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**TEXTBOOK**

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**RESPONSIBLE BUSINESS  
CONDUCT IN CAMBODIA**



Dr. Radu Mares  
Dr. Sokphea Young

# RESPONSIBLE BUSINESS CONDUCT IN CAMBODIA

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<b>ADB</b>	Asian Development Bank
<b>AI</b>	Artificial Intelligence
<b>AICHR</b>	ASEAN Intergovernmental Commission on Human Rights
<b>ANZ</b>	Australia and New Zealand Banking Group Limited
<b>ASEAN</b>	Association of South-East Asian Nations
<b>BFC</b>	Better Factories Cambodia
<b>BHR</b>	Business and Human Rights
<b>BITs</b>	Bilateral Investment Agreements
<b>CAO</b>	Compliance Advisor Ombudsman
<b>CBA</b>	Collective Bargaining Agreement
<b>CBOs</b>	Community-based Organizations
<b>CEACR</b>	ILO Committee of Experts on the Application of Conventions and Recommendations
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CHRB</b>	Corporate Human Rights Benchmark
<b>CSOs</b>	Civil Society Organizations
<b>CSR</b>	Corporate Social Responsibility
<b>DAGs</b>	Domestic Advisory Groups
<b>EBA</b>	Everything But Arms
<b>EHRDs</b>	Environmental Human Rights Defenders
<b>EIA</b>	Environment Impact Assessment
<b>ESIA</b>	Environmental Social Impact Assessment
<b>ELCs</b>	Economic Land Concessions
<b>ESG</b>	Environmental, Social, and Governance factors
<b>EU</b>	European Union
<b>FDI</b>	Foreign Direct Investment
<b>FIs</b>	Financial Institutions
<b>FOA</b>	Freedom of Association
<b>FTAs</b>	Free Trade Agreements
<b>GBVH</b>	Gender-Based Violence and Harassment
<b>GDP</b>	Gross Domestic Product
<b>GFAs</b>	Global Framework Agreements
<b>GSP</b>	General System of Preferences
<b>HRDD</b>	Human Rights Due Diligence
<b>HRDs</b>	Human Rights Defenders

<b>HRIA</b>	Human Rights Impact Assessment
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IFC</b>	International Finance Corporation
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization of Migration
<b>ITUC</b>	International Trade Union Confederation
<b>KPIs</b>	Key Performance Indicators
<b>LCDs</b>	Least Developed Countries
<b>MNEs</b>	Multinational Enterprises
<b>MSIs</b>	Multi-stakeholder Initiatives
<b>MSME</b>	Micro, Small, and Medium Enterprises
<b>NAPs</b>	National Action Plans
<b>NCPs</b>	OECD National Contact Points
<b>NGOs</b>	Non-governmental Organizations
<b>NHRIs</b>	National Human Rights Institutions
<b>ODA</b>	Official development assistance
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PRA</b>	Private Recruitment Agencies
<b>RBC</b>	Responsible Business Conduct
<b>SDGs</b>	Sustainable Development Goals
<b>SLAPPs</b>	Strategic Lawsuits Against Public Participation
<b>SMEs</b>	Small and Medium Enterprise
<b>SR</b>	UN Special Rapporteur
<b>TSD</b>	Trade and Sustainable Development
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNGPs</b>	United Nations Guiding Principles
<b>UPR</b>	Universal Periodic Review
<b>WB</b>	World Bank
<b>WBA</b>	World Benchmarking Alliance
<b>WTO</b>	World Trade Organization

**T**his textbook focusses on ‘responsible business conduct’ (RBC) and has a special focus on the impact of businesses on our human rights. From small local market food stalls to large multinational enterprises, there is evidence everywhere of business activity. **Some central questions** considered in the textbook are in what ways are human rights relevant to businesses, what practical and concrete actions can businesses take, and how can businesses not respecting human rights be held to account by the state and society?

States, that is **the government**, accept as legally binding international treaties on human rights and freedoms. However, states can fail to protect human rights and even violate human rights systematically – human rights work is never finished and no state in the world fully safeguards all human rights. At the same time, businesses can also commit abuses that deny or limit our rights. These can be labour law issues, such as discrimination in rates of pay for women and men, or a failure to provide safe working conditions. However, businesses cannot be held directly responsible under international human rights law, only states. Under international law, if a business infringes rights with impunity, the country is at fault because it does not have a comprehensive and functioning legal framework on labour law or safety at work. The government is required, by international law, to ensure that all rights and freedoms are protected adequately in national law and so companies should be able to adequately observe rights and freedoms by following national law.

The discussion about RBC exists because, in practice, national laws are imperfect and often are not adequately enforced by the government. **Businesses** can exploit such loopholes to make more profits at the expense of communities, workers and consumers. At the same time, businesses pay taxes, create jobs, and in various ways contribute to the economic development of the country. In every country in the world, the question is the same: how to encourage business activities and reap their positive impacts on society while simultaneously limiting the negative impacts and fostering corporate accountability? In recent decades, the answer has been ‘responsible business conduct’ and increasing respect for basic human rights as defined in international treaties and national laws. Where the national laws are deficient, the principles and standards of international human rights treaties play a key role in assessing corporate conduct. Informed by these principles, there are increasing demands for RBC that come from different parts of society and business partners, sometimes from within the country and sometimes from abroad.

This textbook explains many kinds of impacts that various business sectors have on society and human rights. It all has to do with how goods (products) and services are produced, supplied and consumed nowadays. In many countries, there is also a large **informal economy**, where labour law does not even apply, so exploitative conditions can be quite widespread.

At the same time, international production changed drastically several decades ago when the ‘**supply chain** revolution’ took place. Advances in technology and transportation made it possible to trade and invest more easily across national borders. In this period of trade liberalization, instead of exporting finished goods (like a shirt, or a car) it was now possible, and profitable, to outsource to other businesses in other countries some tasks (like producing components of the finished goods, such as making the buttons on a shirt or the gearbox in a car). Instead of trading finished goods made in one country and imported in another country, supply chains made it possible to trade intermediate goods, that is, parts of the finished goods. Some countries, like Cambodia, specialised in certain industries (e.g. garments and shoes) and certain types of tasks (e.g. tasks requiring a lot of labour) and thus obtained a specific competitive advantage (through low-cost production in labour-intensive industries).

As companies specialise more, supply chains (or 'value chains') become ever more complicated. Many more countries and people are involved in making a good or service. With so many entities involved in a supply chain, it becomes more difficult to show who is responsible for abuses; the direct perpetrator does not operate in isolation, but as part of an integrated production network. The supply chains also become less transparent and **opaque**. Do you know where the clothes you are wearing were made, where the fabric was made, and where the cotton for that fabric came from? If you are eating food from a packet or tin, do you know where the food originated from, where was it processed (if at all), where was it canned or packaged and how did it get to the shop or market where you bought it? From an RBC perspective, do you know the conditions of work and the human rights situation of those involved at every stage of this production process? Was there forced labour? Was the workplace so unsafe as to endanger health or even lives? Did workers receive their wages? Was land taken abusively from farmers to make way for a factory or a plantation? Do victims have any practical and effective complaint mechanism when their rights are violated?

In a modern economy and with information widely available on the internet and social media, such **ethical questions** have become unavoidable. People and organizations in other countries have their own expectations about how goods and services should be produced and used. In the 1990s, consumers (including university students) in wealthy countries were the first to ask questions, then ethical investors, then large multinational enterprises. Nowadays mainstream investors, banks and regulators expect businesses to demonstrate RBC.

For a while, RBC was a topic too new for businesses and there was not sufficient guidance and even contradictory expectations from major international organizations. In the last decade, the situation has improved and now there is an international consensus about what businesses should practically do regarding RBC. Since the UNGPs adoption in 2011, businesses are expected to **do no harm** to human rights and use risk management approaches to protect people's rights.

In short, the international standard nowadays is that every business should respect human rights and undertake **human rights due diligence** to prevent and correct human rights abuses. By now there is detailed guidance on how to handle every human right, tailored guidance for specific industries, a multitude of consultants and actors ready to provide advice, numerous platforms where businesses can discuss challenging issues with their stakeholders, and plenty of examples of good RBC practices.

Despite these gains, **obstacles to RBC** are numerous. Some have to do with the costs. Undertaking RBC can have immediate and quantifiable costs, while the benefits brought to a company by RBC take a longer time to materialise and are more difficult to quantify. Some obstacles can be linked to market pressures as markets do not necessarily – or fully – reward RBC and businesses can be undercut by competitors. Other obstacles also come from seeing human rights as a luxury that only wealthy countries can afford and therefore capital accumulation and economic development must take precedence over human rights and RBC considerations. Still other challenges come from a lack of awareness and numerous misconceptions about what RBC is and what other businesses more experienced with RBC actually do and demonstrate what is possible.

This textbook aims to identify and dispel many such **misconceptions**. It not only provides an accessible introduction to the basics of RBC, but also offers information and the latest thinking around RBC without denying the complexity of RBC. Many questions will pop up in classrooms and discussions with newcomers to RBC. Such questions need to be addressed before a dialogue on the specifics of doing RBC



can even begin. Based on our experience, such misconceptions and preliminary questions that often need to be addressed include:

- Are human rights an issue only for states to consider or for businesses as well?
- Is RBC philanthropy, and if not, how does it differ from it?
- Does RBC mean that profits do not matter anymore and that businesses become social welfare institutions?
- Does RBC mean that governments are not responsible for human rights anymore?
- Does RBC mean that human rights are now 'privatized' and left to the mercy of markets and profit-making institutions?
- Can a business implement RBC if the government has other ideas about human rights, labour unions, civil activism, dissent, and the best way to develop the country?
- Do human rights and RBC deal only with negative impacts of business activity and turn a blind eye to the contributions businesses make to society?
- Are human rights only about punishing and holding perpetrators 'accountable'?
- Does RBC and human rights mean something that is bound to remain abstract, general, aspirational and moralistic with no practical guidance and impact in the real world?
- Are human rights and RBC antithetical to economic development?
- Are RBC and human rights too polarizing and politicised to facilitate practical action and collaboration among very different stakeholders?
- If human rights are so universally accepted, why don't the UN, powerful states or the 'international community' punish businesses and governments infringing human rights?
- Is RBC something that only large businesses, especially multinational enterprises, should do?

Indeed, RBC is a fast-moving field where the pace of **innovation** is high, and some businesses have managed to reconcile profits and social responsibilities. RBC presents not only costs but also many opportunities for businesses. These new opportunities and ways to achieve competitive advantage in the marketplace are increasing in the context of the climate emergency. Governments across the world emphasise that a 'green transition' needs to be a 'fair transition', mindful of the needs of those that stand to lose from the transition. Given the massive funding needed to reduce CO2 emissions in economies, it is a rare opportunity to achieve people-centred development. The emphasis would then be not on finance but on 'sustainable finance', not on attracting foreign direct investment (FDI) but 'responsible FDI', not on trade but on 'fair trade' and so on.

This is the **first textbook** on RBC and human rights in Cambodia. It reflects a collaboration of 18 scholars and practitioners either from Cambodia or having extensive practical experience living and working in Cambodia. Whilst there are books and materials on RBC and human rights, what is unique in this text is the focus on the Cambodian context. The contributors of the textbook draw on laws and policies, credible and reliable reports, cases, data, news media, and academic work, as well as the authors' knowledge of Cambodia and experience in the country. It therefore offers theoretically informed and contextualized perspectives on RBC and human rights in Cambodia, and the challenges faced by business, affected people and the government.

The textbook is divided into **five parts**. Part One provides an introduction to RBC, which is still a new topic in Cambodia and many other countries. It explains the essential aspects of RBC and provide examples of how business impacts on human rights. Part Two explains the principles and standards for RBC and focuses on international and national frameworks that apply to businesses and states. Part Three focuses on actors – private and public ones – that work with and promote RBC. Part Four provides more in-depth applications of RBC in a few industries and for selected human rights. Lastly, Part Five offers insights into the broader context of RBC and some cross-cutting issues that will affect RBC in coming years.

**Each chapter** follows a similar structure. A chapter begins with a brief introduction and follows with a section ('Frameworks') that presents the international and Cambodian legal frameworks relevant to the topic and, where needed, offers conceptual and terminological clarifications. The next section ('Applications') is on the practical applications which show how the standards, rules and institutions work in practice, and offers concrete RBC and human rights cases to show promising or abusive practices. The last section ('Further Discussion') aims to encourage critical discussion and points to dilemmas and complexities. Conclusions are followed by selected Further Readings. In sum, in each chapter, the authors combine international and local perspectives on RBC and cover both policy and practice.

The textbook was **designed** as an introduction to RBC at a basic to intermediary level given the novelty of the topic for most readers. Our overriding aim was to offer a concise, but thoughtful and informative presentation of RBC and human rights issues in the Cambodian context. Therefore, we kept the chapters short to around 6000 words. A key consideration was the intended audience: teachers, researchers and students at university level in Cambodia. We also aimed to make the textbook accessible for practitioners and others seeking an authoritative introduction to RBC and human rights in the Cambodian context. Another key consideration was the specialization of potential readers because RBC is inherently a multidisciplinary topic. The primary targets of the textbook are law schools and business schools though it might prove relevant also to political science, sociology, and media faculties. The writing style has been adapted accordingly: we sought to avoid unnecessary jargon and aimed for as simple and accessible language as possible. Ideally, the textbook (or some chapters therein) should be informative and usable.

The **process** of delivering the textbook involved an open call for applications, at least three rounds of drafting and editorial review, internal peer review and a two-day author seminar. For their contribution to the textbook, authors and editors would like to thank professor Rhona Smith, Mostafa Sen, Sokhemmary By, Sovanrachna Hok, Rachana Sam At, Veasna Ky, Tyhuy Sok, Piseth Chan and Sophonnhata Bun.

The textbook is part of a **package** of teaching resources and supporting activities being developed by the Raoul Wallenberg Institute in Cambodia. This textbook is meant to complement the already published Compendium on Business and Human Rights (3 volumes of 'cases and materials') (2021), teaching demos, industry case studies, and an e-platform for teachers and researchers. This on-going RWI program amounts to a comprehensive and long-term effort to support Cambodian universities in the new area of RBC, facilitate their further engagement with societal actors and thus contribute to the sustainable development of the country.

In terms of **terminology**, we offer two clarifications. We have used the term 'businesses' to refer to any business forms sometimes referred to as 'companies', 'enterprises' or 'corporations'. Unless we indicate in the text, 'businesses' cover all types of companies: multinational and national enterprises,





privately-owned or state-owned enterprises, large or small enterprises. Furthermore, we adopted the more modern terminology of 'value chains' instead of 'supply chains' because 'value chains' cover both the production and distribution activities, while supply chains are limited to production activities. More definitions are provided in the Glossary. There is also a List of Abbreviations. To facilitate access to Cambodian laws, we have produced a List of Laws with their original titles in Khmer alongside the generally accepted English translation.

This textbook mentions a number of **websites and databases** and we wish to highlight them herein as a source for continuous learning. They cover a multitude of RBC topics, provide new materials on an ongoing basis, and are free to access. Thus, they can be used to keep the material in the textbook up to date and delve further in other topics that could not be covered. The Business and Human Rights Resource Centre is the most comprehensive database of news and reports on RBC and human rights.<sup>1</sup> The UN website of the OHCHR in Cambodia.<sup>2</sup> The OECD work on RBC.<sup>3</sup> The European Union website on the forthcoming law on corporate sustainability due diligence.<sup>4</sup> The RWI Compendium on BHR available in full text on-line.<sup>5</sup> Other relevant UN websites to understand the functioning of main UN mechanisms on human rights are on treaty bodies<sup>6</sup> and special rapporteurs.<sup>7</sup> The UN Global Compact.<sup>8</sup>

RBC and human rights are covered in several **books and journals**. We recommend the following: John Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013); D. Baumann-Pauly, J. Nolan, *Business and Human Rights* (2016); S. Deva and D. Birchall (eds), *Research Handbook on Human Rights and Business* (2020); A. Marx et al. (eds), *Research Handbook on Business and Human Rights*, Edward Elgar (2022); D. Kinley, *Civilising Globalisation: Human Rights and the Global Economy* (2009); Robert Reich, *Saving capitalism: for the many, not the few* (2015); and Vladislava Stoyanova, *Positive Obligations under the European Convention on Human Rights* (2023).<sup>9</sup> The academic journal dedicated to RBC and human rights is the *Business and Human Rights Journal*.<sup>10</sup> Also good sources of rigorous analysis and strategic thinking are Shift,<sup>11</sup> the Institute for Human Rights and Business,<sup>12</sup> and the Danish Institute of Human Rights.<sup>13</sup>

### The editors.

10.10.2023

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- 1 <https://www.business-humanrights.org/en>
  - 2 <https://cambodia.ohchr.org>
  - 3 <https://www.oecd.org/industry/inv/responsible-business-conduct-and-human-rights.htm>
  - 4 [https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en)
  - 5 [www.rwi.or.id/publications/post/business-human-rights-cambodia-compendium](http://www.rwi.or.id/publications/post/business-human-rights-cambodia-compendium)
  - 6 <https://www.ohchr.org/en/treaty-bodies>
  - 7 <https://www.ohchr.org/en/special-procedures-human-rights-council>
  - 8 <https://unglobalcompact.org>
  - 9 Stoyanova's book is available full text, open access at <https://global.oup.com/academic/product/positive-obligations-under-the-european-convention-on-human-rights-9780192888044?prevNumResPerPage=20&prevSortField=1&sortField=8&resultsPerPage=20&start=0&lang=en&cc=sehas>
  - 10 [www.cambridge.org/core/journals/business-and-human-rights-journal](http://www.cambridge.org/core/journals/business-and-human-rights-journal)
  - 11 <https://shiftproject.org>
  - 12 <https://www.ihrb.org>
  - 13 [www.humanrights.dk/business-human-rights](http://www.humanrights.dk/business-human-rights)

# **CHAPTER 1**

## **Introduction to RBC and Human Rights**



**Radu Mares and Socheata Sao**

This chapter introduces the area of business and human rights (BHR) and explains the broader concept of responsible business conduct (RBC). It seeks to place the topic in a historical context, and to clarify some terminological issues and address some 'myths' that generate confusion on this relatively new and controversial topic. **BHR** is a way of systematically assessing corporate conduct against the entire spectrum of human rights as developed in international law and constitutional orders of states. BHR is relevant to all businesses, from large multinational companies<sup>1</sup> to small and medium enterprises.

In this sense, BHR is a new approach compared with previous **approaches** to RBC that critically discuss the responsibilities and roles of the private sector. For instance, corporate philanthropy through which businesses donate money to charitable causes is 200 years old in some countries. In 1960s, corporate social responsibility (CSR) gathered attention and controversy in the US among business leaders and economists: should corporate managers only maximise profits and pursue the interest of shareholders, or should managers assume wider social responsibilities and balance the interests of various stakeholders? Then business ethics emerged in business schools in the 1970s to pose dilemmas and prompt ethical reasoning among (future) managers. More recently, the Sustainable Development Goals (SDGs) adopted in the United Nations (UN) emphasise the contribution of the private sector in meeting the development goals, including the protection of labour and human rights. Indeed, businesses have positive impacts on society by creating jobs, paying taxes, and innovating technologies, but also negative impacts by harming workers, local communities, consumers, and the environment.

Some of the worst abuses happen in developing countries with weak rule of law where businesses operate with relative impunity. In such situations, it is less likely that irresponsible businesses are detected and punished, and victims are less likely to obtain compensation for the harm they suffered. That being said, irresponsible business conduct occurs in both developed and developing countries and no country is sheltered from harms caused by business operations. Therefore, RBC and human rights issues are relevant to **every country** in the world. Meanwhile, the international human rights system remains state-centred, and international treaties ratified by states do not create a direct legal obligation for businesses. It remains politically difficult for states to adopt a UN treaty on BHR and thus plug a 'hole' in international law on corporate legal liability for human rights violations.

This **chapter** is the introduction to the volume and thus relates to all other chapters. Chapter 2 provides an overview of business impacts on human rights and the environment in Cambodia. The way that RBC relates to law and policy, both at the international level and in Cambodia, is discussed in Chapters 3-5. The ways in which different actors relate to BHR and shape its evolution is examined in Chapters 6-12. The various profiles of human rights due diligence in different settings are explored in Chapters 13-17. Finally, the ways in which the RBC responds to the tectonic shifts occurring in technology, the vagaries of the climate emergency, and the evolving ideas of human rights are covered in Chapters 18-20.

