## 5.2.2 The Practice

Maternity constitutes a collective labour issue since it can affect female workers of reproductive age as a group. Also, the majority of maternity related disputes are brought before the Arbitration Council by trade unions (i.e. instead of individual cases before first instance courts).

Employers often discriminate women workers when hiring, promoting and dismissing workers.<sup>389 390</sup> Cambodia is not an exception. Despite the fact that in 2009 more than four out five textile factories monitored by the ILO's BFC programme had some form of paid maternity leave, only three were in full compliance.<sup>391</sup> There is still a lot to be done, mainly because the programme does not monitor a significant number of factories.<sup>392</sup> Despite the commendable legislative effort, the Cambodian framework comprises a number of issues and its enforcement is poor.<sup>393</sup>

The following subsection section will refer to five topics: (1) pregnancy based-discrimination and the Arbitration Council's interpretation on the matter, (2) the scope of maternity protection (i.e. in particular paid maternity leave), (3) the duration of maternity leave (i.e. as well as the procedures to take and extend the leave), (4) breastfeeding standards in factories and (5) child-care facilities.

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<sup>389</sup> Ibidem, at p. 45.

<sup>390</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, p. 8.

<sup>391</sup> ILO, 'Protecting Maternity in Cambodia's Textile Factories', at p. 8.

<sup>392</sup> Human Rights Watch, 'Better Factories Cambodia'

<[http://features.hrw.org/features/HRW\\_2015\\_reports/Cambodia\\_Garment\\_Workers/chapter-7.html](http://features.hrw.org/features/HRW_2015_reports/Cambodia_Garment_Workers/chapter-7.html)> accessed 22-04-2016.

<sup>393</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 3.

Pregnancy-based discrimination is a key issue in Cambodia. Workers complain that factories do not hire visibly pregnant workers and that it is less likely for pregnant workers to have their short-term contracts renewed, which allow employers to avoid maternity leave costs.<sup>394</sup>

Employers have also been reported to not comply with standards regarding reasonable accommodations for pregnant workers without applying cuts on workers' salaries.<sup>395</sup>

The Arbitration Council has dealt with pregnancy-based discrimination cases, casting the burden of proof on the worker.<sup>396</sup>

This is contrary to the standards set by Convention No. 183 (Article 8 (1)). In a case concerning dismissal during pregnancy,<sup>397</sup> the Council stated that the labour law prohibits the employer from terminating workers during the maternity leave but it does not prevent them from not hiring or terminating the contract during the pregnancy period. In this particular case the Council referred to the prohibition of pregnancy-based discrimination, stating that the burden of proof was placed on the worker. Since the union was unable to prove there was discrimination, the Council ruled in favour of the employer. The same argumentation has been used in other disputes.<sup>398</sup> Pregnant employees are aware there is a higher probability of dismissal but often they cannot fulfil the burden of proof.<sup>399</sup>

Likewise, there are issues concerning the scope of maternity protection. Maternity leave is the most usual benefit provided in maternity protection.<sup>400</sup> The leave can be fully or partially paid or even unpaid.

In Cambodia, not all female workers are entitled to paid maternity leave. This is not a problem in itself, since even the Maternity Protection Convention allows ratifying States to regulate the provision of cash benefits by imposing qualifying conditions. However, in Cambodia, the problem is not so much the requirements imposed in order to qualify for maternity benefits as for employers' abusive practices.

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<sup>394</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 8.

<sup>395</sup> *Ibidem*, at p. 8.

<sup>396</sup> *Awards 115/08, 92/7* as cited by the International Labour Organisation - Practical Challenges for Maternity Protection in Cambodia, 2012 (Arbitration Council).

<sup>397</sup> *Award 115/08* (Arbitration Council).

<sup>398</sup> *Award 92/07* (Arbitration Council).

<sup>399</sup> International Labour Organisation Office for Asia and the Pacific, *Practical Challenges for Maternity Protection in the Cambodian Garment Industry*, at p. 20.

<sup>400</sup> World Alliance for Breastfeeding Action, *Key Elements of Maternity Protection at Work* (2002), at p. 2.

According to the national labour law, a woman must have a minimum of one year of uninterrupted service in order to be granted the wage benefits (Article 183). Accordingly, factories do not hire visibly pregnant women<sup>401</sup> and tend to avoid paying these benefits by making an abusive usage of FDCs.<sup>402</sup>

However, the labour law does not require workers to be under a specific type of contract (i.e. fixed-duration or unfixed duration contract) in order to qualify for paid maternity leave. Hence, a great number of women are not aware of their entitlements under the law.

Also, women entitled to paid maternity leave only receive half of their wage and benefits (Article 183), a rate that is the lowest in South-East Asia.<sup>403</sup> Many workers only receive half of their wages as employers do not include benefits in the calculation for maternity benefits.

If a woman working under a fixed-duration contract becomes pregnant employers are less inclined to renovate her contract, which is a violation of the law.<sup>404 405</sup> Also, the abusive use of FDCs leaves workers with a sense of insecurity and prevents them from claiming their rights.

Another relevant issue refers to the duration of the maternity leave. In fact, there have been problems when it comes to counting the time for maternity leave. Article 4 (1) of Convention No. 183 sets a standard of “no less than 14 weeks”. Cambodian women are entitled to a much shorter time of maternity leave (i.e. 90 days according to Article 182 of the labour law). However, the law does not specify whether the 90 days should be considered as working days or calendar days. The Arbitration Council has been faced with the problem in a number of cases<sup>406</sup> and ruled that the 90-day maternity leave refers to calendar days. The Council has stated that, having in mind the purpose of the maternity leave (i.e. providing women with enough time to recover from childbirth and taking care of their newborns), including holidays and Sundays is “sufficiently appropriate”.<sup>407</sup>

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<sup>401</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 68.

<sup>402</sup> *Ibidem*, at p. 74.

<sup>403</sup> ILO Regional Office for Asia and the Pacific, *Action-Oriented Research on Gender Equality and the Working and Living Conditions of Garment Factory Workers in Cambodia*, at p. 3.

<sup>404</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 69.

<sup>405</sup> International Labour Organisation Office for Asia and the Pacific, *Practical Challenges for Maternity Protection in the Cambodian Garment Industry*, at p. 14.

<sup>406</sup> *Awards 25/08, 23/08, 08/07, 152/08* (Arbitration Council).

<sup>407</sup> *Award 152/08* (Arbitration Council).

