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The Compatibility Between International
Labour Right Standards and Cambodian
Laws Concerning Occupational Safety and
Health in Construction Sector: holding the
Construction Companies Accountable for
Violating the Occupational Safety and
Health Regulations.

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Summary

Occupational safety and health perceived as a universal commitment.

Nevertheless, Cambodia is now facing alarming issues concerning occupational safety and health in the construction sector. According to the ILO, in 2009, every day four people in Cambodia were killed due to occupational accidents which this amounted to more than 1500 death of the construction workers. Based on the union leaders in Cambodia, those accidents and illnesses were seen and occurred at the construction sites such as brick kilns and minor construction enterprises which were not well equipped with the understanding and the system of occupational safety and health at the construction sites.

Therefore, this paper is designed to examine whether the existing Cambodian legal framework associated with occupational safety and health for the construction sector comply with the international standards which are ICESCR, C155, C187, and C167 and then find out whether the existing Cambodian legal instruments are sufficient to punish or deter the construction companies for non-compliance or violation the regulations and laws concerning occupational safety and health.

The research has revealed that Cambodia has met general obligation and the ‘tripartite typology’ of states obligations which are the obligations to respect, protect, and fulfill. First and foremost, Cambodia does not interfere with directly or indirectly with the exercise of the right to health. Secondly, Cambodia punish employers if they violate the right to health of the construction workers which can be reflected through punishment provisions enshrined under the Labour Law, Construction, Civil Law and Criminal Law of Cambodia. Last but not least, Cambodia has implemented legislative and measures to fulfill the right to health of the construction workers which are Labour Law, Construction Law, Prakas 075, 076, 078, and the Second Master Plan on Occupational Safety and Health 2018-2022.

However, Cambodia has not ratified C155, C187 and C167. As a member to ILO, Cambodia is under the obligation to promote, protect and realize the occupational safety and health conventions which is one of fundamental principle which was embedded this 2022. Here in our case, notwithstanding not being a state party to C155, Cambodia had her occupational safety and health and regulations which the Labour Law and its relevant regulations such as: Prakas 075, 076, and 078. Additionally, Cambodia also abide by the approaches enshrined therein C187. This can be reflected via its Labour Law as aforementioned and the the Second Master Plan on Occupational Safety and Health 2018-2022 of the MLVT.

It can be seen that Labour Law of Cambodia offer the minimum standards in relation to the safety and health of the construction workers as enshrined therein C167. The reason is that unlike C167 which specifically designed for the construction sector, the occupational safety and health provisions enshrined in Labour Law is a one-size-fit-all policy which does not focus on any specific branch of economic activity which implies that preventive and protective measures under the Labour Law does meet the international standards.

C 167 set out the aspects of safe means and preventive and protective measures at workplace which shall include as follows: scaffolds and ladders, lifting appliances and gear, transport, earth-moving and materials-handling equipment, Plant, machinery, equipment and hand tools, work at heights including roofwork, excavations, shafts, earthworks, underground works and tunnels, Cofferdams and caissons, Work in compressed air, Structural frames and formwork, work over water, demolition, lighting, electricity, explosive, health hazards, fire precautions, personal protective equipment and protective clothing, first aid, and welfare.

While the Labour Law of Cambodia prescribed about occupational safety and health in a broader sense yet it gives more details about infirmary and first Aid, use of physical force, drinking water, noise, lighting and toilet. Additionally,

Prakas 075, 076, and 078 were particularly designed for prevention and protection the occupational safety and health of the construction yet those Prakases only address about the requirements to have toilet, sufficient and clean water, to accommodation, to set up waste storage at the sites; to allow the workers to rest if there is heavy rain or wind.

In addition to the above, the Construction Law set out that every construction shall have a structure that can safely carry all load and shall also be compliant with the fire regulations. These provisions are compliant respectively with Articles. 15 and 29 of C 167 which these Articles stipulates about the lifting appliance and fire precautions at the construction sites. Nevertheless, There are many aspects of workers safety stipulated within C167 have been left out as follows: scaffolds and ladders, lifting appliances and gear, transport, earth-moving and materials-handling equipment, Plant, machinery, equipment and hand tools, work at heights including roofwork, excavations, shafts, earthworks, underground works and tunnels, sofferdams and caissons, work in compressed air, structural frames and formwork, work over water, demolition, electricity, explosive, health hazards, fire precautions, personal protective equipment and protective clothing.

Moreover, to punish or deter the construction companies for non-compliance or violate the regulations and laws concerning occupational safety and health associated with construction companies, four mechanisms can be used to keep construction corporations accountable: (1) accountable under the Labour Law (2) civil liability provided for in the Cambodian Civil Code; (3) criminal liability provided for in the Cambodian Criminal Code, or liable through administrative penalties provided for in sector-specific laws like labour law and construction law, and their regulations.

However, there are flaws within these mechanisms. First and foremost, although Labour Law and the Law on the Organisation of the Courts stipulated about the establishment of labour courts, yet until the present, they labour courts have not been established. This entails flaws for the enforcement of labour rights as a

whole including but not limited to occupational safety and health. The reason is that the existing courts are not specialised in any specific matters

In furtherance, individual dispute filing and hearing requirements and procedures at the Arbitration Council have still to be decided. It is anticipated that the MLVT will release a revised Prakas in due course to further explain these issues. This is also the flaws of individual labour disputes.

Last but not least, the current numbers and understanding related to occupational safety and health related the construction sector of the labour inspectors are still limited.

As based on the findings, Cambodia shall ratify the ILO conventions namely: C155, C187, and C167 as becoming a party to the conventions, Cambodia will receive more technical assistance from the ILO. As a result, it helps Cambodia to meet the obligation which she owes to due to her membership and ILO and to realise the obligation inscribed under ICESCR which is a state party.

Additionally, Cambodia shall push for the establishment of the labour courts as they will be more effective in solving not just occupational safety and health matters but the other labour matters in general.

Furthermore, the MLVT shall issue Prakas or regulations in due course to further explain individual dispute filing and hearing requirements and procedures at the Arbitration Council.

Last but not least, MLVT shall recruit more labour inspectors and offer proper training related occupational safety and health to them. If this is the challenge, the MLVT shall seek technical assistance from the ILO regarding this matter.

Preface

First and foremost, I would like to express my gratitude towards the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) for not only offering me the chance to pursue a Master of Laws in International Human Rights Law at Lund University but also supporting me during my journey in pursuing my Bachelor of Laws at Royal University of Law and Economics and during my participation in Nuremberg Moot Competition. Without RWI, I would have never made it this far. Further I am incredibly grateful to all of its personnel for their unwavering support throughout my time studying in Sweden. A fantastic journey filled with new acquaintances, education, and adventures.

Additionally, I would like to thank my supervisor, Mrs. Constance Thomas, for her inspiration, assistance, and direction as I was writing this thesis. This thesis would not have been successful without you. Despite the fact that you have not been feeling well thus far, I appreciate that you made yourself available to me for guidance and advice as I was writing my thesis. Even though we were unable to meet in person, it was a pleasure for me to discuss about occupational safety and health. In addition to your support in writing my thesis, you have inspired me to seek a career in defending labour rights, which I am currently working on every day.

Last but not least, I would also like to express my gratitude towards my mother, my family, professors, and friends for always vesting their trust within in me. They are the sources of my motivation to pursue my higher education during the uncertainty and insecurity era which is Covid-19 era. This journey has not just equipped me with knowledge but also brought me good friends.

Lastly, I hope my paper will be of use that it will uphold, promote, and protect the right to health of construction workers at their workplace which this will contribute to upholding human rights as a whole.

Abbreviations

CESCR	Committee on Economics, Social and Cultural Rights
Construction Law	Law on Construction of Cambodia dated 02 November 2019
C167	Safety and Health in Construction Convention dated 20 June 1988
C187	Promotional Framework for Occupational Safety and Health Convention dated 15 June 2006
GDP	Gross Domestic Product
ICESCR	International Covenant on Economic, Social and Cultural Rights dated 16 December 1966
ILO	International Labour Organisation
Labour Law	Labour Law of Cambodia dated 13 March 1997, as amended on 20 July 2007, 26 June 2018 and on 5 October 2021
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MLVT	Ministry of Labour and Vocational Training
NGO	Non-Governmental Organisation
Prakas 075	Prakas 075 on Sanitation at the Construction Site dated 30 March 2011
Prakas 076	Prakas 076 on the Protection of Risk resulting from Climate Change at the Construction Site dated 30 March 2011
Prakas 078	Prakas 078 on Storage of Materials, Release of Waste and Hygiene at the Construction Site dated 30 March 2011
Prakas 358	Prakas on the Launch of Labour Inspection Self-Declaration Regime via Automation System dated 30 December 2020

R175	Recommendation on Safety and Health in Construction Convention dated 20 June 1988
RGC	The Royal Government of Cambodia
UDHR	Universal Declaration of Human Rights dated 10 December 1948
UN	United Nations
UNGA	United Nations General Assembly

Chapter I : Introduction

1.1 Background

The construction industry is one of the sectors which plays a crucial role in the national economic development of many countries. The growth in the industry also represents an indicator of the development of countries. Particularly for those that are emerging, construction has been recognized as a key factor in economic progress. However, the construction industry is one of the most dangerous sectors to work in. Each year, there is a large number of construction workers who face occupational accidents and hazards which deteriorate their health or cost them their lives. Globally, each year approximately 340 million workers are suffer due to work-related accidents while 160 million are prone to occupational diseases.¹ The ILO also estimates that roughly 2.78 million workers lost their lives each year due to work-related accidents and illnesses.² Besides, at least 108 thousand workers die at the construction sites, and the construction workers at the industrialized countries are 3 to 4 times succumb to risks at construction sites while the risks are 3 to 6 times for the construction workers at the developing counties.³ This shows the occupational safety and health threat that construction workers face and the need for increased national and intentional attention, action, and commitment to improve occupational safety and health in the construction sector.

The growth of the economy also gives rise to the blooming of the construction industry in Cambodia. As of the day of writing, the construction industry is

¹ILO, World Statistic, The enormous burden of poor working condition, Link: https://www.ilo.org/moscow/areas-of-work/occupational-safety-and-health/WCMS_249278/lang--en/index.htm

² ILO, International Labour Standards on Occupational Safety and Health, Link: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>

³ ILO, Construction: a hazardous work, Link: https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_356576/lang--en/index.htm

growing significantly in Cambodia mainly due to Chinese Foreign Direct Investment.⁴ As of 2019, the GDP from construction industry was accounted for 6% of the total GDP (equivalent to 1.6 USD Billion).⁵ The 2019 report on the Cambodia Labour Force Survey of the Ministry of Planning showed that 10% (out of 7.9 million people were employed) of workers were employed in construction industry.⁶ The number illustrates that construction industry plays an important role in creating more job for Cambodians. As the construction industry is a labour intensive industry, thus occupational safety and health for workers require extra attention. Nevertheless, Cambodia is now facing alarming issues of occupational safety and health in the construction industry. According to the ILO, in 2009, every day four people in Cambodia were killed due to occupational accidents which this amounted to more than 1500 death of the construction workers.⁷ Based on the union leaders, those accidents and illnesses were seen and occurred at the construction sites such as brick kilns and minor construction enterprises which were not well equipped with the understanding and the system of occupational safety and health at the construction sites.⁸

Safety at work is understood as a universal commitment which this concept was enshrined within the UDHR Articles 25 (1) and 23 respectively that everyone is entitled to favourable working conditions and a living standard “*adequate for the health and well-being of himself and of his family.*” Moreover, the idea of occupational safety and health was also stipulated therein Article 7 (b) of ICECR that everyone is entitled to “*safe and healthy working conditions.*” In furtherance, to ameliorate the occupational safety and working conditions, the

⁴ AsiaNews.it, Cambodia’s construction industry still booming: US\$ 44 billion invested since 2000, [http://www.asianews.it/news-en/Cambodia's-construction-industry-still-booming:-US\\$-44-billion-invested-since-2000-47471.html](http://www.asianews.it/news-en/Cambodia's-construction-industry-still-booming:-US$-44-billion-invested-since-2000-47471.html) 07/05/2019

⁵ Trading Economics, ‘Cambodia GDP from Construction’
<https://tradingeconomics.com/cambodia/gdp-from-construction>

⁶ National Institute of Statistic, Ministry of Planning, Report on the Cambodia Labour Force Survey 2019 Page 38
https://www.nis.gov.kh/nis/CLFS/CLFS19_Final_Full%20Report_EN.pdf

⁷ ILO, Enhancing Occupational Safety and Health Standards in Construction Sector in Cambodia, Link: [https://www.ilo.org/asia/projects/WCMS_577102/lang--en/index.htm](https://www.ilo.org/asia/projects/WCMS_577102/lang-en/index.htm)

ILO has adopted about 40 standards and around 40 Codes of Practice.⁹ Particularly for the construction industry, the ILO has developed and promoted a number of conventions, recommendations, and other guidelines such as the Safety and Health in Construction Convention (No. 167) and its Recommendation (No.175), A Code of Practice of Safety and Health in Construction. Nevertheless, not many countries ratified these conventions.¹⁰ Nevertheless, occupational safety and health was recently included as a fundamental principle and right at work at the 110th Session of International Labour Conference. This tremendous development in occupational safety and health means that regardless being a state party to the conventions associated with occupational safety and health which are C155 and C187, the ILO Member States shall commit to upholding and promoting safety and health at work.