## 2. Frameworks

### 2.1 International and National Frameworks

A turning point in RBC occurred in 2011 when the UN adopted the **Guiding Principles on Business and Human Rights (UNGPs)**. The UNGPs clarified what is expected from businesses and secured a widespread agreement on the human rights responsibilities of businesses. The UNGPs offered a foundation anchored in international human rights law, that emphasised state obligations and remedies

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<sup>1</sup> John Ruggie, 'Multinationals as global institution: Power, authority and relative autonomy', *Regulation & Governance* 12:3 (2018) <https://onlinelibrary.wiley.com/doi/full/10.1111/rego.12154>.

for victims, but also introduced the new idea of human rights due diligence (HRDD). Based on risk management principles familiar to businesses and corporate lawyers, HRDD would become the concrete method for businesses to deal with human rights, in their own operations and supply chains, and deliver both preventive and corrective measures. As the preeminent framework of the UN in the RBC area, the UNGPs have become a facilitating factor for those states wishing to regulate for corporate accountability, for NGOs wanting an authoritative reference point to question economic decision-making and corporate conduct, and for businesses wishing to improve their RBC practices. While many in the Global South and Global North still consider RBC issues a matter for corporate ‘voluntarism’ (or CSR) -- something that businesses do even without being legally obligated, recent development in the Global North point to a significant shift underway that will ripple throughout international supply chains: that is, the emergence of RBC-related regulations (the ‘regulatory turn’ in RBC) and a growing interest in RBC among financial institutions (the ‘turn to sustainable finance’).

Unlike CSR and corporate philanthropy, RBC and BHR are new and mostly unfamiliar concepts in **Cambodia**. As Cambodia pursues economic liberalisation and a free market, it has been experiencing fast economic growth, but not without adverse impacts on human rights and the environment. Violations of human rights involving business interests have been well documented by UN bodies (e.g. UN Special Representative on the issue of human rights – see Chapter 3), local and international civil society organisations (CSOs), academics, and the media<sup>2</sup>. In the early 2000s, RBC cases were commonly centred on land grabs in the agribusiness sector, forced evictions and displacements for real estate development projects, and labour rights violations in the garment sector. Business-related human rights violations and adverse environmental impacts have involved both local and foreign businesses. In more recent years, BHR cases have increasingly covered additional human rights concerns (e.g. right to privacy, health, water, etc.) and other business sectors (e.g. construction, tourism, and banking).

## 2.2 Concepts and Terminology

There are several concepts that try to capture the positive and negative impacts of the private sector on society and the planet. Such concepts and discourses clarify the roles and responsibilities of businesses regarding human rights and various aspects of economic and social development. The most influential concepts and traditions are the following.

**RBC** is the terminology preferred by the Organisation for Economic Cooperation and Development (OECD) for discussing CSR<sup>3</sup>. It refers to the practices and behaviours of businesses that integrate ethical, social, and environmental considerations. For the OECD, RBC is a way to ‘encourage positive contributions enterprises can make to economic, environmental and social progress, and to minimise adverse impacts ... associated with an enterprise’s operations, products and services.’<sup>4</sup> RBC covers ‘all key areas of business responsibility, including human rights, labour rights, environment, bribery and corruption, consumer interests, disclosure, science and technology, competition, and taxation.’<sup>5</sup> RBC is thus more encompassing than BHR. RBC also has a managerial and applied manner of discussing corporate impacts. RBC shifts the weight of inquiry from responsibility, blameworthiness, and legal liability towards action, standards, and management of risks. The OECD adopted detailed and authoritative guidance on corporate due diligence, including sector-specific guidance for six industries, for example, agriculture and the garment industry.

2 For a comprehensive database, see Business and Human Rights Resource Centre, search with ‘Cambodia’ filter [www.business-humanrights.org/en/latest-news/?&search=cambodia&language=en](http://www.business-humanrights.org/en/latest-news/?&search=cambodia&language=en)

3 OECD Centre for Responsible Business Conduct, *About Responsible Business Conduct* (n.d.) <https://mneguidelines.oecd.org/about.htm>

4 OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023), p. 10 <https://doi.org/10.1787/81f92357-en>.

5 Id., p. 76,



Business and human rights (**BHR**) is a concept that clarifies the relationship between businesses and their impact on human rights. The concept was best developed in the UNGPs. BHR draws on the human rights standards developed by states through UN treaties and declarations. As such BHR always emphasises state obligations together with corporate responsibilities and takes a systemic view to corporate human rights abuses. BHR differs from philanthropy in that it focuses on how businesses make money while CSR is more about how businesses spend money. BHR is an evolution from CSR as corporate voluntarism because it draws on international standards, is concerned with compliance by both states and businesses, and considers that a smart ‘policy mix’ of public policies and regulations is necessary. In this way, BHR differs from business ethics and their inspiration in morality, and is most closely related to RBC. Indeed, the idea of due diligence originated in BHR, in the UNGPs, and was immediately incorporated into the OECD work on RBC, its Guidelines for Multinational Enterprises (MNEs). Both BHR and RBC consider due diligence and the ‘smart mix’ of policy measures as essential for corporate accountability and sustainable economic development.

**Philanthropy** refers to the practice of voluntarily giving and contributing resources, such as time, money, or expertise, for the betterment of others and the common good. Philanthropy can take many forms, including charitable donations, grants, scholarships, sponsorships, and volunteering efforts. Historically, in some countries, philanthropy supported causes such as education, healthcare, poverty alleviation, environmental conservation, and arts and culture. Businesses would make donations for various reasons, for example: pure altruism; to improve their reputation and branding (‘cause-related marketing’); and for impact on their operations (‘strategic philanthropy’). Businesses also use philanthropy to divert attention from their harmful operations, buy goodwill, and whitewash their reputation. Critics point out the ‘inherent antidemocratic, paternalistic, and amateuristic’ aspects of philanthropy.<sup>6</sup>

**CSR** is about the integration of societal (including environmental) considerations in business decision-making. For example, the EU defines CSR as ‘the responsibility of enterprises for their impacts on society’.<sup>7</sup> CSR encompasses compliance with legal obligations, as well as voluntary actions taken by businesses to contribute to the wellbeing of stakeholders, including employees, customers, communities, and the environment. The goal of CSR is to promote sustainable development and create a positive impact on society while simultaneously meeting business objectives. By adopting responsible practices, businesses can enhance their reputation, attract socially conscious customers, improve employee morale and loyalty, and develop better relations with investors and regulators. While there is no magic formula as to how to balance profitability and responsibilities to society, CSR indicates that the two are not necessarily antagonistic and that such a balance is inevitable in a modern economy.<sup>8</sup>

**Corporate citizenship** is closely related to CSR and is about businesses identifying more closely with their role in democratic societies, i.e. having rights and responsibilities like ordinary citizens. The term ‘corporate citizenship’ is typically used to describe businesses in their socio-political role. It recognises that businesses are involved in social activities beyond mere financial activities and carry obligations to contribute to social wellbeing. As the term ‘citizen’ indicates, ‘the notion is rooted in politics, indicating a recognition of corporations as a social actor and as responding to non-market pressures.’<sup>9</sup>

6 Eric Franklin Amarante, ‘The Perils of Philanthrocapitalism’, *Maryland Law Review* 78(1) 2018 <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3807&context=mlr>.

7 European Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility* (2011) <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF>.

8 UNIDO, *What is CSR?* <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr>.

9 Mark A. Camilleri and Benedict Sheehy, ‘Corporate Citizenship’ in Idowu S. et al. (eds), *Encyclopedia of Sustainable Management*, Springer (2021) [www.researchgate.net/publication/350631406\\_Corporate\\_Citizenship#fullTextFileContent](http://www.researchgate.net/publication/350631406_Corporate_Citizenship#fullTextFileContent).

**Business ethics** refers to the moral principles and values that should guide corporate behaviour and decision-making processes. 'Business ethics is the application of ethical values to business behaviour. Business ethics is relevant both to the conduct of individuals and the conduct of the organisation as a whole. It applies to any and all aspects of business conduct, from boardroom strategies and how companies treat their employees and suppliers to sales techniques and accounting practices.<sup>10</sup> Ethical reasoning is used in business schools to prepare business executives for dilemmas they might face. This type of reasoning recognises that 'legal' and 'ethical' are not necessarily the same. Regarding BHR, business ethicists have posed questions such as 'A. What are human rights and how to justify one's defence of them?; B. Who is responsible for human rights? What justifies their extension to business?; and C. What are the general features of business's human rights responsibilities? Are they mandatory or voluntary? How are the specific human rights responsibilities of business to be determined?'<sup>11</sup>

**Corporate sustainability** is an element of the UN Sustainable Development Goals (SDGs), the global development framework agreed on by states in the UN. These apply development lenses to capture positive and negative corporate impacts of the private sector. The SDGs are about mobilising all available resources, from both the public and private sectors, to meet the most pressing development challenges. All forms of corporate contributions are valued, from philanthropy to respecting human rights. Under the SDGs, working in partnership is a key modality to achieving positive impacts and avoid negative ones (SDG 17). The UN Global Compact, started in 2000, has evolved as the main UN platform where businesses can engage with the SDGs. It presents itself as the world's largest CSR platform and a voluntary initiative to implement universal sustainability principles and advance UN goals.<sup>12</sup>

Environmental, Social, and Governance (**ESG**) factors promote the integration of these aspects into financial products and decisions. ESGs or socially responsible investing (SRI) is an investment approach that considers environmental, social, and governance factors in addition to financial criteria when making investment decisions. This approach began accelerating in the 2010s with financial actors' growing interest in sustainability. Thus, ESG or SRI is a means for the financial sector to evaluate, holistically, the RBC performance of businesses they invest in. Human rights, the less quantifiable and least developed aspect of ESG, are part of the acronym's 'S'. Given the lack of authoritative standards or regulations for ESGs, the practice of ESG is increasingly criticised nowadays as investors make unsubstantiated claims and mislead clients to believe that their funds are invested responsibly.<sup>13</sup> The European Union (EU) has recognised the risk of ESG becoming a 'whitewashing' tool, and is taking corrective measures through its policies on sustainable finance and the green transition. Thus, the EU and other countries are developing rigorous indicators and classification systems to help businesses and investors identify environmentally (and socially) sustainable economic activities.<sup>14</sup> By considering ESG factors, investors can make more informed decisions, allocate capital to businesses that prioritise sustainability, and promote positive change in the business world.

**Shared value** is the concept used in strategic management circles and business schools to explain win-win situations. Businesses become more successful by contributing to society and the public good. Developed in 2011, the shared value notion refers to a business strategy that aims to create economic value while simultaneously addressing societal challenges.<sup>15</sup> It involves integrating social and environ-

10 Institute of Business Ethics, *What is business ethics?* (n.d.) [www.ibe.org.uk/knowledge-hub/what-is-business-ethics.html](http://www.ibe.org.uk/knowledge-hub/what-is-business-ethics.html).

11 George Brenkert, 'Business Ethics and Human Rights: An Overview', *Business and Human Rights Journal* 1(2) (2016) [www.researchgate.net/publication/300003483\\_Business\\_Ethics\\_and\\_Human\\_Rights\\_An\\_Overview](http://www.researchgate.net/publication/300003483_Business_Ethics_and_Human_Rights_An_Overview).

12 UN Global Compact, *About the UN Global Compact* (n.d.) <https://unglobalcompact.org/about>.

13 Michael Porter et al., *Where ESG Fails* (2019) [www.institutionalinvestor.com/article/b1hm5ghqtj9s7/Where-ESG-Fails](http://www.institutionalinvestor.com/article/b1hm5ghqtj9s7/Where-ESG-Fails).

14 For example, the EU Taxonomy Regulation (2020). See the EU Taxonomy Navigator <https://ec.europa.eu/sustainable-finance-taxonomy>. See also chapter 10.

15 Michael E. Porter and Mark R. Kramer, 'Creating Shared Value', *Harvard Business Review* (2011) <https://www.communitylivingbc.ca/wp-content/uploads/2018/05/Creating-Shared-Value.pdf>.



mental considerations into the core business model to generate sustainable and long-term value for both the company and society. It is a form of 'enlightened self-interest' and rejects the notion that there is (always) an inherent conflict between profitability and societal interests.<sup>16</sup> Shared value draws attention to business opportunities and to the fact that companies can contribute to solving societal problems in ways that also benefit their own bottom line. It also emphasises innovation as the key ingredient to becoming profitable in competitive markets and complex environments. This approach advocates a more equitable and sustainable capitalism. Shared value goes beyond philanthropy and traditional CSR approaches, which often involve add-on initiatives, by embedding CSR considerations directly into the core business model, strategy, and operations. In this way, the implementation of 'shared value' is consistent with the HRDD approach developed in BHR and RBC.

## 3. Applications

### 3.1 Evolution of RBC and Current Developments

**T**he intensification of **economic globalisation** in the 1980s started a process of erosion and questioning of the protection of human rights under the UN system and/or national constitutional orders, all in the name of unfettered economic activity and development. The last several decades were characterised in many parts of the world by neoliberal economic ideology, i.e. the promotion of economic liberalisation and free-market competition, deregulation, privatisation, and austerity measures that cut budgets for essential public services. Unprecedented levels of economic wealth were created through the increasingly free flow of goods, services, and capital. However human rights have often become side-lined in economic decision-making. As multinationals outsourced production and externalised social and environmental costs with varying levels of impunity, no state could opt out of the global market and their regulatory space to protect human rights and provide essential services shrunk. Both industrialised states and developing countries were affected, but people living in least developed countries faced higher and more widespread harms given their weaker institutions and constitutional protections.

Liberalised trade and investment, together with technological advances, accelerated the emergence of global value chains as the dominant way for international production and consumption.<sup>17</sup> The 'supply chain revolution' coincided with the rising influence of media and internet, and the mobilisation of civil society to question the fairness of the international economic system and the responsibilities of multinational enterprises running value chains. This convergence of factors shone the **spotlight on private actors** (especially multinationals) that outsourced production and gained unprecedented access to foreign markets. Record levels of profitability and growth followed, as well as a growing list of human rights violations and environmental impacts. The critique became strong in the 1990s and indicated that with power comes responsibility and that outsourcing production does not mean outsourcing responsibility. Such multinationals initially resisted but eventually gave way and recognised they must manage these new risks to their reputation as well as risks to their production facilities threatened by local unrest (e.g. strikes and community protests). The response was CSR -- voluntary codes of ethics developed by companies and industries, and encouraged by governments that were reluctant to regulate multinationals. This was corporate 'voluntarism': for some it was a welcome development as it allowed experimenting with unfamiliar issues such as CSR risks, and for others it was just a tool to placate critics and 'whitewash' the corporate image.

<sup>16</sup> Rebecca Henderson, *Reimagining Capitalism in a World on Fire* (Public Affairs, 2020).

<sup>17</sup> Xiaolan Fu, 'Digital transformation of global value chains and sustainable post-pandemic recovery', *Transnational Corporations* 27:2 (2020) [https://unctad.org/system/files/official-document/diaeia2020d2a9\\_en.pdf](https://unctad.org/system/files/official-document/diaeia2020d2a9_en.pdf).

The spotlight was not only on unaccountable private businesses (large multinationals) but also on the **gap in international law**. Indeed, states disagreed on an international treaty to regulate multinationals despite the UN efforts since the 1970s. The UN human rights system had a large gap: it had no legal or institutional mechanism to deal with private actors such as multinationals and the very foundations of the human rights system based on state power. Yet, state obligations were being eroded by market forces. Therefore, CSOs criticised states, especially industrialised states, for failing to agree on a UN treaty to create legally binding obligations on businesses and for promoting the neoliberal system of economic development without adequate safeguards for human rights and sustainability.<sup>18</sup> The response from industrialised states and international organisations was twofold: first, ‘soft law’ on CSR that specified responsibilities and encouraged voluntary adherence to CSR, but did not impose sanctions; and, second, partnerships with the private sector where voluntary initiatives would be created either to address negative impacts on labour/human rights and the environment, or to promote development and satisfaction of basic needs such as water, infrastructure, education, and so on (‘partnerships for development’). Both soft law and partnerships had no legal sanctions and were not legally binding. Yet, they aligned well with corporate voluntarism that multinationals preferred.

In short, the response of the powerful states and private actors promoting the neoliberal economic system was soft law, partnerships, and corporate self-regulation (voluntarism) and not a UN treaty or national laws for corporate accountability. This situation continued until around 2010 and reflected a period of corporate responsibility instead of corporate accountability. The limits of soft law and corporate voluntarism began to be recognised in the US and the EU. The first laws creating obligations on businesses regarding abuses in their supply chains emerged. These were either in high-risk sectors (minerals supply chains) or for particularly severe human rights abuses (forced labour and slavery). This revision of attitudes towards CSR as corporate voluntarism was facilitated by **the UNGPs**, with their foundational value and wide stakeholder appeal that emphasised new ideas of HRDD. This versatile concept resonated in both legal and business communities. It facilitated more operational measures that businesses could undertake to respect human rights. It offered states a receipt for regulations should they wish to impose obligations and make HRDD mandatory. It also offered CSOs a benchmark and authoritative reference point from which to evaluate and criticise both states and businesses.<sup>19</sup>

This regulatory turn from CSR to law was, rather, a nod towards **light-touch regulation**. Most of these laws created reporting obligations for businesses, which were obliged to be more transparent on their RBC, but were not required to change their operations as there were no sanctions for absences (e.g. the EU Non-Financial Reporting Directive (2014), UK Modern Slavery Act (2015), and Australian Modern Slavery Act (2018)). For many companies that meant business as usual. The regulators hoped that CSOs would use reported information for ‘naming and shaming’. Investors and consumers would then increasingly use this information for their investment or purchasing decisions. The CSR consulting industry would process the information and offer more advanced tools and business analytics to their clients wishing to demonstrate CSR and comply with their reporting obligations. Multistakeholder initiatives on RBC would have businesses join forces to recognise and address widespread abuses and find systemic solutions. This regulatory turn was founded on a belief in the power of transparency, with a reliance on private enforcement by consumers and investors rather than state sanctions. However, this light-touch regulatory approach largely failed to deliver quality data and enable action as foreseen by regulators.

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18 The Treaty Alliance, *Toward global Regulation on Human Rights and Business* (2017) [www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/TreatyAllianceGermany-WrittenSubmission.pdf](http://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/TreatyAllianceGermany-WrittenSubmission.pdf).

19 R. Mares, ‘Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress’, in R. Mares (ed.), *The UN Guiding Principles on Business and Human Rights – Foundations and Implementation* (Martinus Nijhoff Publishers, 2012) [www.researchgate.net/publication/272302988\\_Business\\_and\\_Human\\_Rights\\_after\\_Ruggie\\_Foundations\\_the\\_Art\\_of\\_Simplification\\_and\\_the\\_Imperative\\_of\\_Cumulative\\_Progress](http://www.researchgate.net/publication/272302988_Business_and_Human_Rights_after_Ruggie_Foundations_the_Art_of_Simplification_and_the_Imperative_of_Cumulative_Progress).





While it recognised the flaws of corporate voluntarism and reaffirmed the role of the states and the law in RBC, it did not change corporate conduct at sufficient scale and significance.<sup>20</sup> Rights-holders still had no improved access to justice. The incentives for businesses to change were still minimal.

Disasters like the Rana Plaza building collapse in Bangladesh that killed over 1000 workers in 2013<sup>21</sup> revealed the limitations of corporate voluntarism and light-touch regulation. France and other EU members, and soon after the EU, recognised this and undertook a second regulatory turn in CSR: the **turn to mandatory due diligence**. As opposed to transparency laws, due diligence laws would require due diligence systems to prevent and correct harms under legal sanction (i.e. fines and civil liability). This turn is underway only in Europe so large parts of the world have yet to make this important step. However, the EU has persuasively put to rest previous assumptions on CSR and acknowledged that voluntarism and transparency laws have not delivered the necessary changes in behaviour<sup>22</sup> and that stronger regulatory measures are needed.<sup>23</sup>

The EU turn to mandatory due diligence is happening in a specific context. The important, legally binding Due Diligence Directive, expected in early 2024 and entering into force in 2026, is part of the Green Deal of 2019, the EU's response to the climate emergency. The Green Deal recognises the imperative of a wholesale transformation of economies and value chains. It is an attempt to rethink international production and consumption, so that they are built on more sustainable foundations. Significantly, it emphasises the critical role of the financial sector. Through pushing for sustainable finance, the EU seeks to mobilise the trillions of dollars from public and private financial institutions that are needed to undertake the green transition. The EU is creating a complex network of laws to compel and enable financial entities to allocate capital more sustainably. The Due Diligence Directive is one such law, and older transparency laws have been made more stringent. Due to the regulatory interventions of the EU, a new turn in RBC is underway: the **turn to sustainable finance**. The impact on businesses will be significant as new legal and market incentives are created. Not only do businesses have to comply with regulations such as due diligence and transparency laws, but they also must inform and assure their investors about their RBC performance.