Nevertheless, three months might not be sufficient for recovery. Also, some women might choose to initiate the leave before delivery, leaving them with less time to recover. The maternity leave can be extended but practices vary considerably depending on the factory.<sup>408</sup>

Article 71 (5) of the labour law provides that labour contracts can be suspended based on the “leave granted to a female worker during pregnancy and delivery, as well as for any post-natal illness”. Generally, extensions go up to five months. In the majority of cases these are unpaid leaves but factories might have unwritten policies awarding workers with fixed sums for specific months (e.g. the fourth month or one extra month).<sup>409</sup>

Generally, the process for taking maternity leave can be done in a relatively smooth manner (i.e. the process is either very simple or it can be done with aid from the trade union). However, it varies greatly, depending on the factory. The law does not regulate the procedure and the Arbitration Council has not touched upon the matter.<sup>410</sup> In some cases the procedure includes a pregnancy certificate, an approval from the factory doctor and the filling of an application form. In other cases the workers do not have to make any formal request and they are absent when they have to deliver. Unions often assist in filling out the paperwork and in justifying workers’ absence when they leave for childbirth.

The same cannot be said for extending the leave. There are a number of problems: lack of knowledge, supervisory discretion and the fact that in most cases the request has to be done in person, by the worker herself.<sup>411</sup>

Lack of knowledge is a problem that is not limited to the extension of the maternity leave. Even when there is a comprehensive collective agreement, it is common that workers are unaware of their rights.<sup>412</sup> There are “four main sources where workers obtain information about maternity leave: factory announcements, union representatives, line supervisors and friends”.<sup>413</sup> Nevertheless, lack of knowledge is often reported among those responsible for disseminating the information to the employees.<sup>414</sup>

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<sup>408</sup> International Labour Organisation Office for Asia and the Pacific, *Practical Challenges for Maternity Protection in the Cambodian Garment Industry*, at p. 26.

<sup>409</sup> Ibidem.

<sup>410</sup> Ibid, at p. 21.

<sup>411</sup> Ibid, at p. 27.

<sup>412</sup> Ibid, at p. 48.

<sup>413</sup> Ibid.

<sup>414</sup> Ibid, at p. 50.

After the childbirth workers' are entitled to lighter work for two months, as well as breastfeeding breaks and day-care facilities.

According to Article 3 of Convention No. 183 States shall take measures to ensure that pregnant or breastfeeding women are not required to perform work that is prejudicial to the health of the mother or child.

Also, Recommendation No. 191 stipulates that breastfeeding workers should be provided one or more daily breaks in order to breastfeed.

The development of reliable child-care facilities promotes equality, women's empowerment and prevents the perpetuation of social inequalities.<sup>415</sup> Also, child-care facilities and support help to balance work and family responsibilities and contribute to a smoother transition for mothers to return to work.<sup>416</sup> The inexistence of such structures constitutes a barrier from women who aspire to have a decision making role.<sup>417</sup> In Cambodia, the lack of nursing rooms and provision of child-care facilities has been reported as a discriminatory practice against women.<sup>418</sup>

### 5.2.3 Summary

Cambodian labour law provides for some maternity protection. Every worker is entitled to 90 days of maternity leave. However, paid maternity leave (i.e. half of the wage and benefits) is not granted to every female worker. According to the legal requirements, workers on FDCs who have worked at the factory uninterruptedly for a year are entitled to cash benefits the same as workers on UDCs. Factories tend to avoid paying maternity benefits by preventing workers from accumulating one year of uninterrupted service and taking short breaks between contracts.<sup>419</sup> Furthermore, employers seem to reject renewing contracts to pregnant workers, engaging in discriminatory practices. The law protects pregnant workers against dismissal but it does not refer to discrimination in hiring or rejecting to renew contracts.<sup>420</sup> Additionally, for discrimination claims, the AC has

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<sup>415</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 49.

<sup>416</sup> Gillian Kane, 'Facts on Cambodia's Garment Industry'

<<https://www.cleanclothes.org/resources/publications/factsheets/cambodia-factsheet-february-2015.pdf>> accessed 12-04-2016, at p. 9.

<sup>417</sup> National Commission for the Promotion of Equality (NCPE), *Gender-Balanced Representation in Decision Making* (2015), at p. 97.

<sup>418</sup> Better Factories Cambodia, *Thirtieth Synthesis Report on Working Conditions in Cambodia's Garment Sector*.

<sup>419</sup> International Labour Organisation Office for Asia and the Pacific, *Practical Challenges for Maternity Protection in the Cambodian Garment Industry*, at p. 52.

<sup>420</sup> *Ibidem*.

placed the burden of proof on the worker, which is contrary to the ILO Maternity Convention. Adding to the burden of proof, lack of knowledge hinders the possibility to present a successful case before the Council.<sup>421</sup>

## 5.4 Sexual Harassment

*“(…) Sexual harassment is not just a workplace phenomena, but reflects prevailing attitudes in Cambodian society that such behaviour towards women is acceptable, compounded by particularly negative attitudes towards garment workers.”<sup>422</sup>*

Harassment at the workplace can happen in different ways. For women in the garment industry it often occurs in the form of sexual harassment, which is reported as common in Cambodian factories.<sup>423</sup> There is an increasing understanding of sexual harassment as a social problem, which reflects a cultural context and a type of gender relations.

Sexual harassment has been addressed as a form of sex discrimination and violence against women. Accordingly, it is comprised in CEDAW as well as the ILO Discrimination (Employment and Occupation) Convention (No. 111).<sup>424 425</sup>

The Cambodia Constitution does not refer explicitly to sexual harassment. However, it comprises a number of provisions that protect women against it (i.e. Article 31, 38, 45 and 46).<sup>426</sup> Furthermore, it is prohibited under the Cambodian labour law. According to Article 172 “all forms of sexual violation (harassment) is strictly forbidden”. The domestic law is supposed to possess a clear definition of sexual harassment in the workplace.<sup>427</sup> The Cambodian Criminal Code provides for a definition of sexual harassment (Article 250). However, “Cambodia does not have a law that elaborates rules against sexual harassment at the workplace or more broadly, outlines complaints procedures or promotes safe working environments.”<sup>428</sup>

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<sup>421</sup> Award 23/08 (Arbitration Council).

<sup>422</sup> Jennifer Makin, *Cambodia - Women and Work in the Garment Industry*, at p. 19.

<sup>423</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 89.

<sup>424</sup> Leang Po and OP Vibol, *Legal Analysis – Sexual Harassment in Cambodia* (2015), at p. 4.

<sup>425</sup> *Ibidem*, at p. 11-12.

<sup>426</sup> *Ibid*, at p. 4.

<sup>427</sup> *Ibid*, at p. 5.

<sup>428</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 90.