It can be seen that Cambodia is a party to all of the main human rights conventions including ICESCR, and she is also an ILO Member State and has ratified all of the eight fundamental conventions of the ILO.¹¹ However, Cambodia has not ratified the conventions concerning occupational safety and health and those that are associated with occupational safety construction industry. To be precise, those conventions are Occupational Safety and Health Convention (No. 155), Occupational Health Services Convention (No. 161), Promotional Framework for Occupational Safety and Health Convention (No.187), Safety and Health in Construction Convention (No. 167) and its Recommendation (No.175). However, as mentioned in the above paragraph, as occupational safety and health became as a fundamental principle and right at

⁹ ILO, International Labour Standards on Occupational Safety and Health, Link: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>

¹⁰ ILO, Construction: a hazardous work, Link: https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_356576/lang--en/index.htm

¹¹ ILO, NORMLEX Information System on International Labour Standards, Ratification for Cambodia, Link: https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNT_RY_ID:103055

work, Cambodia must commit to respect and promote the conventions governing occupational safety and health as mentioned above although she is not a party to safety and health at work conventions.

Despite this, it can be seen that the RGC has put tremendous efforts into improving working conditions at the construction sites by inscribing the provision related to occupational safety and health under Chapter III of her Labour Law.¹² Additionally, the MLVT also created Second Master Plan on Occupational Safety and Health 2018-2022.¹³ Furthermore, to ameliorate safety and health of the construction workers, the RGC also enacted Construction Law in 2019 which these the laws will be the topic of discussion and analysis in Chapters 3 and 4 of this paper.

The Labour Law of Cambodia is considered to be the most prescriptive law in Cambodia at present¹⁴ while the Construction Law was just enacted in late 2019. It can be seen that the laws and regulations which govern the occupational safety and health of the construction workers are in place yet there still exist the cases where the construction workers encounter accidents and incidents which cause them their lives. Consequently, the adequacy and efficacy of the legal framework, which to deter or hold the construction companies accountable for non-compliance or violating the occupational safety and health or to deter to the construction companies for committing such acts, enshrined within the Labour Law of Cambodia and the Construction Law are still questionable.

Therefore, this paper intends to examine whether the existing Cambodian legal framework associated with occupational safety and health in the construction sector comply with the international standards and then find out whether the

¹² The Labour of Cambodia, Chapter VIII

¹³ MLVT, Second Master Plan on Occupational Safety and Health 2018-2022; Link: <https://www.mlvt.gov.kh/index.php/គោលនយោបាយ-និងផែនការ/58-គោល%E2%80%8Bនយោ%E2%80%8Bបាយ%E2%80%8B-និង%E2%80%8Bផែនការ/1761.html>

¹⁴ DFDL, Investment Guide Cambodia (2020), Page 123

existing Cambodian legal instruments are sufficient to punish or deter the construction companies for non-compliance or violation the regulations and laws concerning occupational safety and health. Lastly, the recommendation to the issues will be addressed. These include civil, criminal, and administrative liabilities, ratification to the conventions associated with occupational safety and health related to construction sector, and the assistance from the ILO.

1.2 The relationship between occupational safety and health and human rights

Labour rights are recognised as human rights. Firstly, this reflects through the UNGA report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association dated 14 September 2016 which stated that *“Labour rights are human rights, and the ability to exercise these rights in the workplace is prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.”*¹⁵ Moreover, the recognition of labour rights as human rights can also be substantiated by the inscription of labour rights governing occupational safety and health therein the human rights instrument such as UDHR and ICESCR.

The UDHR Articles 25 (1) and 23 recognizes and provides that everyone has a right to favorable working circumstances and a quality of living *“sufficient for the health and well-being of himself and of his family”*. Furthermore, Article 7(b) of the ICECR also stipulates the concept of occupational safety and health that everyone has a right to *“safe and healthy working circumstances”*. This implies the relation between human rights and occupational safety and health. In furtherance, it can also be seen that either governmental and international organizations, such as courts, or civil society organizations, including trade unions and NGOs, support labour rights as human rights.¹⁶

¹⁵ United Nations General Assembly, Rights to freedom of peaceful assembly and of association, A/71/385, page 6

¹⁶ Ibid.

Additionally, it is essential to note that “*Health is a fundamental human rights indispensable for the exercise of other human rights,*” as addressed under CESCR General Comment No. 14.¹⁷ Safe and healthy working conditions, and a healthy environment are fundamental determinants of the right to health.¹⁸ Furthermore, to pursue the achievement of the right to health, we can use a variety of complementary strategies, such as developing health policies, putting into practice health programs, or adopting particular legal instruments.¹⁹

Therefore, it is obvious that occupational safety and health is a fundamental determinant of right to health which can be achieved via the adoption of particular legal instruments which for the case at hand refer to the ILO conventions, recommendations, and code of practice. In the case of pursuing the achievement of the right to health of the construction workers, the ILO conventions, recommendations associated with occupational safety and health were enacted as follows: those conventions are Occupational Safety and Health Convention (No. 155), Occupational Health Services Convention (No. 161), Promotional Framework for Occupational Safety and Health Convention (No.187), Safety and Health in Construction Convention (No. 167) and its Recommendation (No.175).

In the light of the above explanation it can be concluded that occupational safety and health is a human right; the ILO conventions, recommendation, and instruments are the means enacted to pursue the promotion and realization of human right to health of the construction workers. In addition to this, on the 110th session of International Labour Conference, the ILO Declaration on Fundamental Principles and Rights at Work was amended in order to including the occupational safety and health was embedded as a fundamental principle and right at work.

¹⁷ CESCR, General Comment 12. E/C.12/2000/4, para 1.

¹⁸ Ibid, para 4.

¹⁹ Ibid, para 1.

In conclusion, the author is of the view that to uphold to the human right to health of construction workers in Cambodia, the human rights convention, which is ICESCR alone, is not adequate to ensure the protection and promotion the right to health of the construction workers at the construction site which this will be proven in the following paragraph. Thus, to ensure the protection and promotion the human right to health of the construction workers, it is significant to scrutinize the ILO conventions associated occupational safety and health in general and ILO sectoral conventions associated occupational safety and health for construction sector.

1.3 Purpose and research questions

As aforementioned, Cambodia is currently facing the issues concerning occupational safety and health at the construction sites, this is evidenced by the collapse of an under construction seven-story building which caused death to 28 construction workers in 2019.²⁰ Moreover, the ILO estimates that approximately 1500 construction workers die because of hazardous working conditions in Cambodia each year.²¹

Furtherance, as a state party to the ICESCR and a member to the ILO, Cambodia has both general and tripartite typology obligations to ensure progressive realization and that right to safe and healthy working conditions are respected, promoted, and protected. The failure to do so incurs in the non-compliant with the international standards concerning occupational safety and health. Thus, this paper aims to respond to the following questions:

1. Whether Cambodian legal instruments concerning occupational safety and health for construction sectors are compliant with international

²⁰ Liyana Hasnan, The Asian Post, Construction in Cambodia Lacks Safety (3 August 2019) Link: <https://theaseanpost.com/article/construction-cambodia-lacks-safety>

²¹ ILO, Enhancing Occupational Safety and Health Standards in Construction Sector in Cambodia, Link: https://www.ilo.org/asia/projects/WCMS_577102/lang--en/index.htm

standards. The international standards herein refer to ICESCR, C155, C187, and C167.

2. Whether Cambodian legal instruments are: in place to punish or deter the construction companies for non-compliance or violate the regulations and laws concerning occupational safety and health associated with construction companies, and to find out the mechanisms enshrined within Cambodia legal framework in order to hold construction companies for non-compliance or violating occupational safety and health regulations.

In order to answer these questions, the author is going to scrutinize the international instruments associated with occupational safety and health in the construction industry such ICESCR, C155, C187, and C167.

Cambodian legal framework governing occupational safety and health which bind the construction companies. Then the author will examine and analyze whether Cambodian legal frameworks align with the international standards or not. Ultimately, the author would will explore the solutions through the invocation of civil and/or criminal liability, free trade agreements, human rights due diligence, ratification to the conventions associated with occupational safety and health in the construction industry, and the assistance from the ILO. However, the solutions will not be discussed thoroughly as they are not the main focus of this paper.

1.4 Research materials and methods

To answer the aforementioned research questions, the author adopted two methods which are legal dogmatic and qualitative research owing to the facts that these methods allow the author to have an in-depth insight, better understanding and analysis of the materials governing the international human rights standards associated international occupational safety and health, the ILO conventions and recommendations governing occupational safety and health,

Cambodia legal regulations and its practices related to occupational safety and health, and the Cambodia legal regulations associated with punishment for violation of occupational safety and health regulations. “qualitative research method” is the study of “how” and “why” of a certain social phenomenon functions the manners it does by using the qualitative data include interviewing, respondent observation and documents.²² The “legal dogmatic method” is the study of the interpretation of laws and the normative legal materials which consists of legislation, case law, and legal doctrine.²³

In Chapter 2, the author examined and explored the existing international legal standards governing occupational safety and health for construction sector. These include human rights instruments and conventions such as UDHR, ICESR and their commentaries. Moreover, the author will also scrutinize Occupational Safety and Health Convention (No. 155), Promotional Framework for Occupational Safety and Health Convention (No.187), and Safety and Health in Construction Convention (No. 167).

In Chapter 3, the author examined and explored the loopholes, and the penalty inscribed in the Cambodian legal regulations and instruments associated with occupational safety and health in the construction industry consist of the Constitution of Cambodia, Labour Law, Construction Law, and other government regulations. These materials will be collected and retrieved from the internet sources such the website of the Ministry of Labour, Royal Government Website and other internet sources.

In Chapter 4, the author explored the mechanisms on how to hold the construction companies liable for violating the legal regulation associated with occupational safety and health by examining the Labour Law of Cambodia,

²² MPRA, Mohajan, Haradhan, “Qualitative Research Methodology in Social Science and Related Subject”, December 2018, page 2

²³ South Ural State University, Alexander and Alexey, “Formal-Dogmatic Approach in Legal Science in Present Condition,” 2018, page 968

Construction Law of Cambodia, Civil Code of Cambodia, and Criminal Code of Cambodia.

In Chapter 5, the author would address the findings, give solutions to findings, and give concluding remarks.

1.5 Limitations

This paper is intended to answer whether Cambodian legal instruments concerning occupational safety and health for the construction sector are compliant with international standards and whether Cambodian legal instruments are in place to punish or deter the construction companies for non-compliant or violating the regulations and laws concerning occupational safety and health for the construction sector.

Lastly, it is also intended to find out the mechanisms to hold construction companies for non-compliant or violating occupational safety and health in the construction sector. Last but not least, this paper is designed for academic purpose only as due to time constraint and availability of resources in Cambodia. It is essential to note that although the recommendations would be addressed in Chapter 5, they are not the center of the focus on this paper. Additionally, the construction companies herein this paper refers to the construction companies or entities which obtain the license from the MLMUPC to operate their construction projects. Therefore, the construction businesses fall within the ambit of informal economy are not covered by this paper.

Additionally, Recommendation 175 and Code of practice on safety and health in construction will not be included as they are not binding instruments. The author opinion these instruments are important in promoting occupational safety and health. However, in the context of Cambodia, she is at her baby steps to pursue occupational safety and health and most importantly she has not ratified all of the main conventions related to occupational safety and health including the specific one for the construction sector. Therefore, should the

Recommendation 175 and Code of practice on safety and health in construction be used as standards to measure whether Cambodia meet the international standards, it is too far out of reach that Cambodia can meet the standards addressed therein. Hence, this is rationale for excluding Recommendation 175 and Code of practice on safety and health in construction.

Last but not least, this paper does not include the implementation of Cambodian legal framework on occupational safety and health owing to the unavailability of the data, limited resources, and time constraint. This is also the reasons for exclusion of the small construction businesses which fall into informal economy (i.e. refers to those which are not licensed by MLMUPC).

1.6 Structure of the thesis

This paper is classified into five chapters. The first chapter is the introduction of the background occupational safety and health in the construction industry in general and the occupational safety and health in the construction industry in the context of Cambodia.

The second chapter layouts the international standards concerning the occupational safety and health in the construction sector.

The third chapter is designed to examine the Cambodian legal framework concerning occupational safety and health and analyse the loopholes and the penalty enshrined therein Cambodian legal framework concerning occupational safety and health.

The fourth chapter intends to explore the mechanisms to promote compliance and to hold the construction companies liable for non-compliance or violates occupational safety and health in the construction industry.