Since 2014, **the UN** started a process that would potentially lead to a treaty on BHR, but the process is highly politicised.<sup>24</sup> While a treaty is necessary to plug a hole in international law, it will be a long-term process. It is also uncertain how demanding the proposed treaty would be and whether states would ratify it. In parallel, the UN system makes good use of the UNGPs in its dialogue with states under current human rights treaties and three main oversight mechanisms. Thus, states are asked how they implement the UNGPs in their domestic legal and policy orders: first, UN treaty bodies for states that ratified a specific treaty; second, UN special rapporteurs (special procedures) through their thematic and country mandates; and third, the Universal Periodic Review (UPR) system. Despite their merits in advancing BHR, the UNGPs in themselves cannot create the necessary legal and market incentives for RBC. As envisaged by John Ruggie as he drafted the UNGPs, what is needed is a 'smart mix' of hard and soft law, at the national, regional, and international levels.<sup>25</sup>

20 R. Mares, 'Corporate transparency regulations: a hollow victory?' *Netherlands Quarterly of Human Rights* 36:3 (2018) [www.researchgate.net/publication/326130140\\_Corporate\\_transparency\\_laws\\_A\\_hollow\\_victory](http://www.researchgate.net/publication/326130140_Corporate_transparency_laws_A_hollow_victory).

21 BBC, *Bangladesh factory collapse toll passes 1,000* (10 May 2023) <https://www.bbc.com/news/world-asia-22476774>.

22 de Groen et al., *Study on the Non-Financial Reporting Directive - Final report* (2020) <https://op.europa.eu/en/publication-detail/-/publication/1ef8fe0e-98e1-11eb-b85c-01aa75ed71a1/language-en>.

23 Lise Smith et al., *Study on due diligence requirements through the supply chain - Final report* (2020) <https://op.europa.eu/sv/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

24 Claire Methven O'Brien, *The 2020 Draft UN Business and Human Rights Treaty - Steady Progress Towards Historic Failure*, Blog, *Opinio Juris* (2020) <http://opiniojuris.org/2020/09/11/bhr-symposium-the-2020-draft-un-business-and-human-rights-treaty-steady-progress-towards-historic-failure>.

25 John Gerard Ruggie, *Just Business: Multinational Corporations and Human Rights* (Northon, 2013).

### 3.2 RBC and Corporate Due Diligence under the UNGPs

The UNGPs set as a minimum expectation that companies respect all internationally recognised human rights. That means they should avoid and eliminate adverse human rights impacts in their operations and value chains. The UN explains that an ‘adverse impact’ ‘occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.’<sup>26</sup> HRDD is one of the main innovations in the UNGPs and a critical way for businesses to operationalise RBC and embed it in corporate systems and processes, as explained in Chapter 6. HRDD is a risk management approach to prevention and correction of harms. It should be performed whenever a business is ‘involved’ in adverse impacts. The UNGPs clarify three types of involvement: causation, contribution, and direct linkage (UNGP 13). Causation happens when a business’s operation, activities, products, or services lead to an adverse impact. Contribution typically happens when third parties are also involved in harmful conduct. Direct linkage, perhaps the broadest type of involvement, occurs when a company is linked to harms through its business relationships with others in the value chain. A businesses can thus become associated with harm committed by governmental actors (police or military) or private actors (suppliers and other business partners in value chain).<sup>27</sup>

When the UNGPs provided this concept of involvement as the base for corporate responsibility, it fundamentally challenged CSR practice and thinking. CSR used to demand action only regarding only its own operations or its direct contractors, with which a business would have a contractual relationship and therefore a certain amount of influence. Failing to exercise this influence would be blameworthy in CSR. The problem with this reasoning was that CSR would be limited to the first tier of the supply chain and ignore many serious abuses happening throughout the value chain (e.g. by subcontractors).<sup>28</sup> In this way, the UNGPs changed the **scope of RBC**: under CSR, the line would be drawn at first tier of the value chain (direct contractors); based on the UNGPs, the line potentially includes the entire value chain whenever a businesses is linked to an adverse impact.

The UNGPs thus also changed how a company should **prioritise** which harms and which actors in the value chain are targeted first. To prioritise according to where a business has leverage (influence), such as on its direct contractors, is illegitimate; the right way is to look at the ‘severity’ of harms (UNGP 14). The most severe impacts, irrespective where in the value chain, should be addressed first, not the easier and most tractable human rights problem that the business could choose as it pleases, and not problems on the first tier where action would be the most convenient. This new way of prioritising might require different actions from a business, from taking collective actions with other businesses and stakeholders to terminating business relationships with partners that fail to improve. In this way, the UNGPs have not only expanded corporate responsibility for the entire value chain, but have also changed the order of priority in which harms are dealt with.

The UNGPs have thus expanded corporate responsibilities and challenged the long-established CSR management practice. To prevent accusations that such RBC is unrealistically broad, the UNGPs clarify the ‘corrective action’ expected from businesses (UNGP 19). Any of the three forms of involvement with adverse impacts triggers a responsibility to act and perform HRDD. A business, however, is expected to remedy those harms only for its ‘causation’ and ‘contribution’, not when being ‘directly linked’ to harms that occur in its value chain. Thus, remediation is not expected in all situations covered by HRDD and victims of abuse should turn to the direct perpetrator of abuses and to the state. A company can also establish that it is not ‘directly’ linked to adverse impacts, i.e. through its business relationships, and in such cases its responsibility to respect human rights does not apply.

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26 OHCHR, *The Corporate Responsibility To Respect Human Rights - An Interpretive Guide* (2012) [www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2\\_en.pdf](http://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf).

27 Id .

28 More explanations in Chapter 2 and 6.



### 3.3 RBC and Human Rights in Cambodia

Having emerged from decades of civil wars and a genocide, Cambodia has predominately prioritised economic growth over protection and realisation of human rights. The country has been a hotspot for business-related human rights violations, ranging from systematic land grabbing, forced evictions, sweat shops, child labour to environmental impacts and unregulated deforestation. Taking advantage of Cambodia's weak institutions and rule of law and high corruption levels, some local and foreign businesses have been involved with serious human rights violations and harms to workers, children, local communities, and indigenous peoples. As Cambodia's economy has modernised, **BHR issues** have also evolved to cover new sectors, e.g financial and banking, e-commerce, cybercrimes, consumer goods, thus imposing additional complex regulatory challenges to the government and relevant stakeholders.<sup>29</sup>

The **COVID-19** pandemic laid bare the limitations of Cambodian law and social security systems to protect workers from adverse impacts and rights violations. It also showed that economic interests still trump respect and protection of human rights. The government made various responses and provided support to alleviate challenges to businesses, yet did not require businesses to respect human rights.<sup>30</sup> Some businesses then used the pandemic as a pretext to disregard labour rights and bust unions.<sup>31</sup> Cases of human rights and labour rights violations such as land grabbing, illegal mass layoffs, union busting, arbitrary arrests, detainments, and criminal charges against human rights defenders are still regularly reported in the media.<sup>32</sup> Their grievances and demands for accountability and remedy for the harms they have suffered have often been in vain.

Despite some notable progress, the policy and institutional **framework** of Cambodia needs further improvement to stamp out adverse business impacts and ensure corporate accountability. Cambodia ratified eight out of nine fundamental international human rights treaties and most of the core ILO conventions (see chapter 3). The Cambodian Constitution recognises the state's international legal obligation to protect human rights, including addressing violations by businesses. Cambodia currently does not have any specific laws or regulations imposing on businesses the responsibility to respect human rights. That said, most human rights and labour rights are expressly protected under Cambodian law (e.g. Civil Code, Criminal Code, Labour Law, Land Law) (see chapters 4 and 6). Following massive pressure by local and international CSOs, international campaigns, and dialogues with economic partners from the Global North, the protection of human rights and labour rights in Cambodia have been improved in some areas (e.g. minimum wages, working conditions, and protection of land rights). However, significant gaps in the legal implementation and enforcement still create opportunities for businesses to undermine human rights in favour of commercial interests.

The roll-back of human rights and the rule of law, coupled with systematic land grabbing and labour rights violations, resulted in the partial withdrawal of the EU's Everything But Arms trade scheme that for many years bolstered Cambodia's economy. This economic consequence does not only affect the Cambodian government policy, but also businesses in key economic sectors such as garment and

29 See, e.g., UN Special Rapporteur on the situation of human rights in Cambodia, *End of Mission Statement* (2022) <https://www.ohchr.org/sites/default/files/documents/countries/kh/2022-08-26/SR-Cambodia-End-of-Mission-Statement.pdf>; OHCHR (Cambodia), *Business and Human Rights* (2016) <https://cambodia.ohchr.org/en/economic-social-rights/business-and-human-rights>.

30 See, e.g., Sovannroeun Samreth, 'Impacts of Covid-19 in Cambodia and National and International Responses', Nagoya University, Applied Social System Institute of Asia (ASSIA) Working Paper Series 21-05 (2021) <https://www.assia.nagoya-u.ac.jp/defdbb463e0db897615aca145c6d34a0de96d02a.pdf>.

31 Human Rights Watch, *Cambodia: Covid-19 Pandemic Used for Union Busting* (2022) [www.hrw.org/news/2022/11/21/cambodia-covid-19-pandemic-used-union-busting#:~:text=\(New%20York\)%20%E2%80%93%20The%20Cambodian,in%20a%20report%20released%20today](https://www.hrw.org/news/2022/11/21/cambodia-covid-19-pandemic-used-union-busting#:~:text=(New%20York)%20%E2%80%93%20The%20Cambodian,in%20a%20report%20released%20today).

32 See Footnote 2 above.

agribusiness.<sup>33</sup> Given the **international** trend on BHR, especially the rise of BHR-related regulations in the EU, both the government and businesses operating in Cambodia will have to start considering BHR issues in their economic decision-making. In recent years, big local businesses and banks have started mentioning the UNGPs, relevant soft-law instruments, and ESG indicators in their policies. A more recent emergence of BHR interest is the establishment of the Responsible Business Hub in 2022 by EuroCham to support and provide guidance on RBC as a way of filling the knowledge deficit for local businesses in Cambodia's export sectors.

In this context, BHR will become an area of **increased interest** to the government and business community as well as academia and CSOs. It will become a matter of commercial and legal risk management rather than a discussion merely on moral or business ethics. Nevertheless, there will be systemic challenges in ensuring business respect for human rights or RBC in Cambodia, namely enduring weak regulatory governance, weak judiciary, corruption, lack of political will, and, for businesses, the tension between respecting human rights and market competition. Concurrently, developments at the international level and the economic integration in regional and global value chain offer new standards, guidance, and incentives for RBC and the protection of human rights in Cambodia. China, a prominent government partner of Cambodia, has included RBC in its national Human Rights Action Plan and encourages Chinese businesses to abide by the UNGPs in their foreign trade and investment operations.<sup>34</sup>

## 4. Further discussion

**R**BC cannot be equated with philanthropy. **Philanthropy** is fully discretionary in all respects. There is a similarity between philanthropy and RBC as the latter has mostly not been legally obligatory (until the recent regulatory turn in CSR). However, BHR is certainly not (fully) discretionary as the above parameters explain the legitimate reference points for companies doing their CSR: that is, the entire list of human rights in international law, and the parameters of responsibility defined in the UNGPs that have been endorsed by the UN and many stakeholders. Major economies like China and the US were among the states in the UN Human Rights Council that endorsed the UNGPs in 2011.

The relationship between **corporate voluntarism and law** should not be simplistically seen as either-or. Voluntary business practices and soft law can have legal effects in different ways. Thus, legislators can make mandatory standards that private actors have developed or supported. Courts can apply and interpret legal obligations of businesses (under the negligence principle in tort law) in light of due diligence practices and authoritative soft law. Businesses mindful of their reputation can include RBC clauses in their contracts with business partners. A multitude of laws and policies can make RBC information available to investors and consumers and thus make it easier for them to assess the RBC performance of businesses, voice their concerns and even take their business elsewhere. Powerful market incentives can thus be created through regulations and 'smart mixes' of policies. Indeed, there are numerous actions that governments can and some increasingly use to nudge businesses towards compliance in more subtle and indirect ways.<sup>35</sup> In short, what might be fully voluntary today might become non-optional before long. RBC can be non-legally binding and still have legal effects. In the past, businesses have used CSR strategically as self-regulation to pre-empt public regulation. In turn, too

33 European Commission, *Trade/Human Rights: Commission decides to partially withdraw Cambodia's preferential access to the EU market* (2000) [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_229](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_229).

34 China, *Human Rights Action Plan of China (2021-2025)* [www.chinadailyhk.com/article/237525](http://www.chinadailyhk.com/article/237525).

35 OECD, *Recommendation on the Role of Government in Promoting Responsible Business Conduct* (2022) <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0486>.

often legislators have placed too much confidence in CSR (and soft law) to delay much needed regulation. In this way, CSR sometime appeared to be little more than a de-regulatory ploy as many NGOs have pointed out. CSR as pure corporate voluntarism is now outdated and replaced by RBC, which shows how legal and market incentives are being combined in new ways and with forceful effects in a modern and interconnected economy.

The relationship between **RBC and profitability** is not straightforward. For decades, some CSR proponents have sought to persuade businesses that CSR is in their self-interest. These are arguments pointing to the benefits of CSR and showing the 'business case' for RBC. Academic studies have tried to prove empirically that good CSR performance is correlated with business profitability and success, but the debate is not settled.<sup>36</sup> The reality is that each business context is different, and there are costs associated with doing CSR. Whether the benefits outweigh the costs is an empirical question, and variations are to be expected. Thus, the persuasive power of the business case can be limited. It is a good entry point to start a discussion, but usually it does not convince a sceptical company. Furthermore, such argumentation can backfire and diminish the normative power of human rights. It frames the BHR and RBC discussion as a cost-benefit equation, but under the UNGPs businesses should follow their responsibilities even if costs outweigh benefits. They have choices to make on how they comply with due diligence and, if needed, adjust their business model and value chain. Thus, there are many ways to reduce the costs and risks of RBC, including through collective action and all kinds of increasingly available support and guidance from public and private actors and entities. All these are part of the HRDD process. For exporting states and businesses, RBC offers opportunities to integrate into international value chains and access export markets.<sup>37</sup>

## 5. Conclusions

**T**here are several concepts that illuminate different facets of business in society. BHR is the one focused on human rights (as agreed by states in UN treaties) and recognises human rights as the preeminent ethical language of the world and global economy. RBC is a broader concept than BHR and is also complemented by other broad concepts originating in development, finance, and management circles. RBC is also building on the achievements and shortcomings of older concepts such as CSR and business ethics that began challenging the assumption that business is solely about maximising profits (shareholder primary and short-termism) free of state interference.

The areas of RBC and BHR are relevant to all states, developed and developing countries alike. No country is exempted. Businesses can infringe on any human right mentioned in international instruments, either directly or indirectly through their relations with abusive actors. Still, some countries, some industries, and some human rights are more at risk. New impacts on society are constantly emerging as technology evolves, new business and financial models are developed, and new products and services are offered. New and significant human rights impacts will follow from climate change. Since early 2010s, the RBC area has developed one flexible and powerful tool to anticipate and handle the huge variety of corporate impacts on societies: human rights due diligence and its promotion through mixes of policies. RBC is smart risk management and not charity or corporate voluntarism; and governments cannot be by-standers hoping that the market will auto-correct, but must regulate and actively adopt policies to steer businesses towards sustainability and accountability. The UNGPs laid the

<sup>36</sup> Stefan Hirsch et al., 'CSR and firm profitability: Evidence from a meta-regression analysis', *Journal of Economic Surveys* 37(5) (2022) <https://doi.org/10.1111/joes.12523>.

<sup>37</sup> UNCTAD, *Better Trade for Sustainable Development: The role of voluntary sustainability standards* (2021) <https://unctad.org/webflyer/better-trade-sustainabledevelopment-role-voluntary-sustainability-standards>.



foundation for this new thinking in BHR and called for ‘smart mix’ of law and policies, and enforcement tools at the national, regional, and international levels. To turn the UNGPs into practice, further measures are needed such as stronger laws at the national level and a UN treaty, as well as increased awareness and cultural shifts.

As Cambodia’s economy continues to expand, BHR will inevitably become an area of increased interest for governments and businesses, as well as scrutiny by CSOs, the media, consumers, and the general public. To rebrand the country’s reputation and maintain key exporting markets, Cambodia and businesses operating in the country will have to start considering human rights and environmental protection in their decision-making and addressing adverse impacts that arise.

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2. John Ruggie, *The Paradox of Corporate Globalization: Disembedding and Reembedding Governing Norms* (2020) [https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/FWP\\_2020-01v2.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/FWP_2020-01v2.pdf).
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# **CHAPTER 2**

## **Business Impacts on Human Rights and the Environment**



**Socheata Sao and Nak Srey**



**B**usinesses are indispensable ‘social actors’ and are significant for national and international development. Their operations and activities can affect societies, **positively and negatively**. Their positive contributions include job creation and sources of capital, tax payment, new technologies, and innovations, to name a few. At the same time, businesses can adversely impact or violate the whole spectrum of human rights through their operations, products, or services. They may also cause or contribute to adverse environmental impacts that add to climate change and disrupt biodiversity, livelihoods, and ways of life of local communities.

This **chapter** will provide a brief overview of business-related human rights and environmental issues in Cambodia. It will discuss adverse human rights impacts or rights violations by business operations and activities, how cases arise; which actors are involved; and how cases are addressed. Where relevant, related environmental impacts will be highlighted. This chapter will also illustrate how corporate human rights and environmental harms interact with Cambodia’s international human rights obligations, domestic laws, and soft-law instruments regulating business conduct, the causes of such harms, and the challenges in addressing the resulting issues.

## 2. Frameworks

**A**ccording to the United Nations, an ‘adverse human rights impact’ occurs when ‘an action removes or reduces the ability of an individual to enjoy his or her human rights.’<sup>1</sup> Both states and businesses have clear roles and responsibilities nowadays to prevent and address adverse impacts on human rights. Such responsibilities of businesses arise under national laws as a matter of legal compliance, but recently, states in the United Nations have agreed that businesses should not infringe internationally recognised human rights. More specifically, businesses should exercise human rights due diligence to identify and address their adverse impacts on human rights and to comply with national laws.

In Cambodia, **businesses** are classified into four key categories:<sup>2</sup>

- ‘Sole proprietorship’ is owned by one person who is fully responsible for the business.
- ‘General partnership’ is owned and directed by two or more persons, having joint legal obligations and responsibilities. There can be additional limited partners, but they can only contribute and receive certain shared profits.
- A ‘limited liability’ company is a commonly used form as it limits the liability of shareholders to the extent of their shares. It is classified into three subtypes: single-member ‘private-limited’ company; private-limited company;<sup>3</sup> and ‘public-limited’ company, created to sell securities to the public.<sup>4</sup>
- The last type of business is ‘foreign companies’ which, based on their activities, can be registered in the form of a representative office, foreign branch, or subsidiary (as a private limited liability company or public limited liability company).<sup>5</sup>

The Law on Commercial Rules and Register (1995, amended 2022) and Law on Commercial Enterprises (2005, amended 2022) and related laws govern the general description of the legal structure, type, ownership, legal rights, and responsibilities of businesses, including state-owned and public listed companies. These laws do not, however, impose human rights responsibilities on businesses or their corporate officers.<sup>6</sup>

1 OHCHR, *The Corporate Responsibility To Respect Human Rights - An Interpretive Guide* (2012) [www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2\\_en.pdf](http://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf).

2 See EuroCham Cambodia, *Business structure* (2020) <https://investincambodia-eu.org/business-structure/>; Ministry of Commerce, Business registration (n.d.) <https://www.businessregistration.moc.gov.kh/starting-a-business-2/register/>.

3 Law on Commercial Enterprise, Article 86; EuroCham Cambodia (2020) n 1 above.

4 *Id.*, Article 87.

5 Making It Easy, *Types of business in Cambodia* <https://www.makingiteasycambodia.com/types-of-business-in-cambodia.html>.