Also, the Ministry of Women’s Affairs has passed a ‘National Action Plan to Prevent Violence Against Women’, which has the goal of addressing sexual harassment in the workplace and community, mainly through legal and policy changes.<sup>429</sup>

The importance of increased women’s participation in union leadership has been emphasised as a way to mainstream gender concerns, including sexual harassment.<sup>430</sup> According to a report,<sup>431</sup> a significant relationship between the incidence of sexual harassment and the application of disciplinary consequences or procedures does not seem to exist. Still, the same report showed that managers were significantly more likely to report sexual harassment when such consequences existed. “This indicates that while there is no difference in the incidence of sexual harassment, women feel most confident to report in factories with disciplinary consequences.”<sup>432</sup>

## 5.5 Hygiene in the Workplace

*“Women require access to menstrual hygiene facilities at work or their dignity and livelihood and opportunities may be reduced.”<sup>433</sup>*

Biological differences make workplace hygiene, particularly toilet hygiene, a fundamental issue for women. “Women have the right to hygienically manage their menstruation wherever they are.”<sup>434 435</sup>

“Globally, around 52 per cent of the female population (26 per cent of the total population) is of reproductive age.”<sup>436</sup> As part of the reproductive cycle, menstruation is a natural part of a woman’s life. As stated in chapter 1.1, 4.1 and 5.2, most of garment workers in Cambodia are women of

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<sup>429</sup> Leang Lo and OP Vibol, *Legal Analysis - Sexual Harassment in Cambodia*, at p. 5.

<sup>430</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 91.

<sup>431</sup> Jennifer Makin, *Cambodia - Women and Work in the Garment Industry*.

<sup>432</sup> *Ibidem*, at p. 19.

<sup>433</sup> Thérèse Mahon, Sue Cavill and Sarah House, *Menstrual Hygiene Matters* (2012), at p. 50.

<sup>434</sup> Wash United, 'Menstrual Hygiene Management' <<http://www.wash-united.org/our-work/issues/menstrual-hygiene-management/articles/our-work-issues-menstrual-hygiene-management>> accessed 20-05-2016.

<sup>435</sup> Marni Sommer and others, 'Comfortably, Safely, and Without Shame: Defining Menstrual Hygiene Management as a Public Health Issue' (2015) 105 *American Journal of Public Health* 1302.

<sup>436</sup> Thérèse Mahon, Sue Cavill and Sarah House, *Menstrual Hygiene Matters*, at p. 22.

reproductive age. Hence, menstrual hygiene has to be considered when working conditions are assessed.

Poor menstrual hygiene increases the risk of infections and it affects maternal mortality.<sup>437</sup> Practices such as the use of unclean sanitary pads or materials, prolonged use of the same pad or not washing after changing a sanitary towel constitute health risks and demonstrate the importance of good hygiene practices, particularly during menstruation.<sup>438</sup> However, in the Cambodian labour context the most stinking issue relates to the unfounded burden placed on female workers. Menstruation requires women to have more toilet breaks, which affects their productivity. Employers consider this will affect production targets and can use it as a basis for dismissing employees.<sup>439</sup> Women are particularly affected by restrictions in toilet breaks. “A number of health problems can arise as a result of heavy restroom restrictions, like stomach problems, urinary infection and issues connected to reproduction, such as vaginal infections as menstruating workers can’t take care of their personal hygiene properly.”<sup>440 441</sup>

The link with health, water and sanitation and dignity mean that menstrual hygiene is comprised in a number of international instruments.<sup>442</sup> In particular, Article 11 of the ICESCR refers to the right to an adequate standard of living, the right the highest attainable standard of physical and mental health and the right to life and human dignity.

According to the ILO’s Hygiene (Commerce and Offices) Convention (No. 120), sufficient and suitable sanitary conveniences must be provided and properly maintained. However, Cambodia has not ratified Convention No. 120. Still, according to a national proclamation (*Prakas* 052/00 on toilet construction), the employer must provide clean toilets for the employees in the proportion defined in the law.<sup>443</sup>

Achieving gender equality and empowering women has a link with hygiene conditions. “Women and girls have to manage their menstruation at work

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<sup>437</sup> Ibidem.

<sup>438</sup> Ibid, at p. 33-34

<sup>439</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 55-56, 62-63, 72-73.

<sup>440</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 16.

<sup>441</sup> Thérèse Mahon, Sue Cavill and Sarah House, *Menstrual Hygiene Matters*.

<sup>442</sup> Ibidem, at p. 187.

<sup>443</sup> Better Factories Cambodia, *Guide to Cambodian Labour Law for the Garment Industry* (2014, revised), at p. 28.

and at home. Poor menstrual hygiene situations in any of these contexts can prevent them from engaging fully.”<sup>444</sup>

Despite not being given as much attention as other matters, the lack of hygiene in the workplace (i.e. mostly in factories’ bathrooms) is frequently referred by Cambodian female workers as a concern.<sup>445</sup> Female workers refer that toilet hygiene conditions are a specific concern and men are often unable to understand the issue as an important part of working conditions.<sup>446</sup> Also, employers often do not understand why women need to take additional time in the toilet during menstruation.<sup>447</sup>

Menstrual hygiene in the workplace can refer to the lack of toilet facilities or their poor condition, as well as to the difficulty in raising these issues with male managers.<sup>448</sup> Accordingly, the lack of involvement in decision making has been identified as one of the main aspects affecting the standards on menstrual hygiene.<sup>449</sup> “Gender power inequalities in decision making roles, and access to and control over resources can result in women and girls’ menstrual hygiene needs being hidden or neglected.”<sup>450</sup>

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<sup>444</sup> Thérèse Mahon, Sue Cavill and Sarah House, *Menstrual Hygiene Matters*, at p. 188.

<sup>445</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

<sup>446</sup> Ibidem.

<sup>447</sup> Thérèse Mahon, Sue Cavill and Sarah House, *Menstrual Hygiene Matters*, at p. 172.

<sup>448</sup> Ibidem.

<sup>449</sup> Ibid, at p. 22.

<sup>450</sup> Ibid, at p. 50.

## 6 Analysis

*“Women in leadership is a matter of democracy as much as anything else. To be fully representative of our members, we need women to take part in the visionary work of unions, in bargaining and negotiations and in all other important work and structures.”*<sup>451</sup> –  
Sharan Burrow, General Secretary of the ITUC

### 6.1 Female Trade Union Leadership, Gender Equality and the Improvement of Working Conditions

*“Women should be central actors in influencing and shaping their workplace.”*<sup>452</sup>

Achieving gender equality underpins the concept of decent work, whose ultimate objective is attaining productive work for both men and women, in conditions of freedom, equity, security and human dignity.<sup>453</sup>

After demonstrating the importance of gender equality and gender balanced representation, explaining the crucial role trade unions have in this context and focusing on the Cambodian case, the argument presented is that increasing the number of women in top trade union positions can contribute to gender equality and to the improvement of working conditions for both men and women.