The last chapter layouts the findings and the recommendations concerning mechanisms on how to hold the construction companies accountable for non-compliance or violation of occupational safety and health in the construction industry in Cambodian context.

Chapter 2: International legal framework governing Occupational Safety and Health

The author, in this chapter, will demonstrate the UN Human Rights Instruments governing occupational safety and health associated with construction sector. The author will start by laying out the human rights declaration and convention which inscribed the provisions concerning occupational safety and health as follows: UDHR and ICESCR. Thereafter, the author will proceed to the ILO instruments governing occupational safety and health in general which are C155, C187.

2.1 UN Human Rights Instruments concerning Occupational Safety and Health

The reason for addressing the UN instruments related to occupational safety and health conventions and ILO conventions as mentioned above is to lay out standards which will be used as yardsticks to measure whether Cambodia regulations related to occupational safety and health have met those standards or not.

UN Human Rights Instruments governing occupational safety and health associated with construction sector is to establish that Cambodia is bound by the conventions which she is party to.

Unlike human rights conventions which if not ratified they are not binding upon the state parties. On the contrary, the state members of ILO are bound to respect, promote and realize the ILO conventions which fell into the categories of fundamental principles and rights work.²⁴ The subject of those conventions include (1) freedom of association and the effective recognition of the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labour; (3) the effective abolition of child labour; (4) the elimination of

²⁴ ILO Declaration on Fundamental Principles and Rights at Work (1998) amended in 2022, Article. 2

discrimination in respect of employment and occupation; and (5) a safe and healthy working environment.²⁵

2.1.1 Universal Declaration on Human Rights

Article 23 (1) stipulated that “*everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*”²⁶

Article 25 (1) inscribed that “*everyone has the right to a standard of living adequate for the health and the well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*”²⁷

It can be seen that the idea of safety and health at is also enshrined under the UDHR although it is not verbatim as in the ILO convention. In furtherance, the UDHR extends that the safety and health are one of the components the right to an adequate standard of living which is the minimum standards of human rights.

The UDHR is not binding, however, the principles inscribed therein are considered as customary international law since the principles inscribed into human rights conventions. The idea of safety and health at work can also be found in one the of the human rights conventions which is ICESCR which would be explained in the next section.

2.1.2 International Covenant on Economic, Social and Cultural Rights

²⁵ Ibid.

²⁶ UDHR, Article. 23 (1).

²⁷ Ibid, Article. 25 (1).

Unlike to UDHR, the Covenant binds all the States Parties which means that they are under the obligation to protect, respect, and ensure the citizens are guaranteed with safe and healthy working conditions.

Article 7(b) of the convention provides that *“The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: ... safe and healthy working condition. ...”*²⁸

Additionally, state parties of the ICESCR are bound by two main obligations as follows:

2.1.2.1 General Obligation (Progressive realization of the rights to health for the construction workers)

According to Article 2 of the ICESCR, the state has the obligation to achieve progressively the full realization of the rights stipulated in the covenant,²⁹ including but not limited to right to healthy natural and workplace environment and the right to prevention.³⁰ This mean that states which in this case Cambodia must use to the maximum of its available resources to ensure *“The improvement of all aspects of environmental and industrial hygiene”* by ensuring an adequate supply of safe and potable water and basic sanitation, the prevention and reduction of the population's exposure to harmful substances like radiation and harmful chemicals, or other detrimental environmental conditions that directly or indirectly impact human health.³¹

2.1.2.2 The ‘tripartite typology’ of states obligations which are the obligations to respect, protect, and fulfill.

²⁸ ICESCR, Article 7(b).

²⁹ Ibid, Article 2(1)

³⁰ Ibid, Article 12(2)(b).

³¹ CESCR, General Comment 14. E/C.12/2000/4, para 15.

The obligations to respect, protect, and fulfill the right to health are three different sorts or categories of obligations that States parties must meet, just like with all other human rights.³² First and foremost, states must refrain from interfering directly or indirectly with the exercise of the right to health under the obligation to *respect*.³³ Additionally, states must take precautions to stop outsiders from tampering with article 12 guarantees under the commitment to safeguard.³⁴ Finally, under the obligation to fulfill which is to fully realize the right to health, states must implement appropriate legislative, administrative, budgetary, judicial, promotional, and other measures.³⁵

If Cambodia meet the requirement as immediately mentioned, it means she has progressively realized the rights to health at work place of the construction workers.

2.2 Occupational Safety and Health under ILO Framework

ILO is one of the UN agencies; it is a tripartite organisation where the employers, governments, and workers are brought together to regulate labour standards and to draft labour policies and other relevant projects in order to promote decent work for the workers and employees. In short, ILO is a UN agency which specializes in employment matters. Currently, it consists 187 state members.³⁶

2.2.1. ILO Constitution

It is crucial to note that the amelioration of occupational safety and health is one of the elements to the achievement of universal and lasting peace as based on the preamble of the ILO.³⁷ To achieve this, the occupational safety and health

³² Ibid, para 33.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ ILO Geneva, Switzerland, 1919, Link: <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/member-states/lang--en/index.htm>

³⁷ LO Constitution, Preamble

concept is put into an enforceable act by embedding into a set of ILO conventions which will be elaborated in the following paragraphs.

The concept of occupational safety and health is not only enshrined in the Constitution of ILO, but it is also laid out in the ILO conventions such as Occupational Safety and Health Convention (No. 155), and Promotional Framework for Occupational Safety and Health Convention (No.187), these conventions address the general duties obligations of all of the stakeholders associated with occupational health and safety in general without focusing on any specific economic activities. These conventions are regarded as the framework conventions for the creation of a national safety and health system while C187 obliges state parties to enact a national policy in order to promote and improve the working conditions which are safe and healthy. Moreover, the safety and health at work of the construction workers are inscribed therein the Safety and Health in Construction Convention C167, Recommendation 175 and Safety and Health in Construction: A Code of Practice deal specifically with the occupational safety and health in the construction industry. However, Recommendation 175 and Safety and Health in Construction: A Code of Practice will not be addressed herein this paper as already mentioned in the delimitation sector of this paper.

Therefore, the following sections the author will lay out all of the occupational safety and health obligations in general which inscribed in ILO Convention 155 and Convention 187. Thereafter, the author will examine the occupational safety and health obligations in the construction industry which enshrined in ILO Convention 167.

2.2.2 Occupational Safety and Health Convention (No. 155)

The main purpose of the C155 is to prevent accidents and injury to health originating out of, linked with, or occurring at work, by eliminating, to the

extent that is reasonably practicable, the causes of dangers inherent in the working environment.³⁸ Therefore, C155 lay outs actions as follows:

2.2.2.1 Actions for Government

A state member is under the obligation to enact, implement and periodically review its national policy to ensure the compliance with occupational safety and health and the working environment.³⁹ Moreover, the national policy shall be designed in a manner to prevent accidents and injury to health originating out of, linked with, or occurring at work, by eliminating, to the extent that is reasonably practicable, the causes of dangers inherent in the working environment.⁴⁰ With consultation with the representative organisations of the employers and workers associated, the government shall take actions in order to give effect to national conditions and practices concerning occupational safety and health which this will help prevent accidents and injury occurring related to work or at work.⁴¹ These shall include main spheres of action which can be considered to affect safety and health at work and the working environment as following:⁴²

- designing, testing, selecting, replacing, installing, arranging, using, and maintaining the physical components of the job. Workplaces, tools, machinery, and equipment, chemical, physical, and biological substances, work processes, and working environments are examples of the material elements of work..⁴³
- the relations between the workers and the material elements of work, the adaptation of workplace machinery, working period, the arrangement of work and its processes for the workers' physical and psychological abilities.⁴⁴

³⁸ Occupational Safety and Health Convention (1981), Article. 4

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid, Article. 8

⁴² Ibid, Article. 5

⁴³ Occupational Safety and Health Convention (1981), Article. 5

⁴⁴ Ibid.

- the trainings, inspirations and qualifications of those associated with the realisation of satisfactory levels of safety and health.⁴⁵
- communication and collaboration of the any relevant levels of stakeholders such as working group, the undertaking, and the government.⁴⁶
- the safeguarding of workers and the workers' representative from any disciplinary measures arise from their activities which conducted with the purposes to ensure the compliance of the policy concerning safety and health.⁴⁷

To give effect to domestic conditions and practices concerning occupational safety and health as mentioned above, the state parties **through its laws and regulations,**⁴⁸ and **enforcement of these laws shall be secured by an adequate and system of inspection and adequate penalties for violations.**⁴⁹

Beyond this, guided measures shall be offered to employers and workers as well so that they can comply with the legal requirements.⁵⁰ In order to make the policy more effective, the competent authority shall ensure some certain functions as following:⁵¹

- the establishment of conditions associated with the planning, building, and organization of undertakings; the beginning of the operations of undertakings; the use of technical and safety tools at the workplace; and the implementation of protocols established by the relevant authorities.⁵²
- the determination of the processes of working, the substances, the agents barred, restricted or under the authorisation or regulation by the competent authority; the determination of health hazards owing to the instantaneous exposure to different types of substances or agents.⁵³
- the creation and execution of processes for employers, insurance providers, and other relevant stakeholders to notify about occupational accidents and

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid, Article. 8

⁴⁹ Ibid, Article. 9

⁵⁰ Ibid, Article. 10

⁵¹ Ibid, Article. 11

⁵² Ibid, Article. 11 (a)

⁵³ Occupational Safety and Health Convention (1981), Article. 11 (b)

diseases; the publication of annual statistics on occupational accidents and illnesses.⁵⁴

2.2.2.2 Action at the level of the undertaking

In furtherance, the employers are also under the obligation to ensure that the workplace, machinery, equipment, processes, chemical, physical and biological substances and agents under their control are safe and without risk to health, and the employers shall offer protective clothing and equipment in order to prevent any risks of accidents or adverse effects on health.⁵⁵

Both the workers and their representatives are entitled to proper training concerning occupational safety and health.⁵⁶ Moreover, representative of the workers are entitled to information about the measures taken by the employers to secure safety and health at work.⁵⁷ Furthermore, in any events where there presents an imminent and serious danger to the life or health of the workers, the employer cannot force the workers to return to work where the dangers occur until he or she has taken remedial action.⁵⁸ The expenditure on measures taken to safeguard the occupational safety and health shall be the burden of the employers.⁵⁹

2.2.3 Promotional Framework for Occupational Safety and Health Convention (C.187)

Article 3(2) of C187 expressly recognizes the right to a safe and healthy working environment that its cornerstone is a "national preventative safety and health culture". Furthermore, Article 1 of Convention No. 187 emphasizes that this culture is one in which "a safe and healthy working environment through a system of defined rights, responsibilities and duties" - which in and of themselves make up conditions that are contained within the working

⁵⁴ Ibid, Article. 11 (c)

⁵⁵ Ibid, Article. 16

⁵⁶ Ibid, Article. 19 (d)

⁵⁷ Ibid,, Article. 19 (c)

⁵⁸ Ibid, Article. 19 (f)

⁵⁹ Ibid, Article. 21

environment - is actively secured by government, employers, and workers In the 1980s, the term "safety culture" entered the international lexicon. Since then, it has been used to describe human and behavioral components of effective occupational safety and health management in the workplace as well as preventative OSH strategies.

Additionally, state parties shall continuously promote and improve the occupational safety and health in order to prevent injuries, diseases, deaths arise due to occupational performance.⁶⁰ Moreover, the states shall progressively achieve the occupational safety and health by adopting active steps via formulating, promoting their national policy concerning occupational safety and health, and these shall be done through the consultation with most representative organization of both the employers and the employees.⁶¹

Thus, the state parties shall establish their national system and national programme which focus on occupational safety and health.

To establish a standardized national system concerning occupational safety and health, the national system related occupational safety shall be as follows: laws and regulations, collective agreement; body, or authorities or bodies, designated in accordance with national law and practice, responsible for occupational safety and health; mechanism to safeguard and guarantee the adherence to national laws and regulations including systems of inspection ; and arrangements to encourage cooperation between management, employees, and their representatives at the level of the enterprise as a crucial component of workplace-related preventative measures.⁶²

2.2.4 Safety and Health in Construction Convention (C 167)

⁶⁰ Promotional Framework for Occupational Safety and Health Convention, Article. 2

⁶¹ Ibid, Articles. 2&3

⁶² Promotional Framework for Occupational Safety and Health Convention, Article. 4

This convention is fundamental to occupational safety and health in the construction industry. It addresses the essential legal requirements which bring into force the good practices and procedures concerning occupational safety and health in construction industry. This convention is divided into five (5) sections which are 1). Scope and definitions 2). General provisions 3). Preventive and protective measures 4). Implementation 5). Final provisions.

1). Scope and definitions

This convention is applicable to all of construction activities include building, civil engineering, and erection and dismantling work and the associated processes from the preparation of the construction site until the project is completed.