6 See Chapter 6.



Essentially, all businesses operating in Cambodia must obey all **domestic laws**.<sup>7</sup> While Cambodia has yet to pass a law that specifically imposes on businesses a responsibility to respect human rights, the Constitution and domestic laws explicitly or implicitly protect human rights, e.g. labour rights, right to a reasonable standard of living, right to property, right to a safe environment, freedom to be free from arbitrary arrest and detainment, and right to an effective remedy, among others. Some businesses also need to comply with the environmental law and regulations to avoid causing harms to the environment and local communities, e.g. the requirement to conduct an initial environmental and social impact assessments.<sup>8</sup>

The Cambodian Constitution reiterates the direct application of **international human rights treaties** and International Labour Organisation (ILO) Conventions it has ratified.<sup>9</sup> Cambodia ratified eight out of nine international human rights treaties and all of the core ILO conventions.<sup>10</sup> The International Covenant on Economic, Social, and Cultural Rights (ICESCR) enshrines rights to internal self-determination connected with culture and land, economic, social and cultural development, equality, fair wages, safe and healthy working conditions, forming or joining trade unions, and right to strike. The right to fair trial, and to be free from arbitrary arrest, slavery, and forced labour are stipulated in the International Covenant on Civil and Political Rights (ICCPR). The minimum age for labour and working conditions for children are codified in the Minimum Age Convention No. 138 and ILO Convention 182 on the Worst Forms of Child Labour. Regarding environmental protection, the Convention on Biological Diversity (adopted in 1992) is an international treaty aimed at the protection of biology and sustainable use of genetic resources by requiring states to take progressive actions towards the conservation. The Paris Agreement (adopted in 2015) is also a treaty that entails obligations to limit climate change and secure a balance between development and climate (see Chapter 19).

In addition to domestic laws, some businesses may have to observe **foreign laws** which require respect for human rights in the value chains (see Chapter 12). Businesses, especially multinational corporations, increasingly have legal obligations to undertake human rights due diligence and be transparent about their operations and impacts in developing countries. For affected individuals and communities, these laws provide additional grounds and access to remedy. Furthermore, increasingly, businesses are increasingly expected to observe relevant international soft-law instruments, such as the UNGPs, UN Global Compact, OECD Guidelines for Multinational Enterprises (OECD Guidelines) as well as industry/-sector-specific guidelines that promote business respect for human rights (see Chapter 3).

However, the notion that businesses have to respect human rights is relatively novel in Cambodia. Most businesses still use **corporate social responsibility** and philanthropic acts as a way of 'doing good' or giving back to society (see Chapter 1). That said, global development and trends on business' human rights responsibility will soon change this landscape.

States have traditionally been the primary actors having obligations to respect, protect, and fulfil human rights (see Chapter 3).<sup>11</sup> When dealing with corporate human rights issues, there can be issues of extra-territorial jurisdiction, which means that home states might have the obligation to protect human rights in foreign countries and regulate 'their' businesses impacting on the human rights of people in those countries (see Chapter 12).<sup>12</sup> Businesses do not have the same duty as states and are asked only to

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7 See, e.g., Law on Commercial Enterprise, Article 3. See also Chapter 6.

8 See Chapter 6.

9 Article 31.

10 See Chapter 3.

11 OHCHR, *International Human Rights Law* (2023) para.3, <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law#:~:text=By%20becoming%20parties%20to%20international,the%20%20enjoyment%20of%20human%20rights>.

12 See Gamze Erdem Türkelli, 'Extraterritorial human rights obligations and responsibility under international law' in M. Gibney et al, *The Routledge Handbook on Extraterritorial Human Rights Obligations*, Routledge, (2021) <https://www.taylorfrancis.com/chapters/oa-edit/10.4324/9781003090014-5/extraterritorial-human-rights-obligations-responsibility-international-law-1-gamze-erdem-t%C3%BCrkelli>; Samantha Besson, 'Due diligence and extraterritorial human rights obligations-mind the gap!' ESIL Reflections (2020), pp.3-4 <https://esil-sedi.eu/wp-content/uploads/2020/04/ESIL-Reflection-Besson-S-3.pdf>.

respect human rights, meaning to not infringe internationally recognised human rights in their own operations and value chains. The UN Guiding Principles on Business and Human Rights (UNGPs), which is the leading authority on business and human rights, provide that businesses have the **responsibility to respect** all internationally recognised human rights, additional to their national legal obligations and own codes of conduct.

To fulfil this responsibility, businesses should take a number of **concrete steps**: develop a human rights policy to guide all their operations and activities; conduct human rights due diligence to avoid infringing human rights; and provide effective remedies for harms they caused or contributed to. Simply put, businesses need to avoid, address, and remedy adverse human rights impacts in their value chains (see Chapter 6). Importantly, businesses can adversely impact the whole spectrum of human rights, which means each and every human right in international treaties can be violated or undermined by business activities. That is possible because business can be involved in human rights abuses in more direct or indirect ways. Thus, according to the UNGPs, businesses, either upstream or downstream of value chains, may cause, contribute, or be directly linked to adverse impacts through their operations, products, or services via their business relationships with others.

As a first key step to managing their adverse impacts, businesses need to conduct a **human rights impact assessment** (HRIA) to identify and assess potential and actual adverse human rights impacts of their business operations, products, or services through their business relationships with others. Adverse human rights impacts arise when an action removes or reduces the ability of an individual to enjoy his or her human rights. Human rights violations refer to the deprivation of an individual's human rights. In some cases, it is difficult to distinguish between adverse impacts and rights violations. Using a human rights-based methodology, an HRIA involves analysing the effects that business activities have on rightsholders such as workers, local communities, consumers, and others.<sup>13</sup> For example, the Equator Principles (EP) offer a framework for analysis of financial institutions and their human rights impacts (see Chapter 10). The EP suggest using a methodology of understanding specific impacted rights, affected groups, and the extent and level of risks to address. The EP also include certain suggestions for businesses with regard the scope of remediation.<sup>14</sup>

Although businesses may debate their responsibilities concerning direct and indirect adverse human rights impacts or violations they cause, contribute, or are directly linked to, they are expected to be accountable to all stakeholders, especially affected individuals or communities. This expectation provided in the UNGPs and many other **international frameworks** (see Chapter 3), is based on principles of international human rights law<sup>15</sup> as well as business notions of 'sustainable' or 'responsible' leadership.<sup>16</sup> For example, according to theories of responsible leadership, the accountability of businesses to stakeholders includes, but is not limited to, legal obligations, human rights, society, sustainability, and the environment.<sup>17</sup>

13 The Danish Institute for Human Rights, *Human rights impact assessment guidance and toolbox* (2020) <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox>.

14 Equator Principles, *Guidance note on implementation of human rights assessments under the equator principles* (2020) [https://equator-principles.com/app/uploads/Human\\_Rights\\_Assessment\\_Sept2020.pdf](https://equator-principles.com/app/uploads/Human_Rights_Assessment_Sept2020.pdf).

15 UN Guiding Principles on Business and Human Rights, Principle 12.

16 A. Friedman & S. Miles, Stakeholders: Theory and practice, OUP, (2006) pp.21, 22, para.2; Nancy E. Landrum & Cynthia M. Daily, 'Corporate Accountability: A Path-Goal Perspective' *International Journal of Business Insights and Transformation* 4(3) (2012) p.60 [https://ecommons.luc.edu/cgi/viewcontent.cgi?article=1022&context=ies\\_facpubs](https://ecommons.luc.edu/cgi/viewcontent.cgi?article=1022&context=ies_facpubs); Muhammad T. Khan et al, 'Corporate social responsibility (CSR)- definition, concepts and scope' *Universal Journal of Management and Social Sciences* 2(7) (2012) p.41, para.2 [https://my.uopeople.edu/pluginfile.php/57436/mod\\_book/chapter/121630/BUS%205115%20Unit%208%20CSR%20Definitions%20and%20Concepts.pdf](https://my.uopeople.edu/pluginfile.php/57436/mod_book/chapter/121630/BUS%205115%20Unit%208%20CSR%20Definitions%20and%20Concepts.pdf).

17 *Id.*

In the last few decades, amidst **fast economic growth**, business-related human rights violations have been well-documented across Cambodia's key sectors such as agribusiness, and the garment and tourism sectors, to name a few (see Chapters 13-14). Both local and foreign businesses, of all sizes, have caused, contributed, or been directly linked to, adverse human rights impacts and rights violations affecting workers, individuals, and local communities across the country. Some business operations and activities have also caused severe environmental impacts through deforestation, water pollution, waste-dumping, etc. In the meantime, corporate accountability and effective remedies, especially for land-related and other politically sensitive cases, remain rare.

For instance, the **garment sector** has significantly contributed to Cambodia's economic growth. Cambodian factories make clothes, footwear, and travel goods to supply international brands worldwide, especially the European Union (EU) and the United States (US). While this sector creates jobs for hundreds of thousands of workers, most of whom are young women from rural areas, a wide range of labour and human rights violations have been reported. Labour rights have been strengthened through joint efforts of relevant stakeholders, yet violations continue to arise due to gaps and weaknesses in the law and its implementation as well as irresponsible purchasing practices of international brands (see Chapter 13).<sup>18</sup> Common labour rights issues include: poor working conditions; low or unpaid wages and/or overtime work; illegal child labour; suppression of unions and freedom of assembly.<sup>19</sup> This sector has implicated many international fashion brands globally. As will be discussed, some international brands are alleged to have failed to pay wages during the recent pandemic.

**Economic land concessions** (ELCs) were considered an important tool for boosting Cambodia's economy and providing jobs to local people. The EU's Everything But Arms (EBA) trade scheme of tariff preferences led to the growth of ELCs, especially between 2000s-2010s.<sup>20</sup> However, the grant of ELCs often negatively impacted the human rights of local communities, as well as the environment.<sup>21</sup> Smallholder farmers and indigenous peoples communities have long been impacted by large-scale agribusiness investments. In some cases, their homes, farmlands, and/or ancestral lands and forests have been cleared to make way for large agribusiness projects. The grant of these ELCs sometimes violates private property rights or does not comply with the applicable legal requirements (e.g., environmental and social impact assessment, restrictions on types of land eligible for ELCs, and size restrictions). For indigenous peoples, the loss of access to forest lands impedes communities from exercising their rights to cultural and spiritual practices. Having lost their lands, affected communities have also lost their main source of livelihood and income, adversely impacting, among other rights, their right to a reasonable standard of living.

There are also cases of **deforestation in ELCs**, causing adverse impacts on the environment and water supply.<sup>22</sup> Deforestation is not just an environmental issue, as it also impacts other economic, social, and

18 Better Factories Cambodia, 'Annual Report: Joint Efforts Toward Sustainable Labour Compliance' (2019), p. 10, <https://better-work.org/wp-content/uploads/Cambodia-report-english-version-1.pdf>; Fashionating World, 'A Wake Up Call for the Cambodian Textile Industry' (2019) [http://www.fashionatingworld.com/new1-2/a-wake-up-call-for-the-cambodian-textile-industry#disqus\\_thread](http://www.fashionatingworld.com/new1-2/a-wake-up-call-for-the-cambodian-textile-industry#disqus_thread).

19 See Better Factories Cambodia Report (2019) n 17 above; Business & Human Rights Resource Centre (BHRRC), 'Cambodia: Impacts of COVID-19 on Cambodia's garment sector' (n.d.) <https://www.business-humanrights.org/en/from-us/covid-19-action-tracker/cambodia/>.

20 Saturnino M Borrás Jr, et al, 'Study on Land Grabbing and Human Rights: The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the European Union' European Parliament, Directorate-General for External Policies, Policy Department (2016), pp.32-34 [http://https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578007/EXPO\\_STU\(2016\)578007\\_EN.pdf](http://https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578007/EXPO_STU(2016)578007_EN.pdf).

21 See Kyle F. Davis et al, 'Accelerated deforestation driven by large-scale land acquisitions in Cambodia' *Nature Geosciences* (8) (2015) 772, <https://www.nature.com/articles/ngeo2540>.

22 See, e.g., Maren Pauly, Will Crosse, and Joshua Tosteson, 'High deforestation trajectories in Cambodia slowly transformed through economic land concession restrictions and strategic execution of REDD+ protected areas' *Scientific Reports* 12 (2022) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9568659/>; Earth Journalism Network, *Cambodia's land grab endangers people, forests, and the climate* (2022) <https://earthjournalism.net/stories/cambodias-land-grab-endangers-people-forests-and-the-climate>.

cultural rights of affected communities.<sup>23</sup> When harms arise, some affected communities spend years seeking remediation both inside and outside Cambodia from culpable businesses in the value chains. The former UN Special Rapporteur, Surya P. Subedi, expressed his concerns in 2012 on ELCs in Cambodia that affected various types of rights, and called for the state's 'immediate' actions on the environment. The Special Rapporteur also highlighted factors that led to the above issues, e.g. 'lack of transparency', 'mismanagement', and 'unsustainable natural resources exploitation'.<sup>24</sup>

Adverse human rights impacts and rights violations by businesses do not only harm the people but also **Cambodia's reputation and interests**. More generally, the human rights violations in the sugar industry and garment sector contributed to the EU's decision to withdraw Cambodia's trade preferences under the EBA scheme in 2020 (see chapter 12).<sup>25</sup> Notably, the effect of the partial withdrawal of the EBA coincided with the COVID-19 pandemic which caused serious economic impacts in Cambodia, especially on the garment sector, amid a global economic slowdown.<sup>27</sup>

Indeed, the protection of human rights and the environment has been progressively strengthened through various **regulatory measures and polices** during the last decade, e.g. extensive land registration measures, the amendment of Labour Law in 2021, requirement for a social impact assessment for certain sectors, the promulgation of the comprehensive Environmental and Natural Resources Code (2023), etc. (see Chapter 4). Nevertheless, business-related human rights violations and environmental impacts continue to be reported as gaps and weaknesses remain in the laws and their implementation.<sup>28</sup> As Cambodia's economy continues to develop, new adverse human rights risks and challenges will also arise, not to mention external shocks, such as the COVID-19 pandemic and global trade downturns.

### ANZ Case

A high-profile case which illustrates the challenges for businesses concerned ANZ Royal, a commercial bank. ANZ Royal, in which the Australia and New Zealand Banking Group Ltd. (ANZ Bank) had 55 percent shares, financed a Cambodian sugarcane business allegedly responsible for **land grabs and human rights violations** in Kampong Speu Province.<sup>29</sup> The company's sugarcane plantation resulted in more than 1,500 families from 21 villages being forcibly displaced or evicted from their farms or homes, and the destruction of their crops and property. Many affected families claimed to have ownership or legal possession of the lands, which were essential for their livelihoods. Arbitrary arrests and intimidation of villagers ensued. Child labour and labour rights violations, particularly harsh working conditions,

23 OHCHR, 'Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (2013) [https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/Mappingreport/1.ICESCR-24-Feb.docx#:~:text=Article%2012\(1\)%20of%20the,of%20environmental%20and%20industrial%20hygiene.%E2%80%9D](https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/Mappingreport/1.ICESCR-24-Feb.docx#:~:text=Article%2012(1)%20of%20the,of%20environmental%20and%20industrial%20hygiene.%E2%80%9D).

24 OHCHR, *Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Professor Surya P. Subedi* (2012) <https://www.ohchr.org/en/statements/2012/05/statement-united-nations-special-rapporteur-situation-human-rights-cambodia>. See also, Vitit Muntarbhorn, *United Nations Special Rapporteur on the situation of human rights in Cambodia, 'End of Mission Statement'* (2022) <https://www.ohchr.org/sites/default/files/documents/countries/kh/2022-08-26/SR-Cambodia-End-of-Mission-Statement.pdf>.

25 European Commission, *Trade/Human Rights: Commission decides to partially withdraw Cambodia's preferential access to the EU market* (2020) [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_229](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_229).

26 Dennis Arnold, 'Cambodia's Garment Sector in Transformation: External Shocks, Political Space and Supplier Consolidation' (2021) [https://www.academia.edu/45031402/Cambodias\\_Garment\\_Sector\\_in\\_Transformation\\_External\\_Shocks\\_Political\\_Space\\_and\\_Supplier\\_Consolidation](https://www.academia.edu/45031402/Cambodias_Garment_Sector_in_Transformation_External_Shocks_Political_Space_and_Supplier_Consolidation); Sangeetha Amarthalingam, 'The pandemic so far - Taking stock of economic losses, starting with the garment sector', *The Phnom Penh Post* (2021), <https://www.phnompenhpost.com/special-reports/pandemic-so-far-taking-stock-economic-losses-starting-garment-sector>.

27 Pierre-Olivier Gourinchas, *Global Economic Recovery Endures but the Road is Getting Rocky*, IMF Blog (2023) <https://www.imf.org/en/Blogs/Articles/2023/04/11/global-economic-recovery-endures-but-the-road-is-getting-rocky>.

28 For a comprehensive database, see BHRRC, search with 'Cambodia' filter [www.business-humanrights.org/en/latest-news/?&search=cambodia&language=en](http://www.business-humanrights.org/en/latest-news/?&search=cambodia&language=en).

29 Inclusive Development International (IDI), *Cambodia: Securing compensation for ANZ-backed land grab* (n.d.) <https://www.inclusivedevelopment.net/cases/cambodia-sugarcane-land-grabs/>.



were reported at the company's plantation. Facing destitution, many families had no choice but to work at the plantation; some had to remove their children from school to work on the plantation.<sup>30</sup> Besides legal and human rights violations, the plantation destroyed protected forests in the area and encroached into the protected Phnom Aural Wildlife Sanctuary.<sup>31</sup>

The ANZ bank became linked to the human rights violations and adverse impacts through its partial financing of the company's sugarcane refinery construction in 2011. Consequently, supported by local and international non-governmental organisations (NGOs), affected farmer families tried to seek redress from ANZ, even though its relationship with the Cambodian company had ended in July 2014.

The farmers submitted a complaint to the **Australian National Contact Point (AuNCP)** in 2014 against ANZ. It was alleged that ANZ contributed to the human rights violations and harms through its financing as it failed to conduct proper human rights due diligence (see Chapter 9) and then used its leverage on the company to address the harms and remediate affected families. These actions and omissions arguably violated the OECD Guidelines. Following failed mediation attempts in 2015, the AuNCP issued its decision in 2018, highlighting ANZ's failure to implement its own policies and procedures which were in line with the OECD Guidelines. The AuNCP asked ANZ to initiate measures to ensure compliance with its own human rights policies, strengthen its HRDD, and establish a human rights grievance mechanism.<sup>32</sup>

ANZ divested from Cambodia in 2018.<sup>33</sup> Given the pressure from international advocacy and the persistence of affected families in seeking remediation, ANZ eventually agreed (in 2020) to use loan revenue from the Cambodian company to compensate affected families for their harm, to review and strengthen its human rights policy and establish a human rights grievance mechanism (from 2021).<sup>34</sup> **ANZ's response** sets a rare human rights remediation precedent for the commercial banking sector globally. The case illustrates the far-reaching adverse human rights impacts and rights violations caused by business operations and exemplifies risks for being linked thereto. It shows the challenges faced by affected communities seeking remedies from businesses in the value chains.

### **NagaWorld Case**

NagaWorld, a subsidiary of the Hong Kong-listed firm NagaCorp, declared a **mass layoff** of 1,329 workers. The business cited significant revenue losses due to the COVID-19 impact on Cambodia's tourism and the need to ensure the business's sustainability and employment for the remaining workers. However, over 300 laid-off employees claimed that the business still recorded profits and that the mass layoffs were an excuse to remove union members and workers representatives. They alleged the lack of transparency and discrimination against union members and worker representatives in the mass layoff and reinstatement decisions. The employees sought reinstatement and a recalculation of the compensation and severance packages.<sup>35</sup>

The case was submitted to the national **Arbitration Council** for a solution. In its non-binding award, the Arbitration Council refused to decide on the company's mass layoff decision and referred the issue to the Ministry of Labour. It noted, however, that the company executed the mass layoffs before receiving

30 *Id.*; Australian National Contact Point (AusNCP), 'Final Statement' (2018) [https://ausncp.gov.au/sites/default/files/inline-files/11\\_AusNCP\\_Final\\_Statement.pdf](https://ausncp.gov.au/sites/default/files/inline-files/11_AusNCP_Final_Statement.pdf).

31 *Id.*

32 *Id.*, 2-3.

33 Reuters, ANZ to sell 55 percent stake in Cambodian joint venture to J Trust (2018) <https://www.reuters.com/article/us-anz-divestiture-cambodia-idUSKCN1I114Z>.

34 *Id.* n 23 above.

35 Arbitration Council, 'Case Number 012/21 NagaWorld Limited' (2021), pp.2, 3, 4-5, <https://www.arbitrationcouncil.org/download/012-21-naga-world-limited/?wpdmdl=13112&refresh=64f40a78eb31a1693715064>.



approval from the labour inspector. The tribunal also ordered the company to recalculate the employees' seniority pay, unused annual leave, and indemnity payments<sup>36</sup> The case remains unresolved. Since the case arose, affected employees have held protests which were often met with violent crackdowns and harassment by the police and company's security personnel. Leading union members have been arbitrarily arrested, detained, and criminally charged.<sup>37</sup>

As this case illustrates, a lack of human rights consideration and compliance with legal due process in the mass layoffs has led to infringements of labour rights, right to peaceful assembly, and right to access an effective remedy, among others. Moreover, from the outset, affected workers have also faced socio-economic impacts, e.g. loss of livelihood and income.