In order to make this conclusion it is necessary to answer two final questions: (1) why should there be more women in trade union leadership and (2) to what extent can an increase in such leadership contribute to the achievement of gender equality and the improvement of working conditions.

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<sup>451</sup> ITUC, 'Count Us In!' Campaign Newsletter <[http://www.ituc-csi.org/IMG/pdf/\\_count\\_us\\_in\\_campaign\\_newsletter\\_-\\_no\\_1\\_january\\_2014\\_eng.pdf](http://www.ituc-csi.org/IMG/pdf/_count_us_in_campaign_newsletter_-_no_1_january_2014_eng.pdf)> accessed 22-04-2016.

<sup>452</sup> International Labour Office, *Women at Work – Trends* (2016), at p. 45.

<sup>453</sup> International Labour Office, *ABC of Women Worker's Rights and Gender Equality*, at p. 47.

## 6.1.1 Why should there be an Increase in Female Trade Union Leadership

*“As women have increased their labour force participation, they have become a greater percentage of union members and activists, but their leadership has not yet trickled up proportionately.”<sup>454</sup>*

Answering the first question requires understanding why women should be *adequately* represented.

Dialogue among the social partners is fundamental for the achievement of social justice and gender equality.<sup>455</sup> Accordingly, ensuring women’s representation in social dialogue structures is fundamental. This should be done at the employer and worker levels, as well as governmental. Strengthening the participation, expertise and experience of women constituents is an essential part of an effective social dialogue process.<sup>456</sup>

Women are discriminated in many areas of life. However, the labour context is still one of the most oppressive.<sup>457</sup> Gender roles perceive men and women as more suited for specific types of employment and tasks. This reinforces an unequal structure of power, where women occupy a more submissive position.<sup>458</sup> Women face greater barriers in attaining training and promotions at work. They earn less than men for the same work and are more vulnerable to sexual harassment and discrimination.<sup>459</sup> These inequalities are reflected at the union level. Top positions in trade unions are dominated by men, who are considered to be more fitted for these duties. In fact, the latest data available determined that in Cambodia only 16 per cent of union leaders were female.<sup>460</sup> Also, women have the double burden of work and household chores, which makes them less available for progressing in their employment and actively participating in the union movement.

The creation, participation and representation in trade unions is one of the many ways through which women can have an impact on working

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<sup>454</sup> Institute for Women’s Policy Research, *Seven Strategies that Promote Women’s Activism and Leadership in Unions* (2007), at p. 5.

<sup>455</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 12.

<sup>456</sup> Ibidem.

<sup>457</sup> Anna Bednarczyk, 'Gender and Labour - Women Can Benefit from Trade Unions?'

<sup>458</sup> Ibidem.

<sup>459</sup> Ibid.

<sup>460</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

conditions and relations with employers.<sup>461</sup> In fact, collective action constitutes one of the most efficient ways of getting one's demands heard and addressed.<sup>462</sup>

Independent trade unions are a key actor in improving working conditions, namely through collective agreements, negotiating factory internal regulations and reporting violations.<sup>463</sup> Furthermore, unions can advocate and influence the development of legislation and policies. Also, they have an important influence in raising awareness and informing workers about their rights and responsibilities under national law.<sup>464</sup> Equally important is the possibility of presenting (collective) labour disputes before the Arbitration Council.

Trade unions will only be effective in bringing benefits for women if they recognise women's concerns and take specific measures to address them.<sup>465</sup>

Increasing female leadership allows women, as a marginalised group, to have their voices heard in the organisations that represent workers.<sup>466</sup> Also, there is a need for them to participate in the movement in order to address gender specific problems, which include maternity issues and sexual harassment, among others.<sup>467</sup> Women have different priorities and concerns when compared to men. Addressing their specific concerns requires adequate representation in trade unions' structures.<sup>468</sup>

Since women comprise the vast majority of garment workers in Cambodia, it seems logical their interests should be adequately represented. Female concerns represent the concerns of the majority of workers. Still, because of trade union's power structures, women's voice is often not heard.<sup>469</sup> In fact, the lack of female leaders in the labour movement has been recognised as problematic in Cambodia.<sup>470</sup>

However, effectively addressing female concerns at the union level does not mean union leaders should be mostly female. Looking at the number of women holding top positions can be an important indicator of whether the

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<sup>461</sup> Anna Bednarczyk, 'Gender and Labour - Women Can Benefit from Trade Unions?'

<sup>462</sup> Ibidem.

<sup>463</sup> Human Rights Watch, *Work Faster or Get Out - Labour Rights Abuses in Cambodia's Garment Industry*, at p. 35.

<sup>464</sup> Ibidem.

<sup>465</sup> ITUC CSI IGB, *Achieving Gender Equality - A Trade Union Manual*, at p. 53.

<sup>466</sup> Anna Bednarczyk, 'Gender and Labour - Women Can Benefit from Trade Unions?'

<sup>467</sup> Ibidem.

<sup>468</sup> Ibid.

<sup>469</sup> Ibid.

<sup>470</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

union movement takes into account the real concerns of the labour force, but it cannot be the only factor taken into account.

Arguing that an increased female representation at the decision making level in trade unions would contribute to gender equality and an improvement in working conditions requires making a distinction between descriptive and substantive representation.<sup>471</sup> Both perspectives are necessary in order to achieve equality.

Descriptive representation refers to representation by resemblance and reflection or a shared identity.<sup>472</sup> Defending a purely descriptive model of representation would mean that equality could be achieved in terms of numbers. According to this conception, the representatives should resemble those who are represented. Still, it is relevant to note that even an equal numerical representation for both men and women does not mean all interests are addressed.

Nevertheless, the representation of women's interests requires women's inclusion. Their presence (descriptive representation) is considered to be a way of including their interests, needs and wants (substantive representation).<sup>473 474</sup>

In sum, a certain degree of descriptive representation is needed in order to achieve substantive equality.<sup>475</sup> Trade union leaders should be more representative of the working force. This will ultimately contribute to the achievement of substantive representation and gender equality, which is at

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<sup>471</sup> European Institute for Gender Equality, *Gender Equality in Power and Decision-Making - Review of the Implementation of the Beijing Platform for Action in the EU Member States*, at p. 9.