2). General provisions

The member who ratifies this Convention is under the obligation to enact and ensure the effective implementation of the in force laws or regulations concerning the assessment of the safety and health hazards.⁶³ Furthermore, the practical application of these laws and regulations is illuminated by technical standards, codes of practice, or other methods which are in line with domestic conditions and practice.⁶⁴ Moreover, the domestic laws and regulations shall include measures which ensure the co-operation between employers and workers.⁶⁵ The workers, employer and self-employed persons, and those who are involved with the design and planning of the construction projects are also obliged to abide by the prescribed occupational safety and health measures.⁶⁶

The prescribed national laws or regulations shall entitle the workers with the right to remove themselves from danger in any events they have reasonable

⁶³ Safety and Health in Construction Convention (1988), Article. 4

⁶⁴ Ibid, Article. 5

⁶⁵ Safety and Health in Construction Convention (1988), Article. 6

⁶⁶ Ibid, Articles. 7, 9, 10

grounds to believe that the imminent and grave danger to their safety and health exist, and they have the obligation to inform their supervisor abruptly.⁶⁷

3). Preventive and protective measures

The preventive and protective measures shall incorporate all of the proper precautions to guarantee safe workplaces and safe means to access and exit from the workplaces.⁶⁸

Under the Convention, the safe means and preventive and protective measures at workplace shall be embedded into the following aspects:⁶⁹

- **Scaffolds and ladders:** shall be provided if the work cannot be conducted from the ground safely, and they shall be secured against accidental movement. Moreover, they shall be constructed, used, inspected by the competent person in conformity with the prescribed laws or regulations.⁷⁰
- **Lifting appliances and gear:** these tools and their underlying components, anchorages, attachments, and supports shall be made of sound material with adequate strength and in good design so that they can be functioned properly as they are intended. Furthermore, they shall be appropriately installed, used, maintained, and operated by properly trained workers. Moreover, to ensure their effective functions, they shall be examined and tested by a competent person, the examination shall come along with results and they shall be recorded.⁷¹

⁶⁷ Ibid, Article. 12

⁶⁸ Ibid, Article. 13

⁶⁹ Ibid, Articles. 14 - 34

⁷⁰ Safety and Health in Construction Convention (1988), Article. 14

⁷¹ Ibid, Article. 15

- **Transport, earth-moving and materials-handling equipment:** they shall be in good design, under proper maintenance, appropriately used, and operated by proper trained workers in conformity with national laws and regulations.⁷² Moreover, the traffic and safe access ways, where the equipment is used, shall be provided and properly managed.⁷³
- **Plant, machinery, equipment and hand tools:** they shall be in good design, under proper maintenance, appropriately used as they are intended to, and operated by proper trained workers.⁷⁴ In any events, they are used outside their intended design purposes, they should be assessed by a competent person.⁷⁵ In the case of pressure plant and equipment, as prescribed by laws and regulations, they shall be inspected and tested by a competent person.⁷⁶
- **Work at heights including roofwork:** preventive measures shall be introduced to prevent the danger if the height or slope of a structure goes beyond the prescribed laws or regulations or if the roofs or those high places are covered with delicate material.⁷⁷
- **Excavations, shafts, earthworks, underground works and tunnels:** at these sites related to these aforementioned works, sufficient precautions shall be put forward by having proper shoring, ventilation, and investigation.⁷⁸
- **Cofferdams and caissons:** their construction, positioning, modification or dismantling shall be made under the supervision of a competent person, and they shall also be inspected at prescribed intervals.⁷⁹ Furthermore, they shall be properly constructed with

⁷² Ibid, Article. 16 (1)

⁷³ Ibid, Article. 16 (2)

⁷⁴ Ibid, Article. 17 (1)

⁷⁵ Ibid, Article. 17 (1)

⁷⁶ Ibid, Article. 17 (3)

⁷⁷ Ibid, Article. 18

⁷⁸ Safety and Health in Construction Convention (1988), Article. 19

⁷⁹ Ibid, Articles. 20 (2) & (3)

suitable and sound material which they shall be convenient for workers to get to safety in the events of danger such as inrush of water or material.⁸⁰

- **Work in compressed air:** only workers whose physical aptitude fitted for this type of work are allowed, and the physical aptitude shall be recognised by a medical examination.⁸¹ Work in compressed air can only be conducted in compliant with measures prescribed by laws or regulations.⁸²
- **Structural frames and formwork:** their construction can only be conducted only by the supervision of a competent person. In order to protect the workers from dangers, sufficient precaution measures shall be taken to ensure that structural frames and formwork are well designed so that they are stable and strong.⁸³
- **Work over water:** if the working sites are over the water or close to the water, measures shall be taken to prevent the workers from falling into the water, to ensure that the workers will be rescue in time of drowning, to provide the workers with appropriate transport.⁸⁴
- **Demolition:** sufficient measures procedures and precautions as prescribed by laws or regulations shall be taken when conducting the demolition, these include the waste disposal. The demolition shall be planned and conducted by the competent person.⁸⁵
- **Lighting:** sufficient lighting shall be offered at every place at the construction sites.⁸⁶

⁸⁰ Ibid, Article. 20 (1)

⁸¹ Ibid, Article. 21 (2)

⁸² Ibid, Article. 21 (1)

⁸³ Ibid, Article. 22

⁸⁴ Ibid, Article. 23

⁸⁵ Safety and Health in Construction Convention (1988), Article. 24

⁸⁶ Ibid, Article. 25

- **Electricity:** the construction, installations, maintenance of electrical equipment shall be conducted by a competent person with proper maintenance and shall be governed by technical rules and standards of domestic sphere.⁸⁷ Prior to the construction of the electrical equipment or installations, sufficient measures shall be conducted to ensure that the live electrical cable or apparatus under, over or on the sites do not harm the workers.⁸⁸
- **Explosives:** they can be stored, transported, used only if they are prescribed by national laws or regulations, and these activities shall be handled by a competent person.⁸⁹
- **Health hazards:** proper preventive measures shall be adopted where a worker under the exposure of any chemical, physical or biological hazard to the extent that they affect the said worker's health. These measures include:⁹⁰ Wherever possible, replacement of hazardous substances with less hazardous substances, and the use of personal protective tools and clothing. Technical measures for the plant, machinery, equipment or process. Furthermore, appropriate measures shall be adopted in order to protect the workers from the existence of oxygen deficiency or flammable atmosphere.⁹¹ Lastly, the waste shall not be disposed at the construction sites if it can lead to health hazards.⁹²
- **Fire precautions:** the employer is under the obligation to provide adequate storage for flammable liquids, solids, and gases, and to adopt proper measures to ensure that the risk of fire is avoided, the outbreak of fire is abruptly and effectively combated, and the evacuation of persons is efficacious.⁹³

⁸⁷ Ibid, Article. 26 (1) and (3)

⁸⁸ Ibid, Article. 26 (2)

⁸⁹ Ibid, Article. 27

⁹⁰ Ibid, Article. 28 (1) & (2)

⁹¹ Safety and Health in Construction Convention (1988), Article. 28 (3)

⁹² Ibid, Article. 28 (4)

⁹³ Ibid, Article. 29

- **Personal protective equipment and protective clothing:** the employers shall provide these to workers if they cannot ensure the workers are sufficiently protected from risk of accident or health injury. These protective clothing and personal protective equipment shall be in conformity with standards set by the competent authority.⁹⁴ In addition to this, the workers are required to properly use and take care of the protective clothing and personal protective equipment.⁹⁵
- **First aid:** the employer is under the obligation to ensure that the first aid and trained staff are available at all times.⁹⁶
- **Welfare:** drinking water, sanitary and washing facilities, facilities for changing and drying clothes, accommodation for meals, and shelter during interruption of work shall be offered to the workers at every construction site.⁹⁷ Sanitary and washing facilities shall be provided separately for male and female workers.⁹⁸ Last but not least, workers are entitled to the information and training concerning potentiality of safety and health hazards ⁹⁹ In furtherance, the provision concerning the reporting to the competent authority and its timeline shall be inscribed in the national laws or regulations.¹⁰⁰

⁹⁴ Ibid, Article. 30 (1)-(3)

⁹⁵ Ibid, Article. 30 (4)

⁹⁶ Ibid, Article. 31

⁹⁷ Ibid, Article. 32 (1) & (2)

⁹⁸ Ibid, Article. 32 (3)

⁹⁹ Safety and Health in Construction Convention (1988), Article. 33

¹⁰⁰ Safety and Health in Construction Convention (1988), Article. 34

Chapter 3 Analysis concerning the legal framework in Cambodia comparing to the international standards

This chapter is designed to examine the Cambodian legal frameworks concerning occupational safety and health and analyse whether the frameworks meet the requirements enshrined with ICESCR, C155, C187, and C167.

Therefore, laws and regulations governing occupational safety and health for the registered construction companies which consist the Constitution, Labour Law and its regulations, and the Construction Law and its regulations will be addressed and analysed whether they meet the requirements enshrined with ICESCR, C155, C187, and C167.

It is essential to note that Cambodia has ratified the ICESCR and has not ratified any of the Conventions concerning occupational safety and health namely Occupational Safety and Health Convention (No. 155), Promotional Framework for Occupational Safety and Health Convention (No.187), and Safety and Health in Construction Convention (No.167).

However, occupational safety and health in general is seen to be embraced by the government of Cambodia which reflected through its Constitution and Labour Law and its associated regulations. To be specific, the regulations govern occupational safety and health for the registered construction companies are the Constitution, Labour Law, the Construction Law and their regulations.

3.1. The Constitution of Cambodia

The Constitution of Cambodia is the supreme law of land, and the laws and other decisions must abide by the Constitution.¹⁰¹ Under the Constitution, there is not any provision explicitly addresses the occupational safety and health. Nevertheless, Article 72 stipulates the citizens of Cambodia are guaranteed the rights to health which the State is under the obligation to consider disease prevention and medical treatment.¹⁰²

¹⁰¹ The Constitution of Cambodia, Article. 150

¹⁰² Ibid.

Implied from this Article, the occupational safety and health is under the umbrella of this provision which means that the government is also obliged to guarantee that diseases arise from employment shall be prevented and treated so that the right to health of the citizens is guaranteed. It is essential to note that the Constitution also recognizes human rights conventions which Cambodia has ratified,¹⁰³ and ICECSR was ratified by Cambodia in 1992. This implies that Cambodia upholds the right to health at workplace of the construction workers. The Constitution of Cambodia is an indicator which pointing the right to health at workplace of the construction workers is going to be respected, promoted and fulfilled. However, like the Constitution of those of the counties, the Constitution of Cambodia is *lex generlis* which states about general obligation and rights of the government and its people. Therefore, *lex specialis* shall be looked into in order to find out if the Cambodia has respected, promoted and fulfilled right to health at workplace of the construction workers, in case the *lex specialis are Labour Law of Cambodia and the Construction Law*.

3.2. Labour Law of Cambodia

As aforementioned, the Constitution is the supreme law of the land; thus, the Labour Law of Cambodia is codified in line with the Constitution as stipulated therein. This can be implied that Labour Law shall embrace the right to health onto the employment context. Owing to this reason, the provisions associated with occupational safety and health are enshrined under Chapter 8 of the Labour Law which set out the general requirements which the construction companies are required to keep the workplaces clean and to maintain standards of hygiene and sanitation and maintain working conditions necessary for the health of their employees. It is essential to note that the provision is applicable to all kind of enterprises.¹⁰⁴ This article is in line with Article. 1 of Occupational Safety and Health Convention although Cambodia has not ratified this convention.

¹⁰³ Ibid, Article. 31

¹⁰⁴ Labour Law of Cambodia (1997), Article. 228.

Moreover, the Labour Law of Cambodia also requires all work places to maintain **standardised hygiene and sanitation working environment**, and the Ministry of Labour and other associated ministries are obliged to prepare circulation to monitor the measures concerning: quality of the premises, cleaning, hygienic arrangements for the needs of personnel, beverage and meals, lodging of the personnel, work stations and the seating arrangements, ventilation and sanitation, individual protective instruments and work clothes, lighting noise levels in the workplace.¹⁰⁵

Moreover, all workplaces shall be built which they can ensure the safety of employees which the “*machinery, mechanisms, transmission apparatus, tools, equipment and machines must be installed and maintained in the best possible safety conditions*”¹⁰⁶ In furtherance, the management of technical work must be conducted in proper manners.¹⁰⁷ Additionally, the construction companies must adhere to specific rules governing occupational safety and health of the construction workers, specifically, the Construction Law which will be addressed in the next section.

In addition to the above, pursuant to the Labour Law, all workplaces including but not limited to the construction companies must be kept clean and must keep conditions of hygiene and sanitation and essential working conditions for the health and safety of the construction workers. Based on the Labour Law, the construction companies are responsible as follows:

- **Infirmary and First Aid:** An infirmary must be present for an employer to provide first aid to workers who become ill or sustain injuries at work if the employer has at least 50 employees. In accordance with the law, the infirmary must be close to or at the workplace, and it must have the necessary supplies and medical personnel on hand.¹⁰⁸ A first-aid box and a first aid worker are

¹⁰⁵ Ibid, Article. 229.