### COVID-19 pandemic

The recent **COVID-19** pandemic also contributed to adverse business impacts and violations of human rights, e.g., occupational safety and health risks; mass layoffs; unpaid wages; and suppression of union activities. The pandemic caused severe economic impacts on key Cambodian sectors, especially the garment and tourism sectors.

In the **garment sector**, the pandemic gave rise to adverse human rights impacts including rights violations of workers. As factories were forced to close due to disrupted material supplies from China and cancelled orders from buyers in the EU and US, hundreds of thousands of workers were suspended or their employment terminated. Those who managed to keep their jobs had to work fewer hours. Job loss or decreased income significantly undermined the livelihood of the workers and their dependents.<sup>38</sup> In addition, there were multiple other failures, such as: the non-implementation of COVID-19 health safety measures; unpaid wages; unfair mass dismissals, lay-offs without severance pay; and union-busting activities.<sup>39</sup> Many international fashion brands, such as Adidas, Nike, and Gap, have been accused of 'wage theft' during the COVID-19 lockdown, depriving workers of approximately USD109 million in wage losses. Together with outstanding wages and severance pay from the first 13 months of the pandemic, garment workers are owed about USD393 million in total.<sup>40</sup> Affected workers, whose livelihoods have been adversely impacted, still demand their outstanding wages from the international brands. Since the pandemic, union busting is also reportedly rampant in this sector, with many employers using the pandemic to justify laying off union leaders and worker representatives.<sup>41</sup>

36 Id, pp.30-46.

37 See, e.g., Danielle Keeton-Olsen, 'Cambodian police crackdown on casino workers after lay-off negotiations with Hong Kong-listed NagaCorp stall', South China Morning Post (2022) <https://www.scmp.com/week-asia/people/article/3162210/cambodian-police-crack-down-casino-workers-after-lay-negotiations>; BHRRC, *NagaWorld* (2023) <https://www.business-humanrights.org/en/latest-news/?&search=nagaworld&language=en>.

38 Sabina Lawreniuk and Veasna Nuon, 'Social Protection for the Apparel Industry in Cambodia: Gaps and Opportunities' Oxfam in Cambodia (2022) <https://cambodia.oxfam.org/latest/policy-paper/social-protection-apparel-industry-cambodia-gaps-and-opportunities>; Dennis Arnold, 'Cambodia's Garment Sector in Transformation: External Shocks, Political Space and Supplier Consolidation' (2021) [https://www.academia.edu/45031402/Cambodias\\_Garment\\_Sector\\_in\\_Transformation\\_External\\_Shocks\\_Political\\_Space\\_and\\_Supplier\\_Consolidation](https://www.academia.edu/45031402/Cambodias_Garment_Sector_in_Transformation_External_Shocks_Political_Space_and_Supplier_Consolidation); Open Development Cambodia, *Socio-economic impact of COVID-19 on Cambodia* (2020) <https://opendevdevelopmentcambodia.net/profiles/socio-economic-impact-of-covid-19-on-cambodia/>.

39 BHRRC, *Cambodia: Impacts of COVID-19 on Cambodia's garment sector* (2022) <https://www.business-humanrights.org/en/from-us/covid-19-action-tracker/cambodia/>.

40 Public Eye, *Fashion brands fails to address pandemic-era wage theft in Cambodia: Garment workers deprived of USD109 million* (2023) <https://www.publiceye.ch/en/topics/fashion/fashion-brands-fail-to-address-pandemic-era-wage-theft-in-cambodia-garment-workers-deprived-of-109-million>.

41 Human Rights Watch, *Cambodia: Covid-19 Pandemic Used for Union Busting: Severe Restrictions, No Redress for Garment, Tourism Workers* (2022) <https://www.hrw.org/news/2022/11/21/cambodia-covid-19-pandemic-used-union-busting>. See further, Human Rights Watch, 'Only "Instant Noodle" Unions Survive: Union Busting in Cambodia's Garment and Tourism Sectors' (2022) <https://www.hrw.org/report/2022/11/21/only-instant-noodle-unions-survive/union-busting-cambodias-garment-and-tourism>.

The pandemic also heavily hit Cambodia's **tourism**, resulting in many restaurants, hotels, casinos, hospitality, and other entertainment establishments shut down temporarily or permanently. Consequently, workers were suspended or lost their jobs. Similar to the garment sector, there have been controversies regarding mass lay-offs during the pandemic. Trade unions claim that mass lay-offs, many of which do not follow legal due process, are an opportune pretext to weaken unions. A high-profile case which sheds light on the issue is NagaWorld.

### Other Emerging Issues and Challenges

In the last decade, business and human rights risks have noticeably emerged in various forms and sectors, such as in the **casino and hospitality industry** and, more recently in the financial sector. A critical example in the casinos and hospitality industry is the case of Chinese-owned enterprises in Sihanoukville. According to the US State Department's 2023 Trafficking in Persons Report, these businesses pushed more young Cambodian women into forced labour, including sex trafficking. Meanwhile, Cambodia has also become a destination country for human trafficking. Thousands of young Chinese and other Asian nationals have been trafficked to work in online gambling and internet scam operations in the coastal city.<sup>42</sup>

In September 2022, the Cambodian authorities carried out large-scale crackdowns in Sihanoukville.<sup>43</sup> However, these were said to barely touch the surface of the problem.<sup>44</sup> Some **human trafficking** and internet scam rings moved to the neighbouring province, Kampot. There, a five-star hotel was found to house internet scams and human trafficking operations. Dozens of Taiwanese were rescued after being detained by the so-called Big Fatty gang which allegedly trafficked 31 Taiwanese to a cluster of buildings located 100 meters away from the hotel, both of which are reportedly managed by a large Cambodian business, the Sokimex Investment Group. Torture, rape, violence, and harassment were alleged during their detainment.<sup>45</sup> Chinese, Vietnamese, Thai, Saudi Arabian, Malaysian, and Indonesian nationals were also reportedly detained in those buildings operating internet scams. The hotel denied any knowledge of the case and refused to discuss the matter.<sup>46</sup> Forced labour and human trafficking are serious violations of human rights and Cambodian law. That the case occurred within its premise raises serious questions regarding the hotel's compliance with legal and human rights obligations.

Emerging adverse human rights impacts that have drawn international attention in recent years involve the lending and loan collection practices by Cambodian financial institutions. As many poor Cambodians have increasingly sought small loans to support their livelihood or business, microfinance has become a

42 US Embassy in Cambodia, *2023 Trafficking in Persons Report: Cambodia* (2023) <https://kh.usembassy.gov/2023-trafficking-in-persons-report-cambodia/>. See also, Global Alliance Against Traffic in Women, *Complaint to the ASEAN Inter-Governmental Commission on Human Rights* (2023) <https://gaatw.org/events-and-news/68-gaatw-news/1270-complaint-to-the-asean-inter-governmental-commission-on-human-rights#bookmark90>; Helen Davidson and Chi Hui Lin, 'Hundreds of Taiwanese trafficked to Cambodia and held captive by telecom scam gangs' (2022) *The Guardian* <https://www.theguardian.com/world/2022/aug/23/hundreds-of-taiwanese-trafficked-to-cambodia-and-held-captive-by-telecom-scam-gangs>; BBC News, 'Cambodia Scams: Lured and Trapped into Slavery in South East Asia' (2022) <https://www.bbc.com/news/world-asia-62792875>. See, also, Vitit Muntarbhorn (2022) n 22 above.

43 Sam Sopich, 'Sihanoukville: 1,480 people found in a four-day massive crackdown', *Cambodianess* (2022) <https://cambodianess.com/article/sihanoukville-1480-people-found-in-a-four-day-massive-crackdown>.

44 Sorn Sarath, 'Most scam compounds in Sihanoukville remain unnamed as authorities downplay human trafficking' *Camboja News* (2022) <https://cambojanews.com/most-scam-compounds-in-sihanoukville-remain-unnamed-as-authorities-downplay-human-trafficking/>; Huang Yan, 'Under foreign pressure, Cambodia dismantles some 'scam' compounds' *Nikkei Asia* (2022) <https://asia.nikkei.com/Politics/Under-foreign-pressure-Cambodia-dismantles-some-scam-compounds>.

45 Yan Huang and Sovann Sreypich, 'Scams, Human Trafficking Thrived at Bokor Mountain Behind Tycoon's Luxury Hotel' *Camboja News* (2023) <https://cambojanews.com/scams-human-trafficking-thrived-at-bokor-mountain-behind-tycoons-luxury-hotel/>; Helen Davidson and Chi Hui Lin, 'Hundreds of Taiwanese trafficked to Cambodia and held captive by telecom scam gangs' *The Guardian* (2022) <https://www.theguardian.com/world/2022/aug/23/hundreds-of-taiwanese-trafficked-to-cambodia-and-held-captive-by-telecom-scam-gangs>

46 Yan Huang and Sovann Sreypich (2023) n 43 above.

fast-growing sector. As this sector grows, human rights and socioeconomic impacts have been raised concerning the predatory lending and aggressive collection practices of Cambodian **banks and microfinance institutions** (MFIs).<sup>47</sup> Cambodian banks and MFIs commonly require land titles as collateral and pressure land sales to repay due loans. These practices adversely impact and violate human rights, namely through loss of land or valuable assets, risk of homelessness, loss of livelihoods, food insecurity, health impacts, forced migration, and child labour.<sup>48</sup>

In 2022, representing a group of borrowers, two leading local NGOs submitted a **complaint to the International Financial Corporation (IFC)**'s Complaint Advisor Ombudsman (CAO) regarding the lending and collection practices of six Cambodian financial institutions (FIs) which are clients and sub-clients of the IFC.<sup>49</sup> Borrowers in the complaint, who received loans from one or more of the FIs, claimed, variously: loss of land, livelihoods, and/or income; food insecurity; and health impacts due to the FIs' 'predatory and deceptive lending practices'.<sup>50</sup> The CAO accepted and assessed the complaint. The FIs claimed that their lending and collection practices were legal and ethical in line with domestic law and relevant soft-law instruments, including their Environmental and Social Management System policies. A few FIs denied any wrongdoings. As the FIs have thus far refused to engage in the dispute resolution, the case will be forwarded to a compliance appraisal to determine its merits for further investigation.<sup>51</sup>

Many international financiers, particularly from the EU and the US, have invested heavily in Cambodia's microfinance sector despite reports of adverse impacts and violations of human rights. They are now asked to take responsibility for the harms they allegedly contribute to via their investments in Cambodian banks and MFIs.<sup>52</sup>

## 4. Further discussion

**A** key challenge relates to **legal frameworks**, including loopholes and inconsistencies in the law, poor legal enforcement, weak judiciary and state governance, corruption, but also socioeconomic constraints faced by individuals leading them to accept human rights abuses and abuse of power by businesses. Often, affected individuals or communities were not meaningfully consulted or did not receive any prior notice before the business projects were implemented.<sup>53</sup> Some did not know how to

47 See, e.g., Naly Pilorge, 'Opinion: Human Rights and Ethical Concerns in Cambodia's Microfinance Sector' *Cambodianess* (2021) <https://cambodianess.com/article/opinion-human-rights-and-ethical-concerns-in-cambodias-microfinance-sector>; Equitable Cambodia and LICADHO, 'Right to Relief: Indebted Land Communities Speak Out' (2021) <https://www.mficambodia.com/reports/Report-RightToRelief-2021-en.pdf>.

48 On unethical behaviour and human rights abuses, see, e.g., Sahnakum Teang Thaut and LICADHO, 'Collateral Damage: Land loss and abuses in Cambodia's microfinance sector' (2019) [https://www.licadho-cambodia.org/reports/files/228Report\\_Collateral\\_Damage\\_LICADHO\\_STT\\_Eng\\_07082019.pdf](https://www.licadho-cambodia.org/reports/files/228Report_Collateral_Damage_LICADHO_STT_Eng_07082019.pdf); OHCHR, 'Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights' A/HRC/48/49 (2021) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/254/52/PDF/G2125452.pdf?OpenElement>.

49 These FIs are linked to 18 active IFC projects that finance lending programs for micro, small, and medium enterprises (MSME). Compliance Ombudsman Office (CAO), 'CAO Assessment Report' (2014), pp.1-2, [https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReport\\_HarmonHall-02-06-English.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReport_HarmonHall-02-06-English.pdf).

50 *Id.*, pp.3-4, 5.

51 *Id.*, pp.5-8.

52 See, e.g., Ujan Natik, 'Recent complaint submitted to the Dutch NCP exposes structural human rights violations by Cambodian microfinance institutions' *Nova Centre on Business, Human Rights and the Environment Blog* (2023) <https://www.oecdwatch.org/recent-complaint-submitted-to-the-dutch-ncp-exposes-structural-human-rights-violations-by-cambodian-microfinance-institutions/>.

53 See, e.g., Ratha Thuon, 'Holding corporations from middle countries accountable for human rights violations: a case study of the Vietnamese company investment in Cambodia' *Routledge* 15(1) 2018, p.157, 161; LICADHO, 'Smoke on the water: A social and human rights impact assessment of the destruction of the Tompoun/Cheung Ek wetlands' (2020), p.2 [https://www.licadho-cambodia.org/reports/files/231Smoke%20on%20the%20Water\\_Eng\\_Final..pdf](https://www.licadho-cambodia.org/reports/files/231Smoke%20on%20the%20Water_Eng_Final..pdf).



proceed with their complaints and found it too hard to challenge powerful or well-connected businesses. Some submitted complaints, but they were ignored, threatened, or received unfair compensation.<sup>54</sup>

In term of **wages**, although unions perceive that the minimum wage in the garment sector remains low for employees to live with dignity, the unions see the challenges in that Cambodia needs to stay competitive to attract foreign investment.<sup>55</sup> For instance, the minimum wage set in 2021 is insufficient for workers to afford their basic needs<sup>56</sup> and ‘decent living’ standards, including affordability of healthcare, education, food, housing and commuting costs,<sup>57</sup> all of which are linked to human rights in the ICESCR. The above issues are intertwined and compounded, especially when legal enforcement remains ineffective due to high associated costs, a lack of impartiality, and corruption.<sup>58</sup> In the courts, unofficial fees are reportedly demanded. Moreover, impunity still exists, especially for those who are well connected with powerful people.<sup>59</sup>

The above challenges also reflect a **dilemma** the state faces in balancing economic priorities and strengthening the protection of human rights. As seen during the COVID-19, the government supported businesses to survive during times of serious economic disruption, but also to save as many workers and employees as possible from losing their jobs and livelihoods. While investments are crucial for Cambodia’s economic development, Cambodia needs to ensure stronger human rights protection and compliance by businesses to maintain export markets and attract responsible investors. For instance, Cambodia needs to ensure strong labour standards to maintain its trade preferences under the US’s Generalised System of Preferences (GSP).<sup>60</sup> With emerging hard laws on business and human rights in the Global North, investors from developed countries may fear legal consequences for being implicated in human rights violations in the host state or value chains.

Arguably, Cambodia’s strong economic relations with China, through, for example, China’s **Belt and Road Initiative** (BRI), may moderate the expectation of any immediate regulatory actions to ensure business respect for human rights in the country. Notably though, in recent years, China has attempted to position itself as a responsible home state of foreign direct investments; even so, human rights concerns have been raised regarding the BRI-related projects in Cambodia.<sup>61</sup>

Despite the above challenges and dilemma, Cambodia does have a strong imperative to ensure business respect for human rights in order to achieve a sustainable and inclusive development in line with the UN Sustainable Development Goals.

54 *Id.*

55 David Birchall, ‘Corporate power over human rights: An analytical framework’ *Business and Human Rights Journal* 6(1) 2021, p.60 <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/corporate-power-over-human-rights-an-analytical-framework/EDEE9A93D44E0C700C1E59828BE0939D>.

56 Ethical Trading Initiative, *ETI responds to Cambodia's new minimum wage for garment workers* (2021) <https://www.ethicaltrade.org/blog/eti-responds-to-cambodias-new-minimum-wage-garment-workers>.

57 OHCHR, *A human rights analysis of the draft law on minimum wage* (2018), p.6 <https://cambodia.ohchr.org/sites/default/files/Analysis%20of%20Minimum%20Wage%20Law%20EN%20FINAL%20for%20PUBLICATION.pdf>.

58 See, e.g., Khuon Narim, ‘Cambodia perceived as highly corrupt, despite incremental improvement’, *Camboja News* (2023) <https://cambojanews.com/cambodia-perceived-as-highly-corrupt-despite-incremental-improvement/>.

59 Just Access, *Corruption in Cambodia and the influence of the international level* (2023) <https://just-access.de/corruption-in-cambodia-and-the-influence-of-the-international-level/>.

60 Office of the US Trade Representative, *U.S.-Cambodian Textile Agreement Links Increasing Trade with Improving Workers’ Rights* (2002) [https://ustr.gov/archive/Document\\_Library/Press\\_Releases/2002/January/US-Cambodian\\_Textile\\_Agreement\\_Links\\_Increasing\\_Trade\\_with\\_Improving\\_Workers'\\_Rights.html](https://ustr.gov/archive/Document_Library/Press_Releases/2002/January/US-Cambodian_Textile_Agreement_Links_Increasing_Trade_with_Improving_Workers'_Rights.html).

61 Human Rights Watch, *Underwater: Human Rights Impacts of a China Belt and Road Project in Cambodia* (2021) <https://www.hrw.org/report/2021/08/10/underwater/human-rights-impacts-china-belt-and-road-project-cambodia>.

**B**usinesses can comprehensively impact all human rights. In Cambodia, pressing business and human rights issues tend to evolve around, variously: labour rights (such as wages, suppression of trade unions, forced labour, illegal child labour, and human trafficking); land conflicts involving business interests, including indigenous peoples' rights to their lands; and new issues such as predatory lending and aggressive loan collection practices. A range of adverse impacts and other rights violations often follow when people mobilize and claim their rights, namely: freedom from arbitrary arrest or detention, freedom of expression, and the right to an effective remedy. Some human rights violations are direct violations of domestic law. In addition to human rights, businesses may also cause or contribute to serious environmental impacts.

As seen in the case examples, business and human rights issues often arose from weaknesses in domestic laws and their implementation by relevant institutions and courts. Some businesses take advantage of this permissive environment to maximise their profits and to disregard human rights with impunity. While corruption remains high, human rights are often set aside in favour of business interests. As some of the examples in this chapter have shown, respecting human rights requires more than compliance with domestic laws, which often fall short of protecting all human rights.

Businesses should observe international human rights instruments such as the UNGPs and other soft-law instruments with regard to responsible business conduct (see Chapter 3). New laws making human rights due diligence mandatory appearing in industrialised states and they create new risks of legal liability and market sanctions. Businesses also increasingly face a range of business risks such as reputational risk, divestment by investors, and loss of the 'social license' to operate. To ensure legal compliance and long-term business growth, businesses should respect human rights in their operations, products, and/or services through their business relationships with others. To that end, they should create a human rights policy and integrate human rights principles into their corporate governance and management systems; conduct human rights due diligence; and establish a grievance mechanism. Businesses that start early will be better prepared to manage both human rights and environmental risks in value chains, as well as global challenges arising from new technologies and climate change.

## 6. Further readings

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<https://journals.openedition.org/poldev/2051>.
3. Jaspreet Chahal, *Human Rights Violations in Cambodia's Garment Industry* (2021)  
<https://www.durhamasianlawjournal.com/post/human-rights-violations-in-cambodia-s-garment-industry>.
4. Saturnino M Borrás Jr., et al, 'Study on Land Grabbing and Human Rights: The Involvement of European Corporate and Financial Entities in Land Grabbing Outside the *European Union*' *European Parliament, Directorate-General for External Policies, Policy Department* (2016)  
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# **CHAPTER 3**

## **International Frameworks for RBC**



**Radu Mares, Bora Meas**

**T**his chapter explains the **international framework** for responsible business conduct (RBC) and places it in the context of the international law framework for human rights. Even though business and human rights (BHR) and responsible business conduct (RBC) are a more recent topics, international standards for human rights have been developed and refined by the UN over seven decades. These international treaties, negotiated by States and monitored and interpreted by UN mechanisms, constitute the authoritative, ethical and legal framework of which both States and businesses should be mindful. However, these treaties create obligations only for States and apply only indirectly to the private sector so without creating direct legal obligations or sanctions. Instead, businesses are subject to legal obligations only under the national law of the countries where they operate. As the operations of multinational enterprises and their negative impacts on human rights and the environment attracted increasing attention since the 1990s, international organizations have developed RBC instruments. Prime examples are the UNGPs (2011) and the OECD Guidelines for MNEs (2023) that apply directly to businesses and create corporate ‘responsibilities’ – not legal ‘obligations’ – and are therefore considered international ‘soft’ law.