<sup>472</sup> Edin Hodžić and Boriša Mraović, 'Political Representation of Minorities in Bosnia and Herzegovina: How Reserved Seats Affect Minority Representatives' Influence on Decision-Making and Perceived Substantive Representation' (2015) Vol. 14 *Ethnopolitics* 418, at p. 420.

<sup>473</sup> Tracey Feltham-King and Catriona Macleod, 'Gender, Abortion and Substantive Representation in the South African Newsprint Media' (2015) *Women's Studies International Forum*.

<sup>474</sup> Anouk Lloren, 'Women's Substantive Representation: Defending Feminist Interests or Women's Electoral Preferences?' (2014) 21 *The Journal of Legislative Studies* 144, at p. 145.

<sup>475</sup> European Institute for Gender Equality, *Gender Equality in Power and Decision-Making - Review of the Implementation of the Beijing Platform for Action in the EU Member States*, at p. 9.

the heart of decent work.<sup>476 477</sup> And, as mentioned, male workers dominate trade union leadership.

## 6.1.2 To What Extent Can An Increase in Such Leadership Improve Working Conditions and Contribute to Gender Equality

*“Alleviating poverty and enabling women to make some income can better lives but the enabling environment that confirms the right to work, to property, to safety, to voice, to sexuality and to freedom is not created by sewing machines or micro-credit alone.” –*  
Hania Sholkamy (2010)

Finally, how can an increase in female union leadership impact working conditions and gender equality, particularly in the Cambodian context? Ultimately, through women’s empowerment and the resulting inclusion of women and women’s issues in social dialogue and collective bargaining, international framework agreements and by bringing collective labour disputes before the arbitration council.

Increased female representation and the inclusion of gender-specific issues in trade unions’ agendas contributes to women’s empowerment and participation in economic life, which is “essential to build stronger economies, achieve internationally agreed goals for development and sustainability, and improve the quality of life for women, men, families and communities”<sup>478 479</sup>.

Establishing women’s structures with links to decision making bodies, providing adequate child care facilities, electing women to union jobs with negotiating responsibilities and reserving seats for women are among the recommendations made by the ILO for the promotion of gender equality in trade unions’ structures.<sup>480</sup> Also, adopting a policy allocating a higher

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<sup>476</sup> Mraović, 'Political Representation of Minorities in Bosnia and Herzegovina: How Reserved Seats Affect Minority Representatives' Influence on Decision-Making and Perceived Substantive Representation', at p. 429.

<sup>477</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*.

<sup>478</sup> UN Women, 'Women's Empowerment Principles'

<<http://www.unwomen.org/en/partnerships/businesses-and-foundations/womens-empowerment-principles>> accessed 08-05-2016.

<sup>479</sup> Annemarie Reerink, *Report on a Survey of Women and Gender Issues in Trade Union Organisations in Indonesia*, at p. 8.

<sup>480</sup> *Ibidem*, at p. 13.

proportion of leadership positions to women<sup>481</sup> has been indicated as the most effective way of encouraging more participation of women and leading to a more gender-inclusive agenda. As a temporary measure aiming at promoting equality of opportunities between men and women, it is not considered discriminatory against the overrepresented sex.<sup>482</sup>

Women holding top positions can call attention to overlooked issues. The idea according to which women in political office place women's concerns in their agendas<sup>483</sup> can be applied to the work environment. The International Labour Office 2016 Report 'Women at Work' has stated that "positive trends in women's participation in unions, in particular in leadership positions, have led to a wider inclusion of gender issues in union campaigns".<sup>484</sup> Also, as stated by Susan Hopgood, President of Education International and Federal Secretary of the Australian Education Union, without proper representation at the highest level of unions, rights directly affecting women will continue to be the first to be negotiated away.<sup>485</sup>

"Empowerment is not something that can be done to or for anyone else."<sup>486</sup> The concept of power is at the basis of the term empowerment.<sup>487</sup> As stated in the Human Development Report 1995, empowerment is one of the four components of human development. However, development must be done by people and not only for them.<sup>488</sup> This means people must participate in the decisions and processes influencing their lives.<sup>489</sup>

Empowerment can be done through representation in decision making. Hence, Goal 5 of the Sustainable Development Goals refers to the achievement of gender equality and empowerment of all women and girls.<sup>490</sup> One of the goals' targets is to "ensure women's full and effective

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<sup>481</sup> Veasna Nuon, Melisa Serrano and Edlira Xhafa, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, at p. 20.

<sup>482</sup> Tracy Breneman-Pennas and Marleen Rueda Catry, *Women's Participation in Social Dialogue Institutions at the National Level*, at p. 19.

<sup>483</sup> National Commission for the Promotion of Equality (NCPE), *Gender-Balanced Representation in Decision-Making*, at p. 19.

<sup>484</sup> International Labour Office, *Women at Work - Trends*, at p. 46.

<sup>485</sup> ITUC, 'Count Us In – Congress Commits to Women in Leadership' < <http://www.ituc-csi.org/count-us-in-congress-commits-to> > accessed 22-04-2016.

<sup>486</sup> Andrea Cornwall, 'Women's Empowerment: What Works?' (2016) *Journal of International Development*, at p. 344.

<sup>487</sup> Zoe Oxaal and Sally Baden, *Gender and Empowerment: Definitions, Approaches and Implications for Policy* (briefing prepared for the Swedish International Development Cooperation Agency (SIDA) 1997), at p. 1.

<sup>488</sup> United Nations Development Programme, *Human Development Report* (1995), at p. 12.

<sup>489</sup> *Ibidem*.

<sup>490</sup> United Nations, 'Goal 5: Achieve Gender Equality and Empower all Women and Girls'.

participation and equal opportunities for leadership at all levels of decision making in political, economic and public life”.<sup>491</sup>

Still, “empowerment is not only about opening up access to decision making, but also must include processes that lead people to perceive themselves as able and entitled to occupy that decision making space.”<sup>492</sup>

The abusive use of FDCs and the minimum wage have been the most contested issues in the Cambodian garment industry.<sup>493</sup> Accordingly, female specific concerns are often excluded from union’s agendas.<sup>494</sup>

Furthermore, in spite of being one of the most focused issues, the use of short-term contracts has not been linked to the particular disadvantages it can bring for female workers. On the one hand, working under FDCs affects job security, which makes employees less likely to engage in the union movement.<sup>495</sup> This constitutes an additional obstacle for the advancement of women in the union movement.

On the other hand, the abusive use of FDCs can be related to maternity issues. Women are in a more vulnerable position and they are more likely to be employed under fixed-duration contracts, based on the possibility they might get pregnant. Hence, giving a voice to women would improve the situation of workers in general and female workers in particular.