¹⁰⁶ Ibid, Article. 230

¹⁰⁷ Ibid.

¹⁰⁸ Labour Law of Cambodia (1997), Article. 242

required for companies with less than 20 employees, and a bandaging room and a nurse are required for companies with 20 to 49 employees if the employer has fewer than 50 employees.¹⁰⁹ It can be seen that this provision is in line with Article 31 of Safety and Health in Construction Convention.

- **Use of Physical Force:** Employers must refrain from requiring employees to exert excessive physical force that could be hazardous to their health, particularly if the work could hurt their backs.

- **Drinking Water:** the employers are required to provide safe drinking water for their employees.¹¹⁰ Drinking water must be stored in sanitary containers with shut-off taps. Water storage containers need to be kept close to work areas. Additionally, employers are required to give clean glasses to workers so they can drink water.

- **Noise:** Employers are required to keep noise levels as low as possible, and they must stay within a range that won't harm employees' health or hearing. Additionally, when workers are in environments with noise levels above 80 dB(A), employers are required to give them hearing protection devices

- **Lighting:** The workplace must have enough artificial and natural light, according to the employers. Employees must be able to see clearly and comfortably in the light.

- **Toilets:** Male restrooms must be segregated from those used by female personnel, and companies are expected to offer clean, sanitary restrooms for their employees to use. Depending on the number of employees, there are a different number of restrooms.

¹⁰⁹ Ibid.

¹¹⁰ Ibid, Article. 210

These regulations are helpful and generally safeguard the health and sanitation of employees as well as some elements of the workplace, especially those involving construction workers. For instance, having good lighting helps to prevent accidents. The rule on noise follows the occupational and safety and health method by protecting first and minimizing noise second.

In addition to the Labour Law, the following government regulations were issued to ensure the safety and health of the workers at the construction site which include Prakas 075, Prakas 076, Prakas 078. They are going to be discussed as following:

3.2.1 Prakas 075 on Sanitation at the Construction Site

Pursuant to Prakas 075, employers are under the obligation to offer as follows at a construction site:

- a. Adequate and proper toilets and restrooms proximity to the construction site;
- b. clean waters enough for daily use for the workers
- c. In any events where a accommodation is offered for workers to stay at the site, employers must provide as follows: clean and adequate drinks; and proper toilets and restrooms.

If there are multiple companies or subcontractors working on a construction site, the respective employers must negotiate to ensure that the aforementioned requirements are met before signing a written agreement outlining who will be in charge of providing water, lodging, toilets, and restrooms, as well as who will be in charge of overseeing these supplies. If not, each employer must make sure to fulfill the aforementioned requirements.

3.2.2 Prakas 076 on the Protection of Risk resulting from Climate Change

Pursuant to Prakas 076, employers are required to provide workers a break from 11.30 am to 13.00 pm every working day if they are performing work in an open area of a building site without a ceiling to shield them from the heat. Employers may occasionally postpone the aforementioned rest period in an emergency with justification, and they must document this in writing for inspection by labour inspectors or medical labour inspectors.

The workers shall be allowed to rest when there is heavy rain or wind. However, there are exception to this. To finish work before the end of working hours or for concrete pavement work, employers may postpone the aforementioned rest period in an emergency, provided that the suspension does not last longer than an hour. This suspension must be documented in writing by the employer for review by either the labour inspectors or the medical labour inspectors. Furthermore, regardless of how big or small the building site, companies must hire specialists to install lifting-up equipment in order to prevent any risks that could arise from the lifting up or use of those devices.

3.2.3 Prakas 078 on Storage of Materials, Release of Waste and Hygiene at the Construction Site

Additionally, under Prakas 078, employers must constantly maintain a construction site clean and orderly to prevent any risks that may arise from substances, materials, or trash there. To maintain worker safety at the job, employers must properly organize the storage of construction and labour equipment.

Concerning the penalty, Prakas 075, 076, 078 refer the penalty to penalty provision of the Labour Law.

Penalty under Labour Law

Pursuant to Article 375 of the Labour Law, in the event that the employer of the workplace is found not to be compliant with the requirements under the Labour Law above, the companies will be fined of thirty to one hundred twenty days of the base dialy wage.¹¹¹ A minimum fine of KHR 840,000 (approximately USD 210) to a maximum fine of up to KHR 10,080,000 (approximately USD 2,520) may be imposed by the MLVT or a maximum fine of KHR 14.4 million (approximately USD 3,600) may be imposed by the court for breaching this requirement. The fines will be tripled if they are imposed in the event of repeated offenses. In addition to the fines, the employers can be imprisoned from six days to one month.

As mentioned in details in Chapter 2, Article 4 of Occupational Safety and Health Convention (No. 155) which requires the State Party to enact national policy to govern occupational safety and health matters.¹¹² Here in our case, notwithstanding not being a state party to C155, Cambodia had her occupational safety and health and regulations which the Labour Law and its relevant regulations such as: Prakas 075, 076, and 078.

Furthermore, it can be seen that the Labour Law of Cambodia and the relevant prescribed the penalties for non-compliant or violation of occupational safety and health. Although, Cambodia is not a state party to C155, nevertheless, reflecting from the penalty provision prescribed therein the Labour Law, it can be seen, Labour Law is somehow in line with Article 5 of C155 which require the state party to enforce its laws associated with occupational safety and health by establishing an adequate and system of inspection and adequate penalties for violations.¹¹³ In furtherance, as aforementioned, the occupational safety and health has become fundamental principle

Additionally, Cambodia also abides by the approaches enshrined therein C187. This can be reflected via its Labour Law as aforementioned and the the Second

¹¹¹ Labour Law of Cambodia (1997), Article. 375

¹¹² Occupational Safety and Health Convention (1981), Article. 4

¹¹³ Ibid, Article. 9

Master Plan on Occupational Safety and Health 2018-2022 of the MLVT. Unlike the Labour Law and Prakas 075, 076 and 078 which possess forceful effect upon the construction companies, the Second Master Plan on Occupational Safety and Health 2018-2022 of the MLVT is just a policy of the Ministry of Labour which laid out 6 (six) main purposes related to the ministry commitment towards occupational safety and health such as: (1) enforcement of national system concerning occupational safety and health; (2) enforcement on the labour inspection and on the implementation occupational safety and health; (3) encourage employer and employee organizations to participate in occupational safety and health; (4) arrangement and implementation of special programme for occupations which their natures incline to accidents; (5) encourage the small and medium enterprise and workplaces at the rural areas and informal economy to create the preventive aspects concerning occupational safety and health; and (6) support and encourage the collaboration concerning occupational safety and health of children, the combat on drugs infectious diseases and non-infectious diseases at the enterprises.¹¹⁴

Additionally, the Second Master Plan on Occupational Safety and Health does not only just set out a number of activities, rationales, strategies, and goal in order to achieve occupational safety and health for enterprises in general but also addresses the action plans to improve and achieve occupational safety and health for the construction sector.¹¹⁵

C 167 set out the aspects of safe means and preventive and protective measures at workplace which shall include as follows:¹¹⁶ scaffolds and ladders, lifting appliances and gear, transport, earth-moving and materials-handling equipment, Plant, machinery, equipment and hand tools, work at heights including

¹¹⁴ The Second Master Plan on Occupational Safety and Health 2018-2022 of the MLVT, page 4; Link: <https://www.mlvt.gov.kh/index.php/គោលនយោបាយ-និងផែនការ/58-គោលនយោបាយនិងផែនការ/1761.html>

¹¹⁵ Ibid, page 13

¹¹⁶ Safety and Health in Construction Convention (1988), Articles. 14 - 34

roofwork, excavations, shafts, earthworks, underground works and tunnels, Cofferdams and caissons, Work in compressed air, Structural frames and formwork, work over water, demolition, **lighting**, electricity, explosive, health hazards, fire precautions, personal protective equipment and protective clothing, **first aid**, and **welfare**.

While the Labour Law of Cambodia prescribed about occupational safety and health in a broader sense yet it gives more details about infirmary and first Aid, use of physical force, drinking water, noise, lighting and toilet

Reflected from the above, it can be seen that Labour Law of Cambodia offer the minimum standards in relation to the safety and health of the workers in general which they are not as comprehensive as those of the C161 and C167. The reason is that unlike C167 which specifically designed for the construction sector, the occupational safety and health provisions enshrined in Labour Law is a one-size-fit-all policy which does not focus on any specific branch of economic activity which implies that preventive and protective measures under the Labour Law does meet the international standards.

3.3. Construction Law

The Construction Law of Cambodia, which came into existence in November 2019, does not explicitly mention about the occupational safety and health within its provisions. As implied from the purpose of the law which provides that *“this law is intended to ensure: construction quality, security, and safety; the protection of property and well-being of construction owners, construction users and the public,”*¹¹⁷ and *“accountability for and efficiency in working and practicing professions in the construction sector,”*¹¹⁸ it can be seen in the purpose of the law that there is no term mentioning about the safety of the construction workers. However, it can be argued that construction workers are protected under this law since they are covered by the term “construction users”.

¹¹⁷ Construction Law of Cambodia, Article. 1

¹¹⁸ Ibid.

It is essential to note that the term “construction users” is not defined by the law and other Labour Conventions related to the construction. Therefore, it is questionable who are those users. To date, there are not laws or any regulations or conventions define the term. Thus, this term shall be understood as general term. As based on Cambridge Dictionary, the term “users” refers to “someone who uses a product, machine, or service.”¹¹⁹ Here in this context, the “construction users” interpreted in a broader sense shall include the “construction workers” because the intent of the law is to, *inter alia*, protect the safety of the construction users and the public. As a result, the construction workers’ safety and health were implicitly protected, as reflected from the aforementioned provision, the construction workers shall fall into the category of the term construction users and because they are the ones who use and construct those buildings before they become livable buildings. Moreover, the law also intends to ensure the accountability and efficiency in working in the construction sector; therefore, to ensure the efficiency in working in the sector, as implied from this, the health and safety of the construction workers shall be of paramount so that the workers effectively perform their work. The following are the provisions associated safety at the construction sites, and some of them are seen to be compliant with the ILO standards while some are not.

In addition to the above, Articles 8 and 9 of the Construction set out that every construction shall have a structure that can safely carry all load and shall also be compliant with the fire regulations.¹²⁰ These provisions are compliant respectively with Articles 15 and 29 of Safety and Health in Construction Convention which these Articles stipulates about the lifting appliance and fire precautions at the construction sites. Yet the provisions are not as detailed as those of the ILO’s Convention.

Moreover, the construction equipment, material, and product which are not accredited and certified that they possess quality and construction user’s safety

¹¹⁹ Cambridge Dictionary, Link: <https://dictionary.cambridge.org/dictionary/english/user>

¹²⁰ Construction Law of Cambodia, Articles 8 & 9

are prohibited from being used in the construction,¹²¹ and this provision is aligned with Article. 17 (3) of Safety and Health in Construction Convention (1988).

Additionally, Article 39 of the Construction Law also provides that builders shall ensure public security, safety, order and environment at their construction sites.¹²² This provision is rather general comparing to those provisions of the ILO conventions. For instance, to ensure safe at the construction site, lighting,¹²³ electricity,¹²⁴ personal protective equipment and protective clothing,¹²⁵ first aid¹²⁶ etc. shall be provided.