This chapter offers a **comprehensive mapping** of international instruments that influence RBC and apply - directly or indirectly - to businesses. We clarify what is expected from States and businesses under international frameworks, as well as the monitoring and enforcement mechanisms. Indeed, one cannot analyze RBC without being mindful of the legal and policy framework created by States, and that framework cannot be discussed without referring to the international human rights obligations States have assumed under international law. We follow up by discussing the relevance and impacts of these international instruments in Cambodia. Thus, readers will understand how these international frameworks operate and what likely influence they might have on the rights of Cambodian residents and business activities in Cambodia.

This **chapter** complements chapter 4 that is dedicated solely to the national laws and policies of Cambodia regarding human rights and RBC. It also complements Chapter 12, which explains how home countries of multinational enterprises (traditionally industrialized countries where corporate headquarters are located) increasingly regulate these businesses and their worldwide operations (including in Cambodia). For exactly what is expected from businesses under international frameworks, chapter 6 explains how businesses should undertake human rights due diligence (HRDD) and respect human rights in practice.

## 2. Frameworks

**T**his subsection introduces **three categories of international frameworks**: first, specific RBC instruments; second, international economic agreements that facilitate trade, investment and development, and third, human rights treaties especially concluded under the auspices of the UN. For each of them we present the rights and obligations, as well as monitoring and enforcement mechanisms. Some of these instruments will be legally binding (hard law) while others are non-binding but still influential in clarifying standards and responsibilities (soft law).

Both **hard and soft laws** have been important in the development of international human rights law which contains both treaties and numerous UN declarations and resolutions. In RBC, there are currently only soft law instruments; discussions for a UN treaty on RBC are advancing slowly. Economic instruments and treaties, such as free trade and investment agreements, create legally enforceable rights and obligations as they seek to facilitate the flow of goods, services and capital. By comparison, human rights treaties are also hard law, but the enforcement mechanisms are notoriously weak.

Thus the international framework for RBC contains both soft and hard law instruments. The three categories of frameworks are **interrelated** in the meaning that RBC instruments refer to human rights as agreed by States and interpreted by UN system. Similarly, in those situations when trade and investment agreements refer to RBC, labour standards, and human rights, they refer to international instruments from the UN and the ILO, not to national values or ethics.

**International treaties** are agreements negotiated among sovereign States, usually in international forums such as the United Nations. As defined by the Vienna Convention on the Law of Treaties (1969), “treaty” means an international agreement concluded between States in written form and governed by international law. Such treaties create rights and obligations among States that choose to ratify the treaty. **International soft law** is inherently non-binding, and it can affect business conduct in several ways: it guides businesses; it provides legitimacy to civil society activism; it can catalyse political will for States to adopt laws; and it can even help courts with interpretation of law. Soft law can thus have legal effects and practical impacts.

## 2.1 International instruments on RBC

There is currently no international treaty on corporate human rights obligations. That means neither States, nor businesses, are currently subject to a detailed treaty in the BHR area. However, there are many international soft law instruments that cover RBC. These frameworks are not new, but started to appear in the 1970s to address multinational enterprises.

The primary UN instrument nowadays in BHR is the **UNGPs** adopted in 2011. The UNGPs were developed during a 6-year mandate of Prof. John Ruggie, who was appointed Special Representative of the Secretary General (a ‘special procedure’ in the UN system; see section 2.3). Although a soft law instrument, the UNGPs have become an authoritative reference point in BHR and RBC more broadly for several reasons. First, they were developed through participatory processes, involving States, businesses, NGOs, academia and other professionals, as well as regional consultations and field visits. Second, the States in the UN Human Rights Council endorsed the UNGPs unanimously and thus State support came from all regions in the world, from industrialised and developing countries alike. Third, support came not only from States, but also from the business sector (including large companies and business associations) and from parts of civil society. Fourth, they have proven influential as other soft law frameworks were revised in subsequent years to be aligned with the UNGPs (e.g. on human rights due diligence) and some developed countries adopted national laws to make due diligence a legally binding obligation (see Chapter 12). Finally, a range of business actors (companies, investors, trade associations) from diverse industrial sectors have begun to include the UNGPs in their policies and systems. In practice, however, it is a small minority of businesses that rigorously apply the UNGPs, so measuring their impact over the last decade has been a difficult task.<sup>1</sup>

The UNGPs refer to all human rights as developed in international law. Indeed, the UNGPs recognise that business activities can impact every human right (civil, political, economic, social, and cultural rights). Businesses are asked to respect human rights and undertake ‘human rights due diligence’ throughout their operations and value chains (Principles 11-24). The UNGPs also clarify the obligations of States to regulate the private sector and usefully specify what States could and should do as part of their obligation to protect human rights (Principles 1-10). Furthermore, the UNGPs adopt a victim perspective and reaffirm the rights of victims to effective remedies and the importance of complaint and

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<sup>1</sup> See the OHCHR, Guiding Principles on Business and Human Rights at 10: taking stock of the first decade, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (2021) [www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf).



remedial mechanism (Principles 25-31). All these aspects are included in the UNGP, which is referred to as the ‘**protect-respect-remedy**’ framework. Through the UNGPs there is now more clarity and widespread agreement about both State obligations and corporate responsibilities.

In terms of **implementation**, the UNGPs are implemented through the UN system. Since 2011, there has been a Working Group of five experts that has had the mandate to promote and monitor the implementation of UNGPs.<sup>2</sup> All three monitoring mechanisms of the UN – the treaty bodies, the special procedures, and the Universal Periodic Review (UPR) (see section 2.3) – are actively using the UNGPs to question the States about their legal systems and policy reforms. At the national level, some States have adopted the National Action Plans (NAPs) on BHR.<sup>3</sup> Also National Human Rights Institutions (NHRIs) have sometime taken a leading role in both using the UNGPs in their evaluations of the private sector and promoting NAP processes. Some States, especially in Europe, have adopted new laws on corporate due diligence modelled on the UNGPs (see Chapter 12). However, many remain sceptical about the impact and implementation of the UNGPs, and point to the inherent limitations of a soft law instrument, and the need for a UN treaty and stringent national laws to ensure corporate accountability. They consider that only strong legal incentives, together with market and societal pressures, can change business models and tame market forces pushing for profit maximization and shareholder primacy.<sup>4</sup>

Another highly authoritative RBC instrument is the **OECD Guidelines** on Multinational Enterprises (MNEs), first adopted in 1976 and updated several times, including in 2023.<sup>5</sup> It is a soft law instrument enumerating an entire range of issues, from human rights and labour standards to environmental protection, taxation, transfer of technology, and consumer protection. The OECD Guidelines are fully consistent with the UNGPs. Actually, they were revised in 2011 to incorporate the corporate responsibility to respect human rights and to undertake due diligence as developed in the UNGPs. The Guidelines are implemented through a special mediation mechanism called the National Contact Point (NCP) system.<sup>6</sup> Thus, each OECD member States is obliged to set up an NCP that opens, for victims of corporate abuse, a new complaint mechanism. Victims can approach the NCP in the country where the multinational enterprise is headquartered. Still, not being a court, the NCP can offer only mediation services and publish a report with its findings. The OECD is the leading actor for detailed guidance on due diligence; it has developed a detailed OECD Due Diligence Guidance for RBC,<sup>7</sup> as well as six sector-specific guides on due diligence in industries such as finance, extractives, garment, and agriculture.<sup>8</sup>

The **UN Global Compact** started in 2000 as an initiative of the UN Secretary General.<sup>9</sup> It has, according to the UN, grown to become the largest CSR initiative in the world, and now includes 17,000 participants from 160 countries. From its inception, the Compact has been a ‘learning platform’ for businesses to learn and share their efforts to implement 10 principles on human rights, labour, environment and anti-corruption. Based at the UN headquarters, the Compact has numerous country and regional branches in both developed and developing countries. Since 2015 it has become the main portal for the

2 OHCHR, *About the mandate*, Working Group on the issue of human rights and transnational corporations and other business enterprises [www.ohchr.org/en/special-procedures/wg-business](http://www.ohchr.org/en/special-procedures/wg-business).

3 DIHR, *National Action Plans on Business and Human Rights* (database) [www.humanrights.dk/projects/national-action-plans-business-human-rights](http://www.humanrights.dk/projects/national-action-plans-business-human-rights).

4 Surya Deva, ‘Business and Human Rights: Alternative Approaches to Transnational Regulation’, *Annual Review of Law and Social Science* (2021) [www.annualreviews.org/doi/full/10.1146/annurev-lawsocsci-113020-074527](http://www.annualreviews.org/doi/full/10.1146/annurev-lawsocsci-113020-074527).

5 OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023), p. 10 <https://doi.org/10.1787/81f92357-en>.

6 Nicolas Hachez and Allan Jorgensen, *National Contact Points for responsible business conduct and access to remedy: Achievements and challenges* (2021) <https://ccsi.columbia.edu/sites/default/files/content/docs/f-di%20perspectives/No%20317%20-%20Hachez%20and%20Jorgensen%20-%20FINAL.pdf>.

7 OECD, *Due Diligence Guidance for Responsible Business Conduct* (2018) <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

8 Id.

9 <https://unglobalcompact.org/>.



business sector to contribute to the UN SDGs. Companies are invited to work in partnership with various stakeholders, and to report every year.<sup>10</sup> Such reporting serves also as an accountability mechanisms and businesses can be excluded from the Compact for failure to submit reports or to cooperate in solving complaints regarding severe breaches (Systematic or Egregious Abuses).<sup>11</sup> For critics though, the Global Compact was a step in the wrong direction for the UN which, instead of prioritising the international regulation and sanctioning of irresponsible businesses, chose this partnership approach with the business sector, thereby endangering its legitimacy for little results.<sup>12</sup>

There are many other RBC frameworks, such as the ILO Tripartite Declaration concerning MNEs.<sup>13</sup> It focuses on labour aspects of RBC and was updated in 2022 to include HRDD as developed in the UNGPs, even though historically it proved to be less influential than expected. However, the **International Financial Corporation** (IFC), part of the World Bank Group providing finance and advice to the businesses sector, has become a highly influential guide on RBC. Thus, the IFC Performance Standards, adopted in 2012, have inspired the policies of many other development and commercial banks. The IFC refers to the UNGPs and HRDD and offers a detailed standard on 'Assessment and Management of Environmental and Social Risks and Impacts' as well as seven thematic standards for issues such as labour conditions, land acquisition and involuntary resettlement, and indigenous peoples.<sup>14</sup> The Compliance Advisor Ombudsman (CAO) is the IFC mechanism tasked with investigating complaints and mediating between victims and clients receiving IFC support. It has handled numerous cases, it is respected for its objectivity and critical findings, and information on cases is publicly accessible.<sup>15</sup>

Since 2014, there has been an ongoing UN process regarding a **Treaty on Business and Human Rights**.<sup>16</sup> The UN Treaty on Business and Human Rights was the first such treaty and turned the UNGPs from soft law to hard law. The treaty seeks to establish State obligations to prevent human rights abuses, hold businesses accountable and provide remedies to victims. The latest draft of the treaty available at the time of writing is from 2021. Negotiations on the treaty are advancing slowly, with major disagreements among States, and with many industrialized States being concerned or outright hostile to such an international law instrument. It is uncertain when such a treaty might be adopted and how many States will be willing to ratify and implement it.<sup>17</sup>

## 2.2 Trade and development instruments relevant to RBC

The last decades of **economic liberalization** have meant it has become progressively easier for goods, services and capital to flow across national borders. Export-oriented production and an attractive climate for foreign investors has become an important way to pursue economic development. To counteract such competition among States and respond to criticism that economic liberalization comes at a cost for human rights, some States have started to include provisions on human rights and environmental protection in trade agreements and to include RBC in investment treaties. There are thousands of trade and investment agreements and not all countries choose to link economics and human rights in this way.

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10 Global Compact, *Communication on Progress* <https://unglobalcompact.org/participation/report/cop>.

11 Global Compact, *Integrity Measures* <https://unglobalcompact.org/about/integrity-measures>.

12 Oliver F. Williams, *The United Nations Global Compact: What Did It Promise?* (2021) [https://cerv-mendoza.nd.edu/assets/478605/what\\_did\\_it\\_promise\\_.pdf](https://cerv-mendoza.nd.edu/assets/478605/what_did_it_promise_.pdf).

13 International Labour Organization (ILO), *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (2022) [www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm](http://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm).

14 IFC, *Performance Standards on Environmental and Social Sustainability* (2012) [www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standards-en.pdf](http://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standards-en.pdf).

15 Office of the Compliance Advisor Ombudsman, *Make Your Voice Heard* [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

16 OHCHR, BHR Treaty Process [www.ohchr.org/en/business-and-human-rights/bhr-treaty-process](http://www.ohchr.org/en/business-and-human-rights/bhr-treaty-process).

17 R. Mares, 'Draft UN Treaty on Business and Human Rights', in A. Marx et al (eds), *Research Handbook on Business and Human Rights* (Edward Elgar, 2022) [www.researchgate.net/publication/356264576\\_The\\_United\\_Nations\\_Draft\\_Treaty\\_on\\_Business\\_and\\_Human\\_Rights](http://www.researchgate.net/publication/356264576_The_United_Nations_Draft_Treaty_on_Business_and_Human_Rights).

Cambodia has signed several **bilateral investment agreements** (BITs).<sup>18</sup> Such BITs are meant to facilitate investment and the free flow of capital, and investors receive special protections and rights to sue the government. This can undermine the protection of human rights. Therefore, a recent development in international investment law is the recognition of the ‘right to regulate’ which, typically: (1) guarantees the freedom of each State to adopt policies in the public interest without fear of being challenged by foreign investors before international arbitration tribunals; and/or (2) commits the State parties to not to relax health, safety and environmental measures as a way of attracting foreign investment. Such safeguards confirming Cambodia’s ‘right to regulate’ are included in several recent BITs such as between Turkey and Cambodia, and Hungary and Cambodia.<sup>19</sup> The objective is that promotion of investment should not come at the expense of other public interest priorities. An excellent resource regarding investment agreements is the UNCTAD’s Investment Policy Hub.<sup>20</sup> It contains a comprehensive database on BITs, including the text of BITs, monitoring data and dispute settlement cases. The World Investment Report (WIR) is UNCTAD’s flagship annual report on investment trends, data and analysis.<sup>21</sup>

**International trade law** is a rapidly changing area that has begun to include provisions on social and environmental sustainability. The link between trade and labour rights was hotly debated in the mid-1990s when the World Trade Organization (WTO) was being set up. Developing countries feared protectionism and threats to their competitive advantage based largely on low labour costs. This foreclosed labour protections within the WTO system and relegated them to the International Labour Organization (ILO). Somehow unexpectedly, the link between trade and labour/human rights has begun to flourish since the mid-2000s at the levels of bilateral and regional free trade agreements (FTAs). The US trade agreements are known to be more coercive as they allow the use of trade sanctions for breaches of labour provisions. In contrast, the EU FTAs are known to be cooperative as there are no trade sanctions; this changed in 2022 when for the first time the EU policy allowed for trade sanctions in future FTAs for severe breaches of sustainability provisions. A highlight of the EU FTAs is stakeholder participation in the monitoring of FTAs; there are committees where NGOs have a seat although these Domestic Advisory Groups have worked less satisfactorily in practice. Both stakeholder participation (through DAGs) and trade and sustainable development (TSD) chapters demonstrate a change in recent practice (since 2011), and the EU has committed to improving their functioning.<sup>22</sup>

Another trade instrument is the **General System of Preferences** (GSP), which reduces or eliminates altogether tariffs and custom duties on exports. These are trade preference schemes set up in the 1970s to give less developed countries access to rich country markets on preferential terms.<sup>23</sup> The EU’s Everything But Arms (EBA) scheme is part of the GSP system and applicable to Cambodia. The GSP are unilateral measures rather than, like the FTAs, bilateral agreements, and can be reviewed and suspended by those industrialized countries granting GSP preferences (e.g. US, EU, Australia, Canada, UK). GSPs contain labour and human rights clauses as these trade instruments have a declared development objective. Such clauses are based on international human rights treaties, are monitored and discussed with the recipient State, and the sanction can be the withdrawal of preferences that bring tariffs and customs up to WTO levels.<sup>24</sup> The EU EBA and its application in Cambodia are discussed in detail in Chapter 12.

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18 For a complete list of Cambodia BITs, see

<https://investmentpolicy.unctad.org/international-investment-agreements/countries/33/cambodia>.

19 Agreement Between The Government Of The Republic Of Turkey And The Government Of The Kingdom Of Cambodia On The Reciprocal Promotion And Protection Of Investments (2018); Agreement Between Hungary And The Kingdom Of Cambodia For The Promotion And Reciprocal Protection Of Investments (2016)

20 UNCTAD, *Investment Policy Hub (database)* <https://investmentpolicy.unctad.org>.

21 UNCTAD’s annual WIRs are available at <https://unctad.org/topic/investment/world-investment-report>.

22 J. B. Velut et al., *Comparative Analysis of Trade and Sustainable Development Provisions* (LSE, 2022) [www.lse.ac.uk/business/consulting/assets/documents/TSD-Final-Report-Feb-2022.pdf](http://www.lse.ac.uk/business/consulting/assets/documents/TSD-Final-Report-Feb-2022.pdf).

23 UNCTAD, *The Generalized System of Preferences: How much does it matter for developing countries?* (2023) [https://unctad.org/system/files/official-document/ditctsce2023d1\\_en.pdf](https://unctad.org/system/files/official-document/ditctsce2023d1_en.pdf).

24 European Commission, *What is the Generalised Scheme of Preferences (GSP) and why is it important?* (2023) [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_4802](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_4802).



**Development banks** have general policies referring to human rights and projects in Cambodia. The Asian Development Bank (ADB) offers development finance and takes account of human rights aspects through its Safeguard Policy Statement (2009)<sup>25</sup> that refers to land issues (resettlement), indigenous people, and environmental protection. These safeguards are enforced through an accountability mechanism.<sup>26</sup> ADB has implemented a number of projects in Cambodia.<sup>27</sup> The World Bank (WB) also has advanced safeguards and accountability mechanisms for its financing of projects. The WB has a presence in Cambodia and a commitment of around USD 300m annually.<sup>28</sup>

The **Belt and Road Initiative** (BRI) is China's main global framework to promote investment in infrastructure. Since its launch in 2013, the BRI grew to covers projects in around 150 countries including Cambodia. In contrast with other international development banks, the BRI affirms principles of non-interference in domestic affairs and does not impose human rights conditions. This is consistent with China's view on human rights and international relations.<sup>29</sup>

## 2.3 International Human Rights as context for RBC

### Obligations of States under human rights treaties

The previous sections showed how RBC instruments and economic agreements refer to the UN and ILO definitions of human rights, and count on the UN mechanisms to monitor, interpret and enforce human rights. Indeed, the UNGPs as the prime RBC framework indicates that businesses should respect all human rights identified in international law and undertake due diligence. The EBA and free trade agreements ask countries to comply with the main UN and ILO treaties on human rights. Thus, a key source of information for the EU in withdrawing EBA preferences is the data from UN and ILO. Therefore, this subsection explains **the UN system**: the human rights treaties, the State obligations, and the three main protection mechanisms (Special Procedures, Treaty Bodies, and the Universal Periodic Review). It also refers to a soft law instrument on human rights relevant to the region, the ASEAN Human Rights Declaration.

**Cambodia** has ratified most international human rights treaties, including eight of the designated nine core UN human rights treaties (all but the UN treaty on migrant workers)<sup>30</sup> and eight of the eleven fundamental International Labour Organisation conventions.<sup>31</sup> This means that Cambodia is bound, at the international level, to observe its treaty obligations. These treaties have legal effect in Cambodia. Thus, under the Constitution of Cambodia, 'The Kingdom of Cambodia recognizes and respects human rights as enshrined in the United Nations Charter, the Universal Declaration of Human rights and all the treaties and conventions related to human rights, women's rights and children's rights.'<sup>32</sup>

Human rights law, a field of public international law, creates **obligations for States** to secure human rights. Since the beginning this law has covered the relationship between the State and its own citizens; thus, State conduct rather than corporate conduct has been the main focus. For example, in interpreting

25 Asian Development Bank (ADB), Safeguard Policy Statement, Policy Paper (2009) [www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-Statement-june2009.pdf](http://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-Statement-june2009.pdf).

26 FAQ [www.adb.org/who-we-are/accountability-mechanism/overview](http://www.adb.org/who-we-are/accountability-mechanism/overview); Annual report [www.adb.org/sites/default/files/institutional-document/809266/adb-accountability-mechanism-annual-report-2021.pdf](http://www.adb.org/sites/default/files/institutional-document/809266/adb-accountability-mechanism-annual-report-2021.pdf).