Also, women’s empowerment is linked to employment security, which can be connected to maternity protection. Maternity protection is based on women’s biological and reproductive differences. Hence, it is a gender-concern that should be addressed by trade unions in the dialogue between the social partners.

Besides maternity protection, the biological and reproductive differences between men and women have not been given appropriate attention.<sup>496</sup> These issues include hygiene problems in factories, which can be comprised in the occupational safety and health context.<sup>497</sup>

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<sup>491</sup> Ibidem.

<sup>492</sup> Zoe Oxaal and Sally Baden, *Gender and Empowerment: Definitions, Approaches and Implications for Policy*, at p. 3.

<sup>493</sup> Gillian Kane, 'Facts on Cambodia's Garment Industry', at p. 2.

<sup>494</sup> Aria Danaparamita and Sek Odom, 'Lack of Lady Leaders Hinders Labour Movement'.

<sup>495</sup> Community Legal Education Centre, 'Legal Consequences of Fixed-Duration Employment Contract'.

<sup>496</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 11.

<sup>497</sup> Ibidem.

Social dialogue plays an essential role when addressing gender issues and gender equality. It is based on the concept of participation, which means it is necessary that workers are represented through strong, independent and representative organisations.<sup>498</sup> Through social dialogue, workers' organisations can improve working conditions. Trade unions in particular are the major mean used by workers to participate in social dialogue.<sup>499</sup> Through membership and representation in union leadership positions women workers can influence the establishment of the industry's priorities, which go beyond the realm of minimum wage concerns.

Women should be appointed as representatives for workers' organisations in social dialogue institutions. This can be improved by the organisations as in most cases workers' and employers' organisations are responsible for choosing their representatives.<sup>500</sup>

Trade unions can have a significant influence in governmental decisions regarding labour standards. Tripartite consultation gives voice to the concerns of workers' and employers' organisations before governmental decisions regarding ILO standards.<sup>501</sup>

Negotiation, consultation and information sharing constitute forms of social dialogue, which is considered to be one of the ILO's most successful mechanisms for promoting the improvement of working conditions.<sup>502</sup>

Furthermore, social dialogue is a fundamental instrument for the protection of working mothers. It can push States into adopting social protection frameworks. In terms of collective bargaining it permits that struggling segments of society make their voices heard.<sup>503</sup> "The relatively small number of women in key positions in representative bodies acts as a brake on the advancement of gender equality in general and on improving the situation of both female and male workers with family responsibilities."<sup>504</sup> Specific issues will be more emphasised and regularly addressed in social dialogue when women take an active participation in the social dialogue and have access to decision making roles.<sup>505</sup>

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<sup>498</sup> ILO, *Social Dialogue – Finding a Common Voice*, at p. 2.

<sup>499</sup> *Ibidem*, at p. 5.

<sup>500</sup> Tracy Breneman-Pennas and Marleen Rueda Catry, *Women's Participation in Social Dialogue Institutions at the National Level*, at p. 12.

<sup>501</sup> ILO, *ABC of Women's Worker's Rights and Gender Equality*, at p. 185.

<sup>502</sup> ILO, *Social Dialogue – Finding a Common Voice*, at p. 2.

<sup>503</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 52.

<sup>504</sup> *Ibidem*.

<sup>505</sup> *Ibid.*

The ILO's "Gender Equality: A Guide to Collective Bargaining", launched in 1998 comprises a number of issues that should be included in negotiations, such as maternity protection, the defence of non-permanent worker's rights and giving women a voice.<sup>506</sup> Also, it substantiates the importance of including gender issues in collective bargaining by highlighting the fact that women's issues are union issues and that women's concerns have traditionally been disregarded in collective bargaining.<sup>507</sup>

As stated, social dialogue is based on the idea of equitable participation<sup>508</sup> for the improvement of working conditions. Enhancing the participants' capacity and influence is an essential component of a constructive social dialogue. This requires enhancing women's status and participation, which will contribute to a more successful introduction of a gender perspective and gender issues. Involving women in social dialogue is "key to promoting gender equality through tripartism and social dialogue".<sup>509</sup> Including women is necessary in order to achieve the ultimate goal of gender equality and the improvement of working conditions for both men and women.

"The equitable participation of women in the institutions of social dialogue is itself key to promoting gender equality through tripartism and social dialogue."<sup>510</sup> The problem of female underrepresentation and participation in workers' and employers' organisations has been recognised.<sup>511</sup> "Women have been shown to place gender issues on the agenda more than men do. So an increased involvement of women in social dialogue has also resulted in greater attention to gender issues (...)." <sup>512 513</sup>

Also, there is a link between female participation in social dialogue institutions and female leadership in workers' and employers' organisations and the government.<sup>514</sup> Hence, "an increase in women leadership is therefore likely to have an effect on women in social dialogue institutions".<sup>515</sup> The presence of women in social dialogue will promote

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<sup>506</sup> Annemarie Reerink, *Report on a Survey of Women and Gender Issues in Trade Union Organisations in Indonesia*, at p. 12.

<sup>507</sup> Ibidem.

<sup>508</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 161.

<sup>509</sup> Ibidem.

<sup>510</sup> Ibid.

<sup>511</sup> Ibid.

<sup>512</sup> Ibid.

<sup>513</sup> Ibid.

<sup>514</sup> Tracy Breneman-Pennas and Marleen Rueda Catry, *Women's Participation in Social Dialogue Institutions at the National Level*, at p. 18.

<sup>515</sup> Ibidem.

gender equality and contribute to the enforcement of labour standards for both genders.

“Freedom of association and collective bargaining remain the essential tools to empower women and secure their place in information sharing, consultations and negotiations.”<sup>516</sup> Collective bargaining is one of the key ways to determine terms and conditions of employment and other aspects of gender equality at work.<sup>517</sup> “Equal pay, overtime, hours of work, leave, maternity and family responsibilities, health and the working environment, and dignity at the workplace are all issues for collective bargaining with the potential for promoting gender equality in the workplace.”<sup>518</sup>

In order to attain an effective collective bargaining system it is necessary to include gender-specific issues, which must be understood and given sufficient weight. Accordingly, consulting female workers and ensuring female representation in negotiating teams is necessary.<sup>519</sup>

According to Article 96 of the Cambodian labour law, “the purpose of the collective agreement is to determine the working and employment conditions of workers and to regulate relations between employers as well as their respective organisations”. Also, as stated in Article 98, the provisions of a collective agreement can be more favourable to workers than those comprised in the law. Hence, Cambodian law recognises that trade unions can influence employers in order to achieve better working conditions.