In furtherance, construction controller will be assigned to the construction site if it is found out to be essential to ensure public security, safety, and order.¹²⁷

Penalties under the Construction Law

Both natural person and legal person who conduct construction are liable for causing an injury to or damages the health of others. Pursuant to Article 97 of the Construction Law, a natural person who runs construction business without construction permit and causes an injury or damages to health of other persons will be imprisoned from 1 to 3 years and will be fined from KHR 10,000,000 (ten million) (approximately 2500 USD) to KHR 20,000,000 (twenty million) (approximately 5000 USD).¹²⁸ Additionally, at the first glance at this particular Article, it can be argued that those who possess the construction permit can get away with this. However, Article 98 of this law also make the owners' of the construction businesses liable if they "*uses or installs, for building work, construction material, equipment, and product which are required to ensure*

¹²¹ Safety and Health in Construction Convention (1988), Article. 22

¹²² Construction Law of Cambodia, Article. 39

¹²³ Safety and Health in Construction Convention (1988), Article. 25

¹²⁴ Ibid, Article. 26

¹²⁵ Ibid, Article. 30

¹²⁶ Ibid, Article. 31

¹²⁷ Ibid, Article. 42

¹²⁸ Construction Law, Article. 96

construction quality and users' safety without compliance with the building technical regulations or without compliance with the technical regulations on construction material, equipment, and product which are required to meet a certain standard and causes an injury to or damages the health of others," and they will have to will be imprisoned from 1 to 3 years and will be fined from KHR 10,000,000 (ten million) (approximately 2500 USD) to KHR 20,000,000 (twenty million) (approximately 5000 USD).¹²⁹ At the same time, designers of the construction also have to be liable with the same punishment concerning imprisonment as aforementioned and have to be fined from KHR 10,000,000 (ten million) (approximately 2500 USD) to KHR 40,000,000 (forty million) (approximately 10,000 USD) if they *"develops a design document without compliance with the building technical regulations, and the carrying out of the design document causes an injury to or damages the health of others."*¹³⁰ While the builders have to also bear the same punishment as the designers if they *"builds or demolishes a construction without compliance with the design document and building technical regulations, and causes an injury to or damages the health of others."*¹³¹

Additionally, in any events where the above-mentioned acts cause amputation of a limb or cause the victim to be permanently disable, those who committed the above-mentioned acts will be imprisoned from 5 to 10 years.¹³² Furthermore, in case the acts cause death to others, those who committed the aforementioned acts will be imprisoned from 7 to 15 years.¹³³

In furtherance, a legal entity is also liable for the committing the above-mentioned acts which the entity will be fined from KHR 60,000,000 (sixty million) (approximately 15,000 USD) to KHR 100,000,000 (approximately 25,000 USD) including one or more penalties as following:¹³⁴

¹²⁹ Construction Law, Article. 98

¹³⁰ Ibid, Article. 99

¹³¹ Ibid, Article. 100

¹³² Ibid, Article. 103

¹³³ Ibid.

¹³⁴ Ibid, Article. 105

- Dissolution of the entity
- Placement under judicial supervision
- Prohibition from conduction business activities
- Disqualification from public tenders
- Publication of decisions on the punishment
- Broadcasting of decisions by audio-visual communication

Chapter 4: Holding construction companies and their value chains liable for violating Occupational Safety and Health Legal regulations, and the existing the challenges

In previous chapters, particularly in chapter 2, the author examined and explored the existing international legal standards concerning occupational safety and health in construction industry. Those standards cover ICESR and Occupational Safety and Health Convention (No. 155), Promotional Framework for Occupational Safety and Health Convention (No.187). In Chapter 3, the author examined and explored the loopholes, and the penalty inscribed in the Cambodian legal regulations and instruments associated with occupational safety and health in the construction industry consist of the Constitution of Cambodia, Labour Law, Construction Law, and other governmental regulations.

In this chapter, the author explores the existing mechanisms on how to hold the construction companies liable for violating and non-compliant with the legal regulations associated with occupational safety and health by examining the Labour Law of Cambodia, Construction Law of Cambodia, Civil Code of Cambodia, Criminal Code of Cambodia, Trade Union, and Arbitration Council. In Cambodia, in event where the construction companies violates or complies with occupational safety and health, employers, which can be either legal persons or natural persons, can be (1) liable under (1) the Labour Law which would be discussed in section 4.1, (2) the Civil Code of Cambodia which would be discussed in section 4.2 (3) the Criminal Code of Cambodia, which would be discussed in section 4.3 (3) the Construction Law, and their regulations. which would be discussed in section 4.4.

4.1. Holding the Construction Company Liable under Labour Law Regime

As addressed in Chapter 3 of the Labour Law of Cambodia, the law penalizes those companies or enterprises which are not compliant with occupational safety and health, and it also includes the provisions concerning the

occupational safety and health although the provisions are not quite detailed as those of the ILO conventions. Additionally, the law obliges the owner of the enterprise to establish any measures or have any agents to establish any necessary measures to prevent the accidents at work.¹³⁵ In furtherance, the employer is liable for occupational accidents which occurs at the workplace even if the accidents happened due to the workers.¹³⁶

Pursuant to Article 375 of the Labour Law, in the event that the employer of the establishment/work place is found not to be in compliant, they will be fined of thirty to one hundred twenty days of the base daily wage¹³⁷ which the amount of minimum fine is equal to KHR 840,000 (approximately USD 210) to a maximum of up to KHR 10,080,000 (approximately USD 2,520). This fine will be imposed by the MLVT. At the same time, the court can also impose a maximum fine of KHR 14.4 million (approximately USD 3,600) for breaching the occupational safety and health. Moreover, the fines imposed in the event of repeated offenses are triple. In addition to fine, the employers may be liable to imprisonment of six days to one month.

It is clear that failure to abide by the occupational safety and health gives rise to the punishment by the law. To hold the construction companies accountable under the regime of the Labour Law, the mandates of the Labour Inspectors, Shop Stewards, Arbitration Council, and the Labour Court shall be exercised. Otherwise, the companies will get away with the violation or non-compliance with the occupational safety and health provisions enshrined under the law. As earlier mentioned, Labour Inspectors, Shop Stewards, Arbitration Council, and the Labour Court are the main actors who can hold the construction companies liable under the regime of the Labour Law; however, as aforementioned their mandates can be invoked depending on the types of the disputes whether collective or individual. Therefore, in order to hold the construction companies liable under the Labour Law regime, the invocation of the mandates of the

¹³⁵ Labour Law of Cambodia (1997), Article. 250

¹³⁶ Ibid, Article. 249

¹³⁷ Ibid, Article. 375

Labour Inspectors, Shop Stewards, Arbitration Council, and the Labour Court would be discussed and analyzed in the next sections.

4.1.1 Labour Inspection

Labour inspection is a system established to govern and monitor the enforcement of the Labour Law and all the regulations associated with employment. The labour inspectors are the authority tasked with labour inspection. Implied from the law, there are two methods which can be used to activate the mandates of the labour inspectors in order to hold the construction companies liable for violation or non-compliance of occupational safety and health provisions. First and foremost, the labour inspectors can independently exercise their mandates to inspect the construction sites for violation or non-compliance of the occupational safety and health. Secondly, the shop steward or the union can report to the labour inspectors about the non-compliance and/or the violation occupational safety and health at the construction sites.

4.1.1.1 Independent labour inspection

The Labour Law entrusts the inspectors with the obligation as following:

- visit, inspect, and enforce the occupational safety and health at the enterprises. After the inspection, if there exists the non-compliance of the occupational safety and health, the labour inspectors shall report the enterprises, however, prior to reporting, the labour inspectors shall issue restriction upon the enterprises by emphasizing the points which have not been compliant.¹³⁸ In any events where
- guarantee the enforcement of the Labour Law and planned regulatory text and other employment laws and regulations even they are not codified.¹³⁹

¹³⁸ Labour Law of Cambodia (1997), Articles. 233

¹³⁹ Labour Law of Cambodia (1997), Article. 344 (a)

- inform and offer technical advice to both the employees and employers concerning the effective means to comply with the Law and regulations¹⁴⁰
- report to the competent authorities for non-compliance or violation due to the insufficiency of regulations.¹⁴¹
- freely enter any enterprises within the jurisdiction of their inspection, without prior notification of the time whether day or nights,¹⁴²
- enter the daytime workplace which they could reasonably assume to be the subject to inspection of their inspectorate¹⁴³
- perform any examination, inspections and investigation which contemplated as compulsory to guarantee that the provisions of the labour law are effectively implemented.¹⁴⁴
- in the event where there are reasonable grounds to believe that the accidents exist and they seriously harm the health and safety of the employees, the inspectors can order the enterprises to make immediate measures as to prevent the consequences and fine those violate the Labour Law.¹⁴⁵

Reflect from the mandates of the labour inspectors enshrined therein the Labour Law, the labour inspectors can visit the construction site to observe whether the sites are compliant with occupational safety and health and they can also fine the construction companies in case the violations occur. However, the current numbers and understanding related to occupational safety and health related the construction sector of labour inspectors are still limited.¹⁴⁶ It can be seen that the Labour Law of Cambodia mandated the labour inspectors

¹⁴⁰ Ibid, Article. 344 (b)

¹⁴¹ Ibid, Article. 344 (c)

¹⁴² Ibid, Article. 346 (a)

¹⁴³ Ibid, Article. 346 (b)

¹⁴⁴ Ibid, Article. 346 (c)

¹⁴⁵ Ibid, Article. 347

¹⁴⁶ MLVT, Second Master Plan on Occupational Safety and Health 2018-2022; Link:

<https://www.mlvt.gov.kh/index.php/គោលនយោបាយ-និងផែនការ/58-គោលនយោបាយ-និងផែនការ>

[E2%80%8Bនយោបាយ%E2%80%8Bនិងផែនការ/](https://www.mlvt.gov.kh/index.php/គោលនយោបាយ-និងផែនការ/)

with great authority to inspect for the violation of the Law. However, the Labour Law covers all the activities in a wide range of sectors such as industries, mining, commerce, crafts, agriculture, services, land or water transportation.¹⁴⁷ This also implies that the labour inspectors will inspect not just the construction companies, but they will have to inspect the other branches of economic activities.

As of 2021, the number of central labour inspectors were 419 (numbers of provincial labour inspectors in 2021 are not available) and there were 460 provincial labour inspectors as of 2019. However, the numbers appear not to be proportionate comparing to the existing construction sites to be inspected, need less to mention the other economic activities which the labour inspectors have to inspect. Additionally, the insufficient number of labour inspectors to inspect the construction companies can also be reflected via the Second Master Plan on Occupational Safety and Health 2018-2022 of the MLVT as the master plan demonstrated that the labour inspectors only inspected the garment sector while they have not done so on the construction sectors.¹⁴⁸ Therefore, it is reasonable to conclude that the numbers of labour inspectors are insufficient to inspect the violation and/or non-compliance concerning occupational safety and health at the construction sites.

As a result, to fix the aforementioned issues, the MLVT set a goal to establish a system which can control the report of accident at work and keep the .in late 2021, issued Prakas 358 on the Launch of Labour Inspection Self-Declaration Regime via Automation System¹⁴⁹ which this Prakas obliges the owners or directors of enterprises to report 31 priorities of labour compliance, *inter alia*,

¹⁴⁷ Law on Trade Union, Article. 1

¹⁴⁸ The Second Master Plan on Occupational Safety and Health 2018-2022 of the MLVT, page 13; Link: <https://www.mlvt.gov.kh/index.php/គោលនយោបាយ-និងផែនការ/58-គោលនយោបាយនិងផែនការ/1761.html>

¹⁴⁹ Prakas No. 358/21 on the Launch of Labour Inspection Self-Declaration Regime via Automation System

occupational safety and health at work, into this novel online system. Under the system, governing the occupational safety and health section, the employers are required to report about, including but not limited to, whether: they have the occupational safety and health; they offer training on occupational safety and health for persons in charge of human resources, delegates, staffs and unions; they comply with hygienic working conditions and welfare; there are occupational accidents caused by not complying with occupational safety rules; occupational safety in the building; there are hazardous machinery; there is preparation of power transmission. Nevertheless, under the system, the employers are only required to report in a form of “Yes” or “No” and to upload the relevant documents. The online system may help the labour inspectors to spot the non-compliance faster than the physical inspection, however, as the system is self-reporting from the employers’ side, the employers may be able to make false report which means that the non-compliance or violation may go untraced.

In conclusion, the labour inspectors are the agents who can bring the construction companies liable in the event where those companies violate or are not compliance with the occupational safety and health. However, the flaws are that there is not sufficient labour inspectors because they have to inspect not just construction companies but all the branches of economic activities. Additionally, even the MLVT establish an online system for self-declaration labour inspection, yet the effectiveness of this system is in question as it was just launched for operation in early 2022. Moreover, as the system is in a form of self-declaration, the chances are that the employers of the construction companies may falsely report about the occupational safety and health.

4.1.1.2 Unions and Shop stewards

As aforementioned, the numbers of labour inspectors may not be sufficient to inspect all of the construction companies for any violation or non-compliance of occupational safety and health in a timely manner. In this sense and reflecting through the roles of the shop stewards and unions, they play very

important roles in reporting the violation or non-compliance of occupational safety and health to the labour inspectors.

Shop stewards (the term shop steward can be used interchangeably with “worker representative”) are defined as representative of workers whom elected via direct voting of workers while unions refer to professional organizations which established by jointly and voluntarily by workers.¹⁵⁰ Under the Trade Union Law of Cambodia, determined by the numbers of their members, unions are classified as following: local union, union federation, union confederation (coalition of union federations or union alliance), and national council of unions. According to both the Cambodian Labour Law and Trade Union Law, it can be seen that trade union and worker representatives derive from the same concept as their responsibilities are identical which this substantiated by the provision of the Trade Union Law which stipulated that the delegate of the union perform the same duties as the shop steward.¹⁵¹ Those duties consist informing the employer about the collective or individual grievances concerning wages, collective agreements, and enforcement of labour code and regulations which are applicable to the enterprise; informing the labour inspectors about complaints governing the enforcement of labour legislations and regulations that the labour inspectors are in charge of monitoring; ensuring the implementation of the provision associated with safety and health at workplace; and proposing measures which ameliorate the safety and working conditions specifically occupational disease or work-related accidents.¹⁵²

It is essential to note that the distinctions between the trade union and shop stewards how they are formed, the mandatory of their formation, and the discretion to decide and sign a collective agreement. To be precise, it is must that an establishment employs at least 8 (eight) workers or more shall elect

¹⁵⁰ Law on Trade Union, Article. 4

¹⁵¹ Law on Trade Union, Article. 50

¹⁵² Law on Trade Union, Article. 41

shop stewards while¹⁵³ the union is formed on the basis of voluntary. However, the union delegate is mandated with the discretion to decide upon and sign the collective agreements.¹⁵⁴

Therefore, reflected from their responsibilities, the shop stewards and the unions play a role as a conduit in holding the construction company liable for failure in enforcing or complying with the occupational safety and health at the construction sites as following: initially if they notice of any non-compliance of occupational safety and health at the sites, they can directly report the to the labour inspectors.