27 ADB, [www.adb.org/countries/cambodia/projects-results](http://www.adb.org/countries/cambodia/projects-results).

28 The World Bank (WB), Overview, The World Bank in Cambodia (2023) [www.worldbank.org/en/country/cambodia/overview](http://www.worldbank.org/en/country/cambodia/overview).

29 Malin Oud and Katja Drinhausen, *The Decoding China Dictionary* (2021) <https://decodingchina.eu>.

30 OHCHR, *The Core International Human Rights Instruments and their monitoring bodies (database)* [www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies](http://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies).

31 International Labour Organization(ILO), *Conventions and Recommendations (database)* [www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm](http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm).

32 Cambodia, *Cambodian Constitution*, Article 31.

the ICCPR, the Committee explained that obligations are binding on States [Parties] and do not, as such, have direct horizontal effect [on businesses] as a matter of international law.<sup>33</sup> Even if businesses are not bound directly by international treaties, human rights law has evolved to cover relations between individuals and private organizations, and States now have three levels of obligation: to respect, to protect, and to fulfill human rights.<sup>34</sup>

The **obligation to respect** human rights means that a State shall refrain from violating human rights. The State should not adopt laws restricting human rights, unless within the acceptable limitations allowed in international treaties. For example, the parliament should not pass laws discriminating against certain individuals and groups, and State institutions should not interpret laws and exercise their powers in an abusive or discriminatory manner. Furthermore, States shall raise awareness of human rights, especially amongst their public authorities, so that rights will not be violated by State authority. As an example of the obligation to respect, 'Each State Party to the present Covenant undertakes to respect...{for} all individuals...the rights recognised in the present Covenant...'<sup>35</sup>

The **obligation to protect** human rights means a State shall not merely refrain from infringing human rights, but must also act to safeguard human rights against violations by individuals and private organisations. This recognises that the State can not only restrict human rights, but also private entities. It is a State obligation to remove such private abuses of power and secure the enjoyment of human rights affected by businesses.<sup>36</sup> As an example, States shall 'take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant.'<sup>37</sup> Based on this, the State shall take effective measures to prevent, address and remedy human rights violations by non-State actors (third parties), including private businesses, just as is detailed in the UNGPs (Principles 1-10). Thus,

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication.<sup>38</sup>

The **obligation to fulfill** human rights means a State shall assist by providing emergency assistance or dismantle structural barriers so people can enjoy their human rights. That includes support in case of natural disasters but also interventions in markets, so people have access to essentials such as housing, water, food. The ECSR Committee asserts this type of obligation as:

33 Human Rights Committee, General Comment No. 31 (2004) The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, *International Covenant on Civil and Political Rights* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en).

34 Committee on Economic, Social and Cultural Rights, *General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en..](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en..)

35 OHCHR, *International Covenant on Civil and Political Rights*, (1966) Article 2 (1) [www.ohchr.org/en/professionalinterest/pages/ccpr.aspx](http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx).

36 Committee on Economic, Social and Cultural Rights, *General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en).

37 ICCPR, Article 2.

38 UNGPs, *Principle 1 Commentary*.

The obligation to fulfil requires States parties to take necessary steps, to the maximum of their available resources, to facilitate and promote the enjoyment of Covenant rights, and, in certain cases, to directly provide goods and services essential to such enjoyment. Discharging such duties may require the mobilization of resources by the State, including by enforcing progressive taxation schemes. It may require seeking business cooperation and support to implement the Covenant rights and comply with other human rights standards and principles.<sup>39</sup>

### UN Mechanisms for Human Rights

The UN system monitors the implementation of these international treaties through a range of mechanisms. There are three main mechanisms: the treaty bodies, the special procedures, and the Universal Periodic Review. All three regulatory scrutinize RBC and engage States in RBC discussions by using the UNGPs as a reference point (did the State adopt laws, policies and complaints mechanisms re business sector as per Pillars 1 and 3 of UNGPs? Is the State taking measures so businesses under their jurisdiction undertake HRDD as per Pillar 2 in the UNGPs?)

First, the **treaty bodies**. Each human rights treaty commits States to submit periodic reports and is monitored by a treaty body composed of independent experts. These Committees of experts typically fulfil a range of functions including to provide feedback and interpret treaty provisions as well as consider individual complaints. They cannot take decisions binding on States but their work provides authoritative interpretations of treaties and carries weight. There are 9 core UN human rights treaties (sometimes accompanied by optional protocols) and 10 treaty bodies.<sup>40</sup> As mentioned, a State cannot be monitored by treaty bodies unless it first ratified the treaty and thus accepted to be legally bound by it. Second, even when a State has not ratified a treaty, by virtue of being a State member of the UN, there are other mechanisms that engage States in dialogue around international human rights standards. The UN Special Procedures have a thematic or country mandate and, just like the treaty bodies, are composed of independent experts. These are appointed by the UN Human Rights Council and there are around 60 such **special procedures** as of 2023. Typically, they conduct country visits, report on the situation of human rights in a country or thematic area, and raise specific cases of abuse with States.<sup>41</sup> Cambodia is covered by such a Special Rapporteur mandate since created under the 1993 Paris Agreement; it was set up for technical assistance and capacity building and is thus different from many other country mandates that the UN sets up for in situations of concern.<sup>42</sup>

Third, the **Universal Periodic Review (UPR)** system was introduced in 2006 and engages States in reporting and dialogue. Similarly to Special Procedures, the UPR applies even to States that have not ratified some human rights treaties. The UPR is a political process led by States, and in this way it is different from treaty bodies and special procedures that consist of independent experts. The UPR uses peer-review techniques and allows any State to criticize, comment and make recommendations to any other State.<sup>43</sup> Civil society groups participate in this process primarily by submitting their own reports and analysis regarding the human rights situation in a country. States can accept or note recommendations.

Soft law instruments sometimes precede or complement international treaties. The Universal Declaration of Human Rights (UDHR, 1948) preceded UN treaties and due to its foundational character it facilitated the evolution of international law. One soft framework relevant to Cambodia is the **ASEAN**

39 Committee on Economic, Social and Cultural Rights, *General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, para 23.

40 OHCHR, *What the treaty bodies do* [www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do](http://www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do).

41 OHCHR, *About special procedures* [www.ohchr.org/en/special-procedures-human-rights-council](http://www.ohchr.org/en/special-procedures-human-rights-council).

42 OHCHR, *Special Rapporteur on the situation of human rights in Cambodia* [www.ohchr.org/en/special-procedures/sr-cambodia](http://www.ohchr.org/en/special-procedures/sr-cambodia).

43 OHCHR, *Universal Periodic Review* [www.ohchr.org/en/hr-bodies/upr/upr-main](http://www.ohchr.org/en/hr-bodies/upr/upr-main).

**Human Rights Declaration** adopted in Phnom Penh, in 2012.<sup>44</sup> Its preamble reaffirms the ASEAN countries commitment to UDHR and noted that some norms in the UDHR have the status of customary international law, so are binding on all States. In some ways, the ASEAN Declaration goes beyond the older UDHR and current human rights treaties as it mentions human rights to safe drinking water and sanitation, the right to a clean environment, the right to development, and the right to peace. Despite these novelties, the Declaration raised concerns that it ‘undermines, rather than affirms, international human rights law and standards. The document is a declaration of government powers disguised as a declaration of human rights.’<sup>45</sup> The Declaration is to be promoted through cooperation among ASEAN States and with relevant national, regional and international institutions, in accordance with the ASEAN Charter. There is an ASEAN Intergovernmental Commission on Human Rights (AICHR) as a consultative body with a mandate to promote and protect human rights, and advance regional co-operation.

### 3. Applications

**T**his subsection aims to place some of the frameworks discussed in section 2 in the Cambodian context: which of those frameworks was applied in Cambodia and with what results?

Especially in the garment industry, Cambodia has wide experience with **RBC** through the ILO-IFC Better Factories project that monitors labour conditions in garment factories. Though not without its controversies, that project was the result of a pioneering US-Cambodia trade agreement that kickstarted RBC in Cambodia and became a model for other countries (the Better Work programs). In this industry, large MNEs like H&M and Zara apply their codes of conduct to protect workers’ rights. They also test and refine more advanced RBC and HRDD models such as the ACT initiative, which aims to improve wages by advancing collective bargaining at an industry level. This focus on freedom of association and collective bargaining as an enabling right and a key component of this RBC initiative can create tension with the host government. Such MNEs have, for example, issued public letters to the government calling for protections of trade unions and their leaders.<sup>46</sup>

The UNGPs are not well known in Cambodia, as in many other developing countries. That is partly because the UNGPs are not an international **RBC instrument** with its own monitoring and complaint mechanism. In contrast, the OECD and IFC frameworks have such mechanisms and they have been used in Cambodia. Thus, in the agribusiness sector, rightsholders from Cambodia filed complaints in foreign courts and with other institutions (OECD NCPs) against businesses such as Coca Cola and banks such as the Australian ANZ. Complaints against hydropower projects are on-going before the IFC (Lower Sesan case). (See chapter 5)

Cambodia is also part of **free trade agreements** (FTAs) that facilitate the export/import of goods and services. Cambodia, and ASEAN, are not parties to even one FTA that contains labour standards. For example, as a member of ASEAN, Cambodia is part of several regional trade agreements between ASEAN and regional economic powers.<sup>47</sup> Also the recently concluded China-Cambodia FTA (2020), entered into force in 2022, is silent on human rights.<sup>48</sup> However a growing number of States consider

44 ASEAN Human Rights Declaration (2012) <https://asean.org/asean-human-rights-declaration>.

45 Human Rights Watch (HRW), *Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration - AHRD falls far below international standards* (2012) [www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration](http://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration).

46 BHRRC, *Cambodia: 23 brands, brand associations and CSOs send a joint letter calling for the PM to address specific labour rights issues* (January 22, 2020) <https://www.business-humanrights.org/en/latest-news/cambodia-23-brands-brand-associations-and-csos-send-a-joint-letter-calling-for-the-pm-to-address-specific-labour-rights-issues/>

47 For a list of ASEAN trade agreements, see <http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=116&lang=1&redirect=1>

48 Cambodia-China FTA (2020) <http://fta.mofcom.gov.cn/topic/encambodia.shtml>.

necessary to include special provisions on sustainable development, human and labour rights, and environmental protection. They recognize that ‘the right to regulate’ is a necessary but not sufficient condition to effectively protect human rights in economic development. A good source on FTAs is the ILO’s database.<sup>49</sup> It lists 113 FTAs that have labour provisions.

As shown, Cambodia has ratified numerous **international human rights treaties**. In practice, despite this impressive ratification record, the UN Committee on Economic, Social and Cultural Rights has expressed concern that international human rights treaties are rarely invoked or used in practice in Cambodia: ‘The Committee regrets that, despite the constitutional guarantees, it has not been established that Covenant provisions can in practice be invoked before or directly enforced by the State party’s national courts, tribunals or administrative authorities...’<sup>50</sup> Cambodia submits periodic reports to several UN Committees and they evaluate the country’s performance and compliance with the treaties through ‘concluding observations’. For example, the UN Human Rights Committee sends in advance a list of issues to the government to facilitate the preparation of report and then issues its concluding observations. The 2022 report of the Committee contains two sections: ‘Positive aspects’ and ‘Principal matters of concern and recommendations’.<sup>51</sup> All these reports are all publicly available and searchable in the UN database.<sup>52</sup> Another database facilitates search of documentation from all three UN mechanisms as well as the SDGs commitments.<sup>53</sup>

The **Special Rapporteur (SR)** for Cambodia derives from the Paris Peace Accords (article 17). Since 1993, and there have been seven SRs. The SR researches and publishes periodic reports and the latest available on the website at the time of writing is from 2020.<sup>54</sup> It analyses the human rights implications of COVID-19 pandemic as well as restrictions in the democratic and civic space. Regarding businesses, the SR urged international businesses to honour agreed contracts, and that the government ensure that businesses benefiting from economic stimulus measures observe the UNGPs.<sup>55</sup> The 2019 report commented on the newly adopted Cambodian framework on the Sustainable Development Goals from a human rights perspective. The 2018 report analysed the strong economic growth of Cambodia in parallel with the regression of political rights and the enjoyment of fundamental freedoms.

The **UPR** is a peer-review process that applies to Cambodia as to any other member of the United Nations. Cambodia has already gone through 3 cycles of UPR evaluations, the last one in 2019. The UPR process draws on a wealth of information collected from different sources that inform the dialogue among States. There are three main reports: from the government (National report), from the UN agencies (Compilation of UN information) and from CSOs (Summary of stakeholders’ information). To facilitate preparations of reports and responses from the government, States send in advance questions and issues that concern them (Questions submitted in advance). The deliberations are broadcasted live and give the opportunity to the government to present its report and other States to make recommendations. The report from the 2019 deliberations shows that 73 delegations offered 198 recommendations.<sup>56</sup> The

49 ILO, *Labour Provisions in Trade Agreements Hub (database)* [www.ilo.org/LPhub](http://www.ilo.org/LPhub).

50 Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations of the Committee on Economic, Social and Cultural Rights - Cambodia* (2009) para 12, <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-KHM-CO-1.doc>.

51 Human Rights Committee, *Concluding observations on the third periodic report of Cambodia*, CCPR/C/KHM/CO/3 (2022) [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKHM%2FCO%2F3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKHM%2FCO%2F3&Lang=en).

52 OHCHR, *Treaty bodies Search (database)* [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en).

53 DIHR, *SDG - Human Rights data explorer (database)* <https://sdgdata.humanrights.dk/en/solr-explorer?sdg=106513>.

54 OHCHR, *Special Rapporteur on the situation of human rights in Cambodia (website)* [www.ohchr.org/en/special-procedures/sr-cambodia#:~:text=Introduction,in%20Cambodia%20in%20March%202021](http://www.ohchr.org/en/special-procedures/sr-cambodia#:~:text=Introduction,in%20Cambodia%20in%20March%202021).

55 Rhona Smith, *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, A/HRC/45/51 (24 August 2020) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/216/35/PDF/G2021635.pdf?OpenElement>.

56 UNDOC, *Report of the Working Group on the Universal Periodic Review - Cambodia*, A/HRC/41/17 (2019) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/098/90/PDF/G1909890.pdf?OpenElement>.



government has the option to accept, reject or 'take note' of each of these recommendations. In 2019, Cambodia decided to accept 173 and take note of 25 recommendations. Other countries and stakeholders had the opportunity to further comment on the government's response and they recorded in the final report of the 2019 UPR cycle for Cambodia.<sup>57</sup> All documents submitted in the UPR third cycle by civil society, government of Cambodia, the UN and recommendations from other States are publicly available.<sup>58</sup> The UPR process has had its critics and evaluating the practical impact of a politicized process such as UPR is a complex undertaking.<sup>59</sup>

## 4. Further discussion

**A**nother dilemma is about choosing soft law or hard law instruments. Should one settle for a non-legally binding instrument that is more politically achievable or should one insist on legally binding instruments? The **making of the UNGPs** was entangled in this dilemma: should Ruggie have been more ambitious with his mandate and call for a treaty on BHR as many NGOs and human rights lawyers preferred as the best way of progressing towards corporate accountability, or should he settle for 'just' a soft law instrument. Ruggie framed this dilemma as 'thick stakeholder consensus' rather than 'thin State consent'.<sup>60</sup> He justified his choice with an eye to previous unsuccessful attempts at UN standard setting for MNEs that he did not want to repeat. But others continued to think that without a UN treaty, progress would be too slow and uncertain given market pressures and economic incentives and a treaty would kick start a process of strengthening national laws.

**The making of the UN treaty** is currently facing the same dilemma: go for a treaty with specific and comprehensive obligations on States, or go for a 'framework' convention that lays down a few broad principles to be developed later through binding protocols on specific issues? It is a genuine dilemma, as the comprehensive treaty might not attract sufficient ratifications and support from bigger States and thus fail to be adopted, or a framework treaty might be adopted but then not followed up by protocols as States become complacent.<sup>61</sup>

Two final points could be made as we reflect on all the relevant frameworks and mechanisms for RBC and human rights presented in this chapter. On the one hand, **hard law** – human rights treaties – should not be overstated, as their enforcement mechanisms are weak. Just the fact that an instrument is legally binding does not guarantee compliance and that human rights will be respected in practice, whether by States or businesses. It is the same situation with national laws that might not be implemented or enforced. On the other hand, **soft law** – in RBC and human rights – should not be dismissed as useless in ensuring corporate accountability. It can have legal effects and practical impacts. Therefore, soft law should not be overlooked and considered irrelevant just because it does not create enforceable legal obligations. In sum, both hard law and soft law in RBC and human rights must be analysed carefully to understand how they each can facilitate the process of legal evolution, their impacts and pathways for change, and how they relate to each other.

57 UNDOC, *Report of the Human Rights Council on its forty-first session, A/HRC/41/2* (2021) (p. 119-124)

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/028/58/PDF/G2102858.pdf?OpenElement>.

58 OHCHR, *Universal Periodic Review – Cambodia* [www.ohchr.org/en/hr-bodies/upr/kh-index](http://www.ohchr.org/en/hr-bodies/upr/kh-index).

59 Kazuo Fukuda, *Human Rights Council's Universal Periodic Review as a Forum of Fighting for Borderline Recommendations? Lessons Learned from the Ground*, 20 NW. J. HUM. RTS. 63 (2022) <https://scholarlycommons.law.northwestern.edu/njihr/vol20/iss2/1>.

60 John Ruggie, *Life in the Global Public Domain: Response to Commentaries on the UN Guiding Principles and the Proposed Treaty on Business and Human Rights* (2015) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2554726](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2554726).

61 Claire Methven O'Brien, *The 2020 Draft UN Business and Human Rights Treaty – Steady Progress Towards Historic Failure*, Blog, *Opinio Juris*, (11 September 2020) <http://opiniojuris.org/2020/09/11/bhr-symposium-the-2020-draft-un-business-and-human-rights-treaty-steady-progress-towards-historic-failure/>.

**T**he international framework of human rights lays down human rights that have to be secured from abuses by both States and businesses. The UN has developed an extensive array of standards, interpretations and monitoring mechanisms to safeguard human rights. At the same time there are many deficiencies. The international system covers corporate abuses only in an indirect manner and places legal obligations on States and not on businesses. So far, there is no international treaty directly and specifically dealing with obligations and liabilities of private businesses for violation of human rights; negotiations in the UN are advancing slowly. The international system is also weak in terms of monitoring and enforcement as sovereign States have to agree to any more stringent oversight. The UNGPs have clarified in an authoritative manner what States and businesses should do; however, the UNGPs are not legally binding one though they slowly produce legal effects at national level and in corporate practice. There is thus a gap in the international legal system of human rights and the question is whether economic instruments such as RBC instruments and trade agreements can help narrow this gap.

Economic instruments regarding trade, investment and development cooperation sometime refer to labour, human rights and sustainability to prevent economic growth coming at the expense of human rights. However, only the EU, the US and a few other industrialised countries have included such safeguards and conditionalities; other major economies do not link economics and human rights and emphasise instead non-interference and State sovereignty. The withdrawal of EU's EBA trade preferences for Cambodia (discussed in Chapter 12) shows the detailed process that needs to be followed and the complexities and dilemmas that arise when restricting trade for the cause of human rights. Such conditionalities inevitably are read from a politicized stance and become divisive. Meanwhile, the concepts of BHR and RBC can be further popularised among professionals and the general public, and backed by good examples from both developed and developing countries.

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[https://op.europa.eu/en/publication-detail/-/publication-f7031da3-f0dc-11eb-a71c-01aa75ed71a1/language-en](https://op.europa.eu/en/publication-detail/-/publication/f7031da3-f0dc-11eb-a71c-01aa75ed71a1/language-en).
5. Philip Alston and Frédéric Mégret, 'Appraising the United Nations Human Rights Regime', in Mégret and Alston (eds), *The United Nations and Human Rights - A Critical Appraisal* (2020)  
[www.researchgate.net/publication/348674835\\_Introduction\\_Appraising\\_the\\_United\\_Nations\\_Human\\_Rights\\_Regime](http://www.researchgate.net/publication/348674835_Introduction_Appraising_the_United_Nations_Human_Rights_Regime).