The issues referred in the previous sections are comprised in the labour law. However, frequently the law does not provide for a clear and explicit regulation on the topic. Clearer provisions or governmental directives addressing the main practical problems would be beneficial. This would provide the Arbitration Council with the necessary sources for a broader interpretation of these issues in its awards.

Strong and representative trade unions can contribute to promote and pressure the government to enact legislative changes (i.e. lobbying). Nevertheless, in the Cambodian context this might be uncertain, as demonstrated by the approval of the new trade union law this year. In fact, in this case “the law was pushed through despite repeated objections by

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<sup>516</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 13.

<sup>517</sup> International Labour Office, *ABC of Women Workers' Rights and Gender Equality*, at p. 40.

<sup>518</sup> *Ibidem*.

<sup>519</sup> *Ibid*.

trade unions, the International Labour Organisation and several global garment brands”.<sup>520</sup>

Still, unions play an important role in Cambodian politics, as demonstrated by the minimum wage demands. Furthermore, cooperation between all of the relevant stakeholders is required. Effective legal changes require a high degree of consensus.

In 2014, an initiative to increase the number and influence of women in trade unions was launched. The ‘Count Us In! campaign’ hopes to get 80 per cent of the International Trade Union Confederation’s affiliates with a percentage of 30 per cent in their decision making bodies until 2018. The message from women was “count us into the workforce, count us into unions and count us into leadership”.<sup>521</sup>

Dispute resolution can be resolved internally or externally. Most of the dispute resolution happens at an internal level.<sup>522</sup> When it requires external intervention, the resolution normally involves the labour inspectorate, union federations, the GMAC and the Arbitration Council.<sup>523</sup> Trade unions are essential in dispute resolution, both at the internal and external level (e.g. by bringing cases to the Arbitration Council).

In conclusion, a more gender-balanced representation at the leadership level in trade unions has the potential of improving working conditions, particularly those related to women’s concerns and contribute to gender equality and female empowerment.<sup>524</sup>

Both male and female workers have a common goal, which is the improvement of working conditions and the respect of labour rights. Based on this, trade unions have to represent the interests of all workers.<sup>525</sup>

## **6.2 Cambodia’s Obstacles to the Influence of an Increased Female Trade Union Leadership**

The underrepresentation of women in trade union decision making bodies is the result of numerous factors, which include prejudice, lack of knowledge, women’s lack of confidence in their own abilities, unequal division of household chores and the trade union male dominated culture. In fact there

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<sup>520</sup> ITUC, ‘Cambodia: ITUC Deplores New Anti-Union Law’ (2016) <<http://www.ituc-csi.org/cambodia-ituc-deplores-new-anti>> accessed 16-05-2016.

<sup>521</sup> ITUC, ‘Count Us In – Congress Commits to Women in Leadership’.

<sup>522</sup> Jennifer Makin, *Cambodia - Women and Work in the Garment Industry*, at p. 21.

<sup>523</sup> Ibidem.

<sup>524</sup> Anna Bednarczyk, ‘Gender and Labour - Women Can Benefit from Trade Unions?’.

<sup>525</sup> Ibidem.

is a “male dominated network in the quest for leadership positions” in the union movement.<sup>526</sup> Also, women often face gender stereotypes regarding their abilities, as well as discouragement and hostile reactions. Additionally, specific constraints outside of the workplace such as division of domestic chores, childbirth and child bringing make it difficult for female workers to participate in union activities.<sup>527</sup>

Accordingly, the promotion for women’s participation in the trade union movement, not only in membership but also in leadership cannot be achieved without looking at gender equality as a whole.

In Cambodia, besides the stereotype-based obstacles, it is difficult in keeping sex-disaggregated statistics concerning women’s representation and participation. Having accurate and reliable data sets is essential for a proper examination of gender gaps in society.<sup>528</sup>

Also, there are serious issues concerning freedom of association and the right to collective bargaining in Cambodia. There are independence problems and union leadership is seen as a risky occupation.

Adequate social dialogue only exists when (1) strong, independent and capable workers and employers organisations are engaged, (2) there is political will and commitment, (3) there is respect for fundamental freedom of association and collective bargaining and (4) there is an adequate legal and institutional framework.<sup>529</sup>

Increasing the number of female workers in trade union bodies will not bring lasting changes by itself. It is necessary that other key stakeholders take part in the process.

For instances, when it comes to maternity protection, employers have argued that governments should contribute to the costs by putting in place an effective social security system.<sup>530</sup>

Furthermore, corruption claims affect the inspectorates’ reliability and standing in the public eye.<sup>531</sup>

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<sup>526</sup> Annemarie Reerink, *Report on a Survey of Women and Gender Issues in Trade Union Organisations in Indonesia*, at p. 13.

<sup>527</sup> *Ibidem*, at p. 11.

<sup>528</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 168.

<sup>529</sup> ILO, ‘Tripartism and Social Dialogue’ <<http://www.ilo.org/global/topics/workers-and-employers-organizations-tripartism-and-social-dialogue/lang--en/index.htm>> accessed 22-04-2016.

<sup>530</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 53.

Finally, the new trade union law has been considered a “step back for workers’ rights”.<sup>532</sup> The draft had been previously criticised as an infringement of freedom of association and ILO conventions.<sup>533</sup>

As stated in paragraph 10 of CEDAW’s General Recommendation No. 25, women’s status will not improve unless the underlying causes of discrimination are addressed.

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<sup>531</sup> Human Rights Watch, 'The Role of the Government Labour Inspectorate' <[http://features.hrw.org/features/HRW\\_2015\\_reports/Cambodia\\_Garment\\_Workers/chapter-6.html](http://features.hrw.org/features/HRW_2015_reports/Cambodia_Garment_Workers/chapter-6.html)> accessed 25-05-2016.

<sup>532</sup> Fair Action, *A Short-Term Solution - A Study of the Use of Fixed-Duration Contracts in the Cambodian Garment Industry*, at p. 10.

<sup>533</sup> IndustriAll and ITUC, *Letter to the Prime Minister of Cambodia* (2015).

## 7 Conclusions

*“Where the most vulnerable have equal access to a social floor and have a say in the framing the policies and programmes aimed at improving their lives, gender equality will be squarely at the heart of decent work.”<sup>534</sup>*

Focusing in the Cambodian garment industry, the objective of this paper was responding to four inter-related questions:

- (1) Why are gender equality and gender-balanced labour representation important;
- (2) What is the role of trade unions in this context;
- (3) Why should there be an increase in female trade union leadership and;
- (4) To what extent can an increase in such leadership contribute to the enhancement of working conditions and the achievement of gender equality.