4.1.1.3 The Arbitration Council

According to the above, it can be seen that the labour inspectors and shop stewards are the agents who make to the violation and non-compliance or occupational safety and health at the construction sites more visible and punishable. However, in the event where the shop stewards and the labour inspectors cannot fully enforce the provisions concerning occupational safety and health at the construction sites, whether it is possible for an individual worker or a group of workers to bring the construction companies to the Arbitration Council when the construction companies violate or are not compliant with the occupational safety and health.

Before a dispute can be brought to the Arbitration Council, a conciliation is required to be conducted before labour inspectors. If the agreement cannot be met, the MLVT will refer the case to the Arbitration Council for its decision, which must be made within 15 days. Additionally, if no party files an appeal with the Minister of the MLVT within eight days, the Council's decision may be put into effect right away. A copy of the Arbitration Council's award must be posted by the employer at the workplace and at the regional Labour

¹⁵³ Law on Trade Union, Article. 32

¹⁵⁴ Law on Trade Union, Article. 50

Inspectorate's office. The aforementioned conciliation and arbitration services are both free of charge.

Prior to exploring the answers to the above question, it is essential to note that there are two ways that the workers/employees in general can bring the disputes to the Arbitration Council. However, pursuant to Articles 300 (New)¹⁵⁵ and 302¹⁵⁶ of the Labour Law, only the disputes which fall within the ambit of the definitions of individual labour dispute or collective labour dispute can be brought to the Arbitration Council. Therefore, the definitions of the individual labour dispute or collective labour dispute shall be scrutinized as follows:

- the individual labour disputes refer to the dispute associated with the interpretation or the enforcement of the terms under an employment, apprentice contract, or the terms under the collective agreement which occurred between the employer and one or more workers or the apprentices;¹⁵⁷ while
- the collective labour disputes refer to the disputes occurring between one or more employers and a particular number of workers which the disputes may give rise to a peace disruption, particularly the disputes relate to working conditions, the recognition of the rights of professional organization, or their recognized mandates within the enterprise, or issues concerning the relation between the employer and the employee.¹⁵⁸

Therefore, according to the aforementioned definitions, to answer whether it is possible for the construction workers to bring the violation or non-compliance of the occupational safety and health provisions enshrined under the labour law to the Arbitration Council; there are two scenarios to consider.

¹⁵⁵ Law on the Amendment of Articles. 123, 138, 162, 300, 343, 350, 363, 367 of the Labour Law, Article. 302 (New)

¹⁵⁶ Labour Law of Cambodia (1997), Article. 300 (New)

¹⁵⁷ Labour Law of Cambodia (1997), Articles. 300 (New)

¹⁵⁸ Labour Law of Cambodia (1997), Article. 302

Firstly, in the event where it is an individual dispute, implied from the above definition, the construction workers can bring to Arbitration Council the disputes which govern the interpretation or the enforcement the terms under an employment or apprentice contract, or the terms of collective agreement. Thus, if the occupational safety and health stipulated therein as the terms of to the contract or the terms of the collective agreement, an individual construction worker can bring the dispute arising from failure of enforcement of terms related to occupational safety and health. Prior to 2021, only the collective disputes can be brought to the arbitration council, however, in late 2021, this provision was amended allowing the Arbitration Council to hear both collective and individual labour disputes.¹⁵⁹ Yet, the definition is still flawed because if the terms of occupational safety and health have never been enshrined at all therein the employment contract or the collective agreement of the construction workers, the individual construction workers cannot bring the case or the dispute to the Arbitration Council. Moreover, Individual dispute filing and hearing requirements and procedures at the Arbitration Council have still to be decided. It is anticipated that the MLVT will release a revised Prakas in due course to further explain these issues. This is also the flaws of individual labour disputes.

While in the case of second scenario which is the collective labour disputes, “*a particular number of workers*”¹⁶⁰ can bring to Arbitration Council the disputes which govern working conditions, the recognition of the rights of professional organization, or their recognized mandates within the enterprise, or issues concerning the relation between the employer and the employee.

Implied from this, it appears that the disputes related occupational safety and health falls into the threshold of working conditions which also means that the disputes can be brought to the Arbitration Council. However, working

¹⁵⁹ Ibid, Article. 300 (New).

¹⁶⁰ Labour Law of Cambodia (1997), Articles. 302

condition is not the only criteria; the other criteria must also be also fulfilled such as: whether the dispute affects a particular number of workers and whether it gives rise to peace disruption. If these two criteria are fulfilled in addition to the working condition criterion, the collective labour dispute can be brought to the Arbitration Council. Nevertheless, as the name suggests, it requires a group of construction workers to bring collective labour dispute; moreover, the high level of thresholds appear to be the flaws of the definition collective labour dispute. Particularly, if the construction workers find that their rights or entitlement to occupational safety and health is infringed, it appears to be challenging for the workers to bring the case to the Arbitration Council as explained above, the case must disrupt peace and affect a group of construction worker.

4.1.1.4 The Labour Court

The Labour Law and the Law on the Organisation of the Courts stipulated about the establishment of labour courts that have exclusive jurisdiction over labour-related issues,¹⁶¹ yet these specialized courts have not yet been created. In practice, the provincial and municipal courts are used as the last forum for resolving labour disputes. This entails flaws for the enforcement of labour rights as a whole including but not limited to occupational safety and health. This is due to the fact that in practice, provincial and municipal courts deal with the all of matters including but not limited criminal, civil, commercial, or labour cases. Additionally, the commencement of drug campaign in 2017 lead to the rises of cases and drug related cases overload at the provincial and municipal courts.¹⁶² This was a six-month-campaign; during the campaign there were at least 55,770 people arrested due to the suspicion of drug use or sale.¹⁶³ This factor illustrates

¹⁶¹ Labour Law of Cambodia (1997), Articles. 302 and Law on the Organisation of the Courts (2014), Article. 14.

¹⁶² Amnesty International, “Substance Abuses: The Human Cost of Cambodia’s Anti-Drug Campaign”, 2020, Page 13

¹⁶³ AMNESTY INTERNATIONAL and LICADHO, “Arbitrary Detention Related To Drug Policies In Cambodia: Joint Submission By Amnesty International And The Cambodian League For The Promotion And Defense Of Human Rights (LICADHO)”, June 2020, Page 5

the provincial and municipal courts adjudicated upon mostly with drug cases. This can be a ground to assume that the courts may be not able to effectively adjudicate the labour cases as courts were not specialized and overwhelmed drug related cases.

4.2. Holding the Construction Companies Liable under the Civil Code Regime

Under the Civil Code of Cambodia, the construction companies can be held liable for non-compliance or violating occupational safety and health at work via the tortious act regime. As pursuant the commentary of Civil Code of Cambodia, the both legal person and natural person employers can be civilly liable for tortious acts which arise out their failure to fulfill the health and safety at work obligations.¹⁶⁴ Moreover, their agents which include their officers, employees, and managers are also liable for the tortious acts.¹⁶⁵ Therefore, in any events where there is a violation or non-compliant of occupational safety and health at the construction sites which leads or causes injury to the construction workers; both the construction companies and their agents are liable.

Under this Civil Code mechanism, construction companies and their agents can be held liable for committing tortious acts. However, the elements of tortious acts must be fulfilled, and the thresholds for tortious acts are rather high. In this case, if the worker victims want to file a complaint against the construction company for tort to the court, the victims must have suffered damage from the company's failure to comply with occupational safety and health regulations enshrined therein. This implies if the damages or consequences have not occurred yet, the workers will not be able to bring the complaint against the company. Implicitly, this provision of the Code does not abide by the prevention principle of the ILO.

¹⁶⁴ Commentary on Civil Code of Cambodia, Part 3, Book 5, Chapter 16 "Torts", page 179

¹⁶⁵ Ibid, page 180

In the event where occurrence of damages or consequences exist, the workers can file a complaint against the company for damage they have suffered from e.g. accident resulting from the company's failure to comply with the occupational safety and health. In this case, the workers can file a civil tort claim to the court by following the procedure in the civil procedure code.

4.3. Holding the Construction Companies Liable under the Criminal Law Regime

Pursuant to Criminal Code of Cambodia, the legal persons are liable for the chaos which they cause to the society if the chaos reach the threshold of offences.¹⁶⁶ However, the legal persons can be held liable only in the case where the acts expressly enshrined therein the Criminal Code or in other regulations that the legal persons be accountable for the offences.¹⁶⁷ For example, Article 187 of the Criminal Code expressly enshrined that “*Legal entities may be found criminally responsible ... for genocide. [...]*”¹⁶⁸ Article 192 expressly enshrined that “*Legal entities may be found criminally responsible ... for crime against humanity [...]*”¹⁶⁹ Therefore, only those Articles of the Criminal Code or other regulations which expressly inscribed that legal entities shall be criminally liable for certain acts, can be used as grounds to hold the construction company liable. In furtherance, for the construction companies to be liable for non-compliance and/or violation of occupational safety and health, the subject matters of Article 209 (manslaughter) and Article 238 (causing involuntary bodily harm) can be used as the grounds to hold the construction companies liable for failure to comply or violation of measures concerning safety and health at work.

- **Article 209 (manslaughter)**

¹⁶⁶ Criminal Code of Cambodia, Article. 2

¹⁶⁷ Criminal Code of Cambodia, Article. 42; Chak Sambath, ‘Explanation text concerning the liability of legal persons and the regimes of liability implementation’, Sala Traju publication (April 2015) Page 4

¹⁶⁸ Criminal Code of Cambodia, Article. 209

¹⁶⁹ Ibid.

This Article provides that “*Legal entities may be found criminally responsible for manslaughter. [...]*.” “Manslaughter” as defined under Article 207 of Criminal Code, refers to “*the act of causing death of another person by: (1) negligence, recklessness or carelessness; (2) breach of the safety requirement or due diligence imposed by law.*” The legal entities who are found be guilty of manslaughter will be penalized with a fine from ten million to fifty million Riels (approximately 2500 to 12,500 USD); additionally, the entities shall be penalized by one or more of the additional penalties as follows: (1) dissolution of the entities; (2) placement under judicial supervision.¹⁷⁰

This Article gives rise to victim or his/her representative to sue for the construction companies if they breach the safety requirement or due diligence imposed by law. However, this Article can only be activated only if the violation occurred.

- **Article 238 (causing involuntary bodily harm)**

“*Legal entities may be found criminally responsible for causing involuntary bodily harm. [...]*.” “Causing involuntary bodily harm” as defined under Article 236 of Criminal Code, refers to “*the act of causing injury to another person by: (1) negligence, recklessness or carelessness; (2) breach of the safety requirement or due diligence imposed by law.*”

The legal entities who are found be guilty of manslaughter will be penalized with a fine from five million to twenty million Riels (approximately 1,250 to 5,000 USD); additionally, the entities shall be penalized by one or more of the additional penalties as follows: (1) dissolution of the entities; (2) placement under judicial supervision.¹⁷¹

¹⁷⁰ Criminal Code of Cambodia, Article. 209

¹⁷¹ Criminal Code of Cambodia, Article. 209

Similar to Article 209, Article 238 can be used as a ground to hold the construction companies liable for violating the safety requirement or due diligence imposed by law.

Nevertheless, both Article 209 and 238 do not possess preventive element which protect the construction workers from injury, harm, or death which occur due to the violation of the occupational safety and health.

4.4 Holding the Construction Companies Liable under administrative liabilities

Under Cambodia legal context concerning employment and construction, the administrative penalties are normally imposed by the Ministries in charge such as the MLVT and MLMUPC.

4.5 Construction Law and its relevant regulations

In this section, the author points out the penalties provided under the Construction Law and its associated regulations. Then the author addresses how the main competent authority, who is in charge of enforcing the law and regulations namely the construction inspector, enforce the penalties provisions and other measures to hold the construction companies liable. Finally, the loopholes of the provisions are analysed.