Explaining the importance of gender equality and gender-balanced representation is done with a focus on the labour context, which is essential in order to understand the importance of trade unions’ mandate and female representation in the union movement. Most attention regarding the topic of female representation has been done in relation to politics. However, in this paper representation is focused on trade unions.

Ensuring gender equality is fundamental in order to achieve sustainable socio-economic development. In fact, the promotion of gender equality is vital for human rights and justice reasons (i.e. based on the continuous discrimination faced by women), as well as for economic grounds (i.e. the fact women can contribute to socio-economic development). Furthermore, as gender equality refers to equal rights, responsibilities and opportunities for men and women, it is linked to adequate representation for both. In the labour context, gender equality and adequate representation are essential for the attainment of decent work, which refers to productive work in conditions of freedom, equity and human dignity.

There seems to be international consensus concerning the importance of achieving gender equality. Also, there is widespread agreement regarding the need to ensure women’s equal participation and adequate representation in decision making processes. The majority of international conventions and declarations demonstrate such recognition. Historically, references to women’s right to participate in decision making are mostly related to political participation. Still, CEDAW mentions the right to participation and

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<sup>534</sup> International Labour Office, *Gender Equality at the Heart of Decent Work*, at p. 167.

representation in the public life of the country, which encompasses trade unions' activities.

Nevertheless, in recent years there has been an increase of international focus aimed at securing women's participation in decision making bodies in politics and beyond. The latest comprehensive reference to this international understanding was made in 2015, at the United Nations Sustainable Development Summit. Countries adopted a set of 15 goals as part of a new sustainable development agenda. Gender equality is among the goals and representation in political and economic decision making processes is specifically mentioned. These goals are intended to involve not only governments but also the private sector and civil society.

As a part of the international community and a signatory of most international human rights conventions, Cambodia has to comply with a number of obligations intended to accomplish gender equality. Furthermore, Cambodia has ratified the fundamental ILO Conventions. These obligations are mostly encompassed in the Cambodian Constitution and national labour law, which have been praised as progressive. However, implementation and enforcement are problematic. Still, the government is not the only key actor in this context.

The achievement of gender equality and representation at the workplace entails the involvement of the several stakeholders. In particular, trade unions can have a tremendous influence in the fight for women's rights. Union's mandate to promote and protect workers' rights means they also have an essential role in combatting discrimination and addressing workers' concerns. Also, unions can spread information among workers regarding their rights and obligations under the law.

The reasons to promote female trade union leadership are particularly striking in the context of the Cambodian garment industry. First, the industry's workforce is mostly composed of women, who also comprise the majority of union's membership. Second, including women enhances unions' capacity to reach and organise more female workers and activists. Third, unions become more representative of the workforce.

Cambodian legislation provides explicit protection for women in a number of provisions and prohibits discrimination. Still, Khmer women are subjected to recurrent discrimination. Their vulnerability is originated and perpetuated by socio-cultural constraints. The country's economic growth created higher employment rates for women, which did not produce a significant improvement in their situation. Through participation and

representation in trade unions women can influence working conditions and ensure their particular concerns are heard, Their involvement is a way of including their interests, needs and wants.

The impact of an increased female representation in the union movement is linked to the concept of empowerment. Female representation contributes to women's empowerment and empowerment can be done through representation in decision making. They are inter-linked and ultimately promote gender equality and highlight women's specific concerns. Throughout this paper four main issues are addressed as specific gender concerns in the garment industry. The applicable law and practice are referred in order to demonstrate how these problems affect women and how unions' approach regarding these issues could highly improve women's situation in the industry.

The misuse of FDCs is frequently addressed by trade unions as an important issue. However, the connections of FDCs' misuse and gender-based discrimination are not adequately addressed. In fact, by affecting employment security, employers' legal but abusive use of FDCs makes women less likely to engage in trade unions' activities. Also, it is often a way of avoiding paying workers' maternity benefits.

Furthermore, employment security is connected to female empowerment. The information provided regarding maternity issues shows maternity constitutes a main cause of employment related anxiety for women. Women have maternity related concerns before, during pregnancy and after getting back to work. These are issues that do not affect male workers.

Other gender specific issues include sexual harassment and particular concerns regarding hygiene in the workplace.

Social dialogue is based on the concept of participation for the improvement of working conditions. Such participation should be carried out in an equitable way, for both men and women. Hence, female representation and empowerment can have an effect in the way social dialogue is carried out. In particular, collective bargaining is one of the key ways to raise working conditions.

Additionally, influencing trade unions' agenda impacts the types of cases brought before the Arbitration Council. In the long-term it can even have an impact in the Council's interpretation of controversial legal provisions. Also, trade unions can carry out significant influence for legislative changes.

Attaining gender equality requires adopting a holistic approach.<sup>535</sup> In order to attain the adequate working conditions and gender equality it is necessary to involve different actors, progressively transform institutional structures and societal behaviours.

Lasting changes and improvements require action from more than governments and trade unions. Employers' organisations, as a social dialogue institution, are essential in guaranteeing peaceful industrial relations. Another crucial actor in Cambodia is the Arbitration Council. By dealing with collective labour disputes that are usually brought by trade unions the Council is a decisive player in the promotion of gender equality and the improvements an increase female representation in trade unions can bring. Also, the ILO, as the major international actor in the labour context, holds a primary role in the promotion of gender equality. In fact, the ILO has recognised gender equality as a concept placed at the heart of decent work. Furthermore, in Cambodia, the ILO has implemented the Better Factories Cambodia, a well-known monitoring programme.

Additionally, it is relevant to note that women's under-representation is a consequence of culturally engrained conceptions. This supports male domination in the trade union movement and perpetuates women's lack of confidence in their own abilities.

Furthermore, the trade union movement in Cambodia faces serious constraints concerning freedom of association and the right to collective bargaining.

Corruption is also a significant issue in the country. In fact, it is one of the key justifications for the lack of enforcement of the labour law.

Nevertheless, women's growing economic independence can provide support for an increased female representation. In fact, female migration to urban areas and increased employment contributes to economic independence, which can have an effect in their bargaining power.

It is important to note that addressing women's issues is not enough. "For participation to promote empowerment it needs to be more than a process of consultation over decisions already made elsewhere."<sup>536</sup> Hence, increasing

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<sup>535</sup> Ibidem, at p. 167.

<sup>536</sup> Zoe Oxaal and Sally Baden, *Gender and Empowerment: Definitions, Approaches and Implications for Policy*, at p. 11.

women's representation in trade unions is only part of the solution but it is irreplaceable.

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