4.5.1 Penalties under the Construction Law

The Construction Law of Cambodia provides that both natural person and legal person who conduct construction are liable for causing an injury to or damages the health of others. Pursuant to Article 97 of the Construction Law, a natural person who runs construction business without construction permit and causes an injury or damages to health of other persons will be imprisoned from 1 to 3 years and will be fined from KHR 10,000,000 (ten million) (approximately

2500 USD) to KHR 20,000,000 (twenty million) (approximately 5000 USD).¹⁷² Additionally, at the first glance at this particular Article, it can be argued that those who possess the construction permit can get away with this. However, Article 98 of this law also make the owners' of the construction businesses liable if they *“uses or installs, for building work, construction material, equipment, and product which are required to ensure construction quality and users' safety without compliance with the building technical regulations or without compliance with the technical regulations on construction material, equipment, and product which are required to meet a certain standard and causes an injury to or damages the health of others,”* and they will have to will be imprisoned from 1 to 3 years and will be fined from KHR 10,000,000 (ten million) (approximately 2500 USD) to KHR 20,000,000 (twenty million) (approximately 5000 USD).¹⁷³ At the same time, designers of the construction also have to be liable with the same punishment concerning imprisonment as aforementioned and have to be fined from KHR 10,000,000 (ten million) (approximately 2500 USD) to KHR 40,000,000 (forty million) (approximately 10,000 USD) if they *“develops a design document without compliance with the building technical regulations, and the carrying out of the design document causes an injury to or damages the health of others.”*¹⁷⁴ While the builders have to also bear the same punishment as the designers if they *“builds or demolishes a construction without compliance with the design document and building technical regulations, and causes an injury to or damages the health of others.”*¹⁷⁵

Additionally, in any events where the above-mentioned acts cause amputation of a limb or cause the victim to be permanently disable, those who committed the above-mentioned acts will be imprisoned from 5 to 10 years.¹⁷⁶

¹⁷² Construction Law, Article. 96

¹⁷³ Ibid, Article. 98

¹⁷⁴ Ibid, Article. 99

¹⁷⁵ Ibid, Article. 100

¹⁷⁶ Ibid, Article. 103

Furthermore, in case the acts cause death to others, those who committed the aforementioned acts will be imprisoned from 7 to 15 years.¹⁷⁷

In furtherance, a legal entity is also liable for the committing the above-mentioned acts which the entity will be fined from KHR 60,000,000 (sixty million) (approximately 15,000 USD) to KHR 100,000,000 (approximately 25,000 USD) including one or more penalties as following:¹⁷⁸

- Dissolution of the entity
- Placement under judicial supervision
- Prohibition from conduction business activities
- Disqualification from public tenders
- Publication of decisions on the punishment
- Broadcasting of decisions by audio-visual communication

4.5.2 The construction inspectors

Under the MLMUPC, the construction inspectors are in charge of monitoring, observing, researching, controlling, collecting evidence, and enforcing the Law on Construction that they are under the obligations to examine the offences concerning construction sectors as stipulated by the Law on Construction.¹⁷⁹ Moreover, construction inspectors are also qualified as the judicial police. In addition to the law, the MLMUPC also issued an Inter-ministry Prakas (the “Prakas”) laying out the procedures and modalities of construction inspection. According to the Prakas, one of the roles of the construction inspectors is to inspect the occupational safety within and around the construction sites.¹⁸⁰ Thereafter the inspection, the inspectors are under the obligation to file a record and a report of the inspection to the competent authority.¹⁸¹ Under the report,

¹⁷⁷ Construction Law, Article. 103

¹⁷⁸ Ibid, 105

¹⁷⁹ Ibid, Article. 57.

¹⁸⁰ Inter-ministry Prakas on the procedure and modality of construction inspection, No.118K/D.N.S-KY, (02 August 2019) Clause. 10

¹⁸¹ Ibid, Clause. 11

there are a set of information which are required to report to the competent authority to verify and decide, one of which is the proposition as the measures and/or the penalties.¹⁸² In the event where the inspectors propose the fines, they inspectors shall include the provisions of the law or regulations which had been violated and the penalties in the report.¹⁸³ If the it is found out that the, the construction is not compliant with permit letters, the technical regulation and other laws and regulations in force, the report about construction shall raise the measures and/or any or many fines in the forms as followings: warning in writing; postponing of the construction sites; suspending or withdrawing the permit letter of land development and/or the permit letter construction or the removal of the construction permit; banning from conducting construction business; detaining the construction materials or the construction equipment that involves with the offences; finding the person committed the offenses; and taking other measures compliance with the provision as in force.¹⁸⁴ Within 15 days after signing the so-called report, the competent authority has to decide the measures and/or penalizes the person committed the offenses, in any events where the offenders or the construction companies do comply with the measures or the with penalties; the competent authority must send the case to the court in order to take the forced enforcement measures.¹⁸⁵

4.5.3 The loopholes of the Laws

After the Construction Law came into force and Inter-ministry Prakas on the procedure and modality of construction inspection was issued, the government decided to appoint 362 construction inspectors in 2020. Although the regulation so provides, as reflected from the law and the Inter-ministry Prakas, the mandates of the inspectors appears to be limited. Under Clause 8 of the Inter-ministry Prakas, the construction inspectors can inspect the construction sites only if they are allowed by the owner of the sites.¹⁸⁶ Concerning this regard, it

¹⁸² Ibid, Clause. 13

¹⁸³ Ibid.

¹⁸⁴ Ibid, Clause. 14

¹⁸⁵ Ibid, Clause. 15

¹⁸⁶ Ibid, Clause. 8

appears that the mandate of the labour inspectors is undermined and restricted. Under this circumstance, if the owner of the sites is not complying with the occupational safety and health provision, he or she can hide the non-compliance from the inspectors by not allowing the inspectors into the sites.

In conclusion, the following four mechanisms can be used to keep construction corporations accountable: (1) accountable under the Labour Law, which is covered in section 4.1, (2) civil liability provided for in the Cambodian Civil Code, which is discussed in section 4.2; (3) criminal liability provided for in the Cambodian Criminal Code, which is discussed in section 4.3; or liable through administrative penalties provided for in sector-specific laws like the Labour Law and construction law, and their regulations. with which section 4.4 would be concerned.

Chapter 5 Findings and Recommendation

In this Chapter, the author will conclude the findings on the research questions and give recommendations towards the issues found.

5.1 Findings

Research question No. 1 Whether Cambodian legal instruments concerning occupational safety and health for construction sectors are compliant with international standards. The international standards herein refer to ICESCR, C155, C187, and C167.

Occupational safety and health of the construction workers meet the requirements enshrined therein ICECSR, C155, 187, and C167 as follows:

5.1.1 ICESCR

Cambodia has met general obligation and the ‘tripartite typology’ of states obligations which are the obligations to respect, protect, and fulfill. First and foremost, Cambodia does not interfere with directly or indirectly with the exercise of the right to health. Secondly, Cambodia punish employers if they violate the right to health of the construction workers which can be reflected through punishment provisions enshrined under the Labour Law, Construction, Civil Law and Criminal Law of Cambodia as addressed under chapter 4 of this paper. Last but not least, Cambodia has implemented legislative and measures to fulfill the right to health of the construction workers which are Labour Law,

Construction Law, Prakas 075, 076, 078, and Second Master Plan on Occupational Safety and Health 2018-2022.

The obligations to respect, protect, and fulfill the right to health are three different sorts or categories of obligations that States parties must meet, just like with all other human rights.¹⁸⁷ First and foremost, states must refrain from interfering directly or indirectly with the exercise of the right to health under the obligation to *respect*.¹⁸⁸ Additionally, states must take precautions to stop outsiders from tampering with article 12 guarantees under the commitment to safeguard.¹⁸⁹ Finally, under the obligation to fulfill which is to fully realize the right to health, states must implement appropriate legislative, administrative, budgetary, judicial, promotional, and other measures.¹⁹⁰

5.1.2 C155 and C187

Cambodia has not ratified C155 and 187. However, as a member to ILO, Cambodia is under the obligation to promote, protect and realize the occupational safety and health conventions which is one of fundamental principle which was embedded recently.

Article 4 of C155 requires the State Party to enact national policy to govern occupational safety and health matters.¹⁹¹ Here in our case, notwithstanding not being a state party to C155, Cambodia had her occupational safety and health and regulations which the Labour Law and its relevant regulations such as: Prakas 075, 076, and 078. Additionally, Cambodia also abide by the approaches enshrined therein C187. This can be reflected via its Labour Law as aforementioned and the the Second Master Plan on Occupational Safety and Health 2018-2022 of the MLVT.

¹⁸⁷ CESCR, General Comment 14. E/C.12/2000/4, para 33.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Occupational Safety and Health Convention (1981), Article. 4

5.1.3 C167

It can be seen that Labour Law of Cambodia offer the minimum standards in relation to the safety and health of the construction workers as enshrined therein C167. The reason is that unlike C167 which specifically designed for the construction sector, the occupational safety and health provisions enshrined in Labour Law is a one-size-fit-all policy which does not focus on any specific branch of economic activity which implies that preventive and protective measures under the Labour Law does meet the international standards.

C 167 set out the aspects of safe means and preventive and protective measures at workplace which shall include as follows:¹⁹² scaffolds and ladders, lifting appliances and gear, transport, earth-moving and materials-handling equipment, Plant, machinery, equipment and hand tools, work at heights including roofwork, excavations, shafts, earthworks, underground works and tunnels, Cofferdams and caissons, Work in compressed air, Structural frames and formwork, work over water, demolition, **lighting**, electricity, explosive, health hazards, fire precautions, personal protective equipment and protective clothing, **first aid**, and **welfare**.

While the Labour Law of Cambodia prescribed about occupational safety and health in a broader sense yet it gives more details about infirmary and first Aid, use of physical force, drinking water, noise, lighting and toilet. Additionally, Prakas 075, 076, and 078 were particularly designed for prevention and protection the occupational safety and health of the construction yet those Prakases only address about the requirements to have toilet, sufficient and clean water, to accommodation, to set up waste storage at the sites; to allow the workers to rest if there is heavy rain or wind.

In addition to the above, the Construction Law set out that every construction shall have a structure that can safely carry all load and shall also be compliant with the fire regulations.¹⁹³ These provisions are compliant respectively with

¹⁹² Safety and Health in Construction Convention (1988), Articles. 14 - 34

¹⁹³ Construction Law of Cambodia, Articles 8 & 9

Articles. 15 and 29 of C 167 which these Articles stipulates about the lifting appliance and fire precautions at the construction sites.

There are many aspects of workers safety stipulated within C167 have been left out as follows: scaffolds and ladders, lifting appliances and gear, transport, earth-moving and materials-handling equipment, Plant, machinery, equipment and hand tools, work at heights including roofwork, excavations, shafts, earthworks, underground works and tunnels, Cofferdams and caissons, Work in compressed air, Structural frames and formwork, work over water, demolition, electricity, explosive, health hazards, fire precautions, personal protective equipment and protective clothing.

Therefore, the Labour Law, Construciton Law, and 075, 076, and 078 have not met international standard which C167 yet.

Research question No. 2 Whether Cambodian legal instruments are: in place to punish or deter the construction companies for non-compliance or violate the regulations and laws concerning occupational safety and health associated with construction companies.

Based on the above, to punish or deter the construction companies for non-compliance or violate the regulations and laws concerning occupational safety and health associated with construction companies, four mechanisms can be used to keep construction corporations accountable: (1) accountable under the Labour Law (2) civil liability provided for in the Cambodian Civil Code; (3) criminal liability provided for in the Cambodian Criminal Code, or liable through administrative penalties provided for in sector-specific laws like The Labour Law and construction law, and their regulations.

However, there are flaws within these mechanisms. First and foremost, although Labour Law and the Law on the Organisation of the Courts stipulated about the establishment of labour courts, yet until the present, they labour courts have not been established. This entails flaws for the enforcement of labour rights as a

whole including but not limited to occupational safety and health. The reason is that the existing courts are not specialised in any specific matters

In furtherance, individual dispute filing and hearing requirements and procedures at the Arbitration Council have still to be decided. It is anticipated that the MLVT will release a revised Prakas in due course to further explain these issues. This is also the flaws of individual labour disputes.

Last but not least, the current numbers and understanding related to occupational safety and health related the construction sector of the labour inspectors are still limited.

5.2 Recommendations

It can be seen that Cambodia has not ratified C155, 187, and C167. As based on the findings, Cambodia shall ratify the ILO conventions namely: C155, C187, and C167 as becoming a party to the conventions, Cambodia will receive more technical assistance from the ILO. As a result, it helps Cambodia to not the obligation which she owes to due to her membership and ILO and meet the obligation inscribed under ICESCR which is a state party.

Additionally, Cambodia shall push for the establishment of the labour courts as they will be more effective in solving not just occupational safety and health matters but the other labour matters in general.

Furthermore, the MLVT shall issue Prakas or regulations in due course to further explain individual dispute filing and hearing requirements and procedures at the Arbitration Council.

Last but not least, MLVT shall recruit more labour inspectors and offer proper training related occupational safety and health to them. If this is the challenge, the MLVT shall seek technical assistance from the ILO regarding this matter.

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