# **CHAPTER 4**

## **National Law and Policy and RBC in Cambodia**



**Bora Meas, Rhona Smith**

**T**he international legal framework for responsible business conduct outlined in Chapter 3 should be reflected in national law. So, this chapter will focus on the national (**Cambodian**) **legal and policy framework** for responsible business conduct. States are required to give effect to their international human rights obligations in national law which, in terms of the UN Guiding Principles on Business and Human Rights (UNGP), is clear (Principles 1-6). Businesses in turn should comply with national laws (Principle 11) as well as respecting international human rights (Principles 12 and 13) to ensure they observe the standards for responsible business conduct. National law also offers remedies or, more precisely, mechanisms whereby victims of human rights violations can access remedies, gain recognition of their rights and ensure they are effectively enforced.

The **chapter** will begin with an introduction to the Cambodian legal framework, which will be especially useful for non-lawyers and those new to Cambodia. A more detailed analysis of the principal laws will follow. There is also an overview of aspects of the regulatory system, including monitoring and enforcement, though remedies are considered in more detail in Chapter 5. An evaluation of the national framework, its fulfilment of treaty obligations (explained in Chapter 3), including perceived compliance gaps, will conclude this chapter.

## 2. Frameworks

### 2.1 The legal and policy framework for RBC and human right in Cambodia

**T**his section offers a brief **overview** of modern era Cambodian laws, including the relevant provisions of the Constitution. Key laws and prakas giving further detail to those provisions and building the framework will also be considered. On the policy framework, this chapter will consider the Royal Government's Rectangular Strategy (Phase IV) which was an enabler for the country's Vision 2050. All aspects are relevant given the government's focus on growing business, expanding international links and ensuring an appropriate workforce for maintaining growth. Note that the seventh National Assembly and new Prime Minister may proceed with plans to change the rectangular format to a more comprehensive pentagon.

There are several **sets of laws of direct relevance** to responsible business conduct in Cambodia. Many are discussed in more detail elsewhere in this book with reference to specific topics so here is offered simply an overview. All businesses operating in Cambodia should respect national laws, even though complexities arise when those laws should, but do not yet, reflect international law.

The Constitution is the primary source of law in Cambodia, the supreme law which no other legislation and regulations should conflict with.<sup>1</sup> The National Assembly and Senate can, and obviously do, draft and enact legislation. These are primary laws. There are, however, a range of **types of laws** which can be passed in Cambodia: namely laws (Chbab), royal decrees (Preah Reach Kret), sub-decrees (Anu-Kret), prakas (which are executive proclamations), decisions (Sech Kdei Samrach) circulars (Sarachor), by laws (Deika – these are council level) and orders.<sup>2</sup> These laws are listed in an approximate descending hierarchy, reflecting their enactment - from being promulgated after going through National Assembly, Senate and Royal approval to local level provisions.

Cambodian laws can be reviewed for compliance with international laws by the Constitutional Council. Thereafter, all laws are enforced by the courts. The **Cambodian justice system** follows civil law principles

<sup>1</sup> Constitution of Cambodia(1993) Article 150 (new).

<sup>2</sup> See generally, Hor Peng, Kong Phallack and Jörg Menzel (eds.), *Introduction to Cambodian Laws*, Konrad-Adenauer-Stiftung (2012).

and so judges primarily apply the law, they do not observe the common law system of judicial precedence (though of course cases should be decided consistently). The publication of court decisions is ongoing though the texts of decisions may still not be easily obtained.

### Law and Policies

Cambodia's national legal framework has been evolving throughout **the modern era** (from 1993). All pre-existing laws remain in force until new ones were/are passed which repeal or modify them (Article 158 Constitution). Given the volume of legislation initially required, and the Peace Agreements emphasis on international assistance to Cambodia, many of the initial modern era laws were drafted with technical support from other countries. This has resulted in a plurality of legal concepts, not all flowing from the pre-modern era civil law system which had evolved under the French Protectorate system. Modern Cambodia has more of a plural legal system, which whilst grounded in civil law has been influenced by other legal systems and applied against a background of traditional practices.

The Royal Government is guided in the laws it decides to enact by its proclaimed policy framework, which elaborates the vision and priorities of the government. The **New National Strategy Phase I** is Government's key enabler for achieving Vision 2050; much government policy (and rhetoric) evolves from, or is linked directly to, the Rectangular Strategy. The current Strategy is guided the country's seventh legislature (2023-2028). All spheres of the Strategy are relevant given the government's focus on growing business, expanding international links and ensuring an appropriate workforce. The Royal Government considers this strategy as the basis for its localization of the UN Sustainable Development Goals<sup>3</sup> which also can shape responsible business conduct. Of five focus areas, one is continuing to strengthen governance of private sectors and to promote a beneficial environment for business.

Article 31 of the Constitution of Cambodia enshrines the respect of the Kingdom for international human rights standards, in particular UN treaties that Cambodia has ratified (Chapter 3). It also provides a general principle of non-discrimination, with discrimination against women elaborated up in more detail in later **constitutional guarantees**. These human rights are elaborated on in subsequent laws. Besides the constitutional guarantees of people's rights, there are several national laws which directly or indirectly offer people protection against private businesses in various fields through criminal sanction. These are an essential part of the Government's positive obligations to transform its international legal commitments into a practical reality.

As the space precludes a detailed analysis of all relevant laws,<sup>4</sup> this chapter will simply highlighting key laws relevant to RBC: Company Law; Labour and Trade Union Laws, Land Law, Environmental Laws, Laws impacting Civil Society and Tax Law.

**Company Laws:** Companies and other forms of business enterprises are the focus of this book and were introduced in Chapter 2 along with the relevant national legal framework. Company laws provide detailed legal requirements for setting up and operating a business in Cambodia. Among them are the rights and obligations of shareholders as well as the duties of directors and top executives.

**Labour Laws:** The foundation laws in Cambodia are the Labour Law 1997 and amendments, and the Law on Social Security, which offers support for those with work-related illness and injury.

3 These were introduced in Chapter 1 of this book.

4 ILO, *The International Labour Organisation maintains details of Cambodian labour social security and human rights laws on its Natlex database*, [https://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p\\_lang=en&p\\_country=KHM](https://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=KHM).

Most of the common protections are available in law to those working in Cambodia. This includes the right to have a contract (Article 65), a prohibition on compulsory or forced labor (Article 15) and a prohibition on child labour (Article 177), prohibiting labour for under fifteens, and prohibiting hazardous work for under eighteens. There are also provisions on working time and leave: a forty-eight hour week is stated as the maximum (Article 137), though overtime can be required (within limits and for an enhanced pay). People should work no more than six days a week and generally have Sunday off (Article 146/7). As for leave, everyone should have a minimum of fifteen days of paid leave, usually including time off at Khmer New Year (Article 170). In terms of minimum wage, this applies primarily in the garment, textile and shoe industry, where unions successfully negotiate the tariff. This does mean that workers in those sectors are generally better paid than those in many other sectors. The Labour Law also regulates enterprises operating in Cambodia, prescribes dispute resolution avenues for labour disputes and makes provisions for redundancy and transfers of undertakings.

A more recent innovation is the **National Social Security Fund**. This extended to all Cambodians the opportunity to pay forward into the scheme which should offer a range of social security benefits. The Social Security Scheme on Pension for Persons under the Provision of the Cambodian Labour Law began on 1 July 2022.<sup>5</sup>

**Trade Union Law:** The rights to form trade unions and to collective bargaining are provided in the Constitution (Article 37) and in the Labour Law. The Trade Union Law is provided for in the Labour Law (Article 36). However, the Trade Union Law itself took a long time to draft and there remains concerns as to whether the law fully reflects Cambodia's international commitments.<sup>6</sup> Whilst there are many very active trade unions in Cambodia, there are also some which the government consider too politicized. A more detailed analysis of trade union law can be found in Chapter 8.

**Land Law:** At the start of the modern era, there was essentially no land title in Cambodia. Private land ownership and title has only been possible since the 2001 Land law. There remain many people living on land and eking out a subsistence existence on land without title, usually in rural provinces and close to the poverty line. Such people may find themselves in conflict with large businesses granted permission by the government to establish major businesses or large infrastructure projects where they live. The government can issue specific (usually time-limited) land titles (called 'concessions'). Social land concessions can be used for building houses, but more relevant to business are the economic land concessions.

**Economic land concessions** are leases of state land to a private lessee for a fixed period of up to 99 years.<sup>7</sup> However, from November 2020, the period was shortened to 50 years. Such concessions have been granted for large-scale sugar (and other) plantations, farming livestock and building factories (eg garment, textile and shoe industries). There have also been concessions for other industries including mining and even tourism. The lessee can clear the land (including controversially forestry) and establish the agreed business. From the government's perspective, such agreements are beneficial, as they support the development of Cambodia. In recognition of their unique relationship with the land and forests, indigenous groups can have collective community land titles recognised, albeit through a slow, complex process.

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5 Ministry of Labour and Vocational Training and Ministry of Economics and Finance issued a joint Prakas on the implementation of the Social Security Scheme on Pension for Persons under the Provisions of Cambodian Labour Law (Joint Prakas 165) determining the implementation date as per Article 39 of Sub-Decree No. 32 dated 4 March 2021 on the Social Security Scheme on Pension for Persons under the Provision of the Cambodian Labour Law (Sub-Decree 32).

6 OHCHR Cambodia, *A Human Rights Analysis Of The Draft Law On Trade Unions*, available <https://cambodia.ohchr.org/sites/default/files/FINAL%20OHCHR%20Analysis%20on%20Trade%20Union%20Law-%20En%20%20FOR%20NA%20SUBMISSION.pdf>.

7 Land Law (2001), Article 61.

**Environmental Law:** The Environment Code was promulgated in June 2023 and contains much of relevance to RBC and human rights. The code applies to acts of both physical persons and legal entities related to the environment, natural resources and heritage in the Kingdom of Cambodia.<sup>8</sup> It sets forth core principles such as the precautionary principle, participation, and the principle of informed consent.<sup>9</sup> The code demands Environment Impact Assessments<sup>10</sup> as a precursor for business activities which may impact on the environment. It also sets up dispute settlement mechanisms,<sup>11</sup> comprising liability for breaching norms therein.<sup>12</sup> Victims are entitled to claim remediation.

The **Environment and Natural Resources Code** offers the strategic direction of the country towards protecting, conserving and restoring natural heritage. As such, it will be highly relevant for businesses engaged in mining, agribusiness, forest management and those impacting on the waterways in the country. Chapter 22 considers environmental laws and policies in more detail, including the provisions respecting and conserving Cambodia's biodiversity, preventing and regulating pollution (water and air), protecting and preserving forestry, and balancing environmental protection with a more nuanced conservation to accommodate development and, of course, climate change and adaptation, all highly relevant in the Cambodian business context.

**Civil Society and Human Rights Defenders:** Civil society actors include trade unions, which are outlined above and for which there is specific legal provision. In this section, however, the primary focus is on other actors. These are now subject to regulation in terms of the Law on Associations and Non-Governmental Organizations (LANGO) 2015. This Law is similar to many enacted around the world, which seek to ensure civil society is formalized, registered and held accountable.<sup>13</sup> In Cambodia, the law has proven controversial, particularly with provisions on registration of non-governmental organizations, including their management, and the requirement for all NGOs to be politically neutral (which can be challenging when human rights themselves are deemed political).<sup>14</sup> Activities of some civil society actors engaged with politically sensitive issues such as environmental rights and human rights can be limited by the government, formally or informally. For a deeper understanding of civil society, and human rights defenders in particular, see Chapters 7 and 9 respectively.

**Tax Law:** Civil society entities and businesses are also increasingly subject to taxation in Cambodia. It should be noted that a range of tax laws has been in existence for many years (further to Article 57 of the Constitution), but not uniformly enforced.<sup>15</sup> Many of these pre-existing tax laws in Cambodia were combined into a new Law on Taxation which entered into force in 2023. Tax Law in Cambodia, as elsewhere, is a highly technical area so recourse should be had to an expert familiar with Cambodian tax law (i.e. a Cambodian-based accountant or tax lawyer). All businesses operating in Cambodia and all people working in Cambodia may be liable to pay tax. The new law enables the government to offer tax incentives to businesses and tax exemptions. The penalties for non-compliance are increased and criminal penalties can be imposed for tax evasion.

### National institutional context

Law does not operate in a vacuum. Laws are usually proposed by the government (Council of Ministers in

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8 Code of Environment and Natural Resources( 2023), Article 2.

9 Code of Environment and Natural Resources (2023), Article 15.

10 Code of Environment and Natural Resources( 2023), Book V, content I on EIA.

11 Code of Environment and Natural Resources(2023), Article 803-805 for example.

12 Code of Environment and Natural Resources(2023), Articles 722, 858.

13 Law on Association and Non-Governmental Organization (2015), Article 6.

14 For a human rights analysis, see OHCHR Cambodia, *A Human Rights Analysis of the Law on Associations and Non-Governmental Organisations (LANGO)*, (2015) [https://cambodia.ohchr.org/sites/default/files/OHCHR\\_analysis\\_of\\_5th\\_LANGO\\_Eng.pdf](https://cambodia.ohchr.org/sites/default/files/OHCHR_analysis_of_5th_LANGO_Eng.pdf).

15 See generally, the RGC Ministry web portal (primarily Khmer) for the text of the laws and guidance see <https://www.tax.gov.kh/en/>.



Cambodia<sup>16</sup>) in furthering policy objectives,<sup>17</sup> enacted by the legislature (National Assembly and Senate) in accordance with constitutional and national practices, and then applied by the judiciary,<sup>18</sup> primarily the courts. These are the **three organs** of state: executive (elected government); legislature (lawmaking body); and judiciary. Laws are enacted through votes in both parliamentary chambers – the National Assembly and the Senate<sup>19</sup> – before HRH the King promulgates them, i.e. proclaims the law to make it officially valid.

As is noted above, the government should propose laws to give effect to the **international laws** (including human rights treaties) it accepts. Other laws and policies may reflect regional priorities, such as those agreed by the ASEAN. Generally, policies are not legally binding, they either offer guidance or, as in the Rectangular Strategy, indicate the government's aims, thereby offering a blueprint for laws and policies.

In line with the civil law approach which Cambodia primarily follows, **the role of the judiciary**<sup>20</sup> is to apply the law fairly, consistently and transparently. Integrally linked to law and crucial in international human rights is the right to a remedy for those whose rights are violated.<sup>21</sup> This is important in the context of responsible business conduct, as the business itself can be liable in law.

Citizens have the right to make complaints to court and have the right to defence through the judicial system.<sup>22</sup> **Courts** must be independent, protecting citizens' rights and liberties, addressing all types of complaint, including administrative litigation.<sup>23</sup> These provisions provide access to justice whereby remedy is provided through various means: civil, administrative or criminal ones. Note also that the criminal code of procedure of Cambodia provides jurisdiction for Cambodian courts to consider liability for offences committed abroad by Cambodians or by foreigners against Cambodians.<sup>24</sup> The legal person (e.g. a business) has also criminal liability for acts violating people rights (e.g. non-discrimination). Legal persons here include those doing business in Cambodia. The principal sentence is a fine, as a company cannot be sentenced to prison; however, its managers can be if the conditions for individual criminal liability are met.<sup>25</sup> Of course, liability only exists if the laws so provide.<sup>26</sup>

Victims of individual or corporate offences might seek for **reparation** as civil parties in criminal proceedings initiated, for example, by a prosecutor, or file civil litigation directly to court.<sup>27</sup> In such a situation, civil litigation waits for the criminal verdict.<sup>28</sup> Victims might seek a civil remedy under the civil procedure code for any breach of contractual obligation or for tortious liability (which is the most relevant to RBCs and human rights). This latter was provided in more detail for the first time in the Civil Code of Cambodia,<sup>29</sup>; remarkably, the term 'person' used in the civil code, (and different from that in the Criminal Code), was either 'physical or legal person'.<sup>30</sup> Employers are also liable in tort for employees' acts that are attributable to the employer.<sup>31</sup>

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16 Constitution of Cambodia (1993), Article 118 (new).

17 In Cambodia, laws can be initiated by the Prime Minister (Council of Ministers) or members of the National Assembly or the Senate.

18 Constitution of Cambodia (1993), Articles 128 et seq.

19 Technical guidance on law making are found in the internal rules of the National Assembly and Senate as well as circulars of the Council of Ministers.

20 Constitution of Cambodia (1993), Articles 128-129.

21 Constitution of Cambodia (1993), Article 39.

22 Constitution of Cambodia (1993), Article 38.

23 Constitution of Cambodia (1993), Article 128 (new).

24 Criminal Code( 2010), Article 20.

25 Criminal Code (2010), Article 167.

26 Criminal Code( 2010), Article 42.

27 Criminal Procedure (2007), Article 3.

28 Criminal Procedure (2007), Articles 22 and 23.

29 Civil Code(2007), Chapter 16.

30 Civil Code (2007), Attached Glossary.

31 Civil Code (2007), Article 747.

Of relevance, other laws provide for **settlement** of specific disputes,<sup>32</sup> including the new Code of Environment and Natural Resources. Labour law sets forth mechanisms to settle two types of disputes -- individual and collective -- before the Labour Arbitration Council.<sup>33</sup> Before resorting to judicial mechanisms, workers might ask labour inspectors for preliminary consideration.<sup>34</sup> Parties might reach agreement enforceable by law, and if agreement is not reached, either party can make a complaint to court.<sup>35</sup> For collective disputes,<sup>36</sup> parties might refer the case to the arbitration council, and finally (if necessary) to the court.

For land issues, the Ministry of Land Management and Urban Planning and Construction creates mechanisms for deciding land disputes, starting from receipt of complaint by the **Cadastral Commission of District** (CCD) and investigate on files and documents related to disputed lands.<sup>37</sup> The CCD tries to conciliate, and if it is impossible to reach an equitable resolution, it shall submit the dispute to the provincial cadastral commission (PCC) if, for example, the dispute involves State public land.<sup>38</sup> If the CCD reaches a settlement, it reports to the PCC, copies to the district office of land management, and begins the registration process of the land.<sup>39</sup>

Chapter 5 provides a detailed overview and analysis of remedies available (and sought) in Cambodia, both formal (mostly legal) remedies and the various alternative and informal dispute resolution mechanisms.

### Relationship between national and international law

Cambodia rapidly accepted UN **human rights treaties** at the start of the modern era. As Chapter 3 explains, Cambodia has ratified most key international human rights treaties. This means that Cambodia is bound at the international level to respect, promote and protect those rights in fulfilment of its treaty obligations. Cambodia does this primarily through national laws as foreseen in the Peace Agreement.

Article 31 of the Cambodian Constitution provides the legal basis for Cambodia to apply human rights norms to comply with obligations imposed by treaties or indeed international customary norms that Cambodia has ratified or accepted. There are different points of view as to whether Cambodia is monist or dualist in its approach to international law,<sup>40</sup> i.e. whether treaty provisions can be applied directly by national courts or need first to be enacted into legislation before becoming enforceable in the courts. As human rights protection is guaranteed in the Constitution, the **Constitutional Council of Cambodia** rendered in 2007 a landmark disposition on application of human rights treaties, with regard to the UN Convention on the Rights of the Child: ‘the law’ here refers to the national law including the Constitution which is the supreme law and other applicable laws as well as the international conventions that Cambodia

32 Law on Investment, Cambodia, *Law on the Investment of the Kingdom of Cambodia* (1994) Article 20 [https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/WTACCKHM3A3\\_LEG\\_45.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_45.pdf); Law on Management and administration, Cambodia, *Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans*, Royal Kram No. NS/RKM/0508/017 (2008) <http://seaknowledgebank.net/e-library/cambodia-law-administrative-management-capital-provinces-municipalities-districts-and-Articles-89-92>.

33 *Prakas on the Arbitration Council*, No. 99 MOSALVY (ប្រកាស ០៩៩/០៤ ស្តីពី ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល) (2004) [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=82037](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82037).

34 Cambodia, *Law on the Investment of the Kingdom of Cambodia* (1994) [https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/wtacckhm3a3\\_leg\\_45.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/wtacckhm3a3_leg_45.pdf)

35 Labor Law (1997), article 301.

36 Labor law (1997), Article 302.

37 Sub-Decree on Organization and Functioning of the Cadastral Commission, No. 47 ANK.BK (អនុក្រឹត្យលេខ ៤៧ អនក្រ.បក ស្តី ពី ការរៀបចំ និងការប្រព្រឹត្តទៅនៃគណៈកម្មការសុរិយាធិ), Articles 7 and 8, (2002) [https://data.opendatadevelopment.combo-dia.net/laws\\_record/sub-decree-on-the-organization-and-functioning-of-the-cadastral-commission](https://data.opendatadevelopment.combo-dia.net/laws_record/sub-decree-on-the-organization-and-functioning-of-the-cadastral-commission).

38 Sub-decree no. 47 (អនុក្រឹត្យលេខ ៤៧ អនក្រ.បក ស្តីពី ការរៀបចំ និងការប្រព្រឹត្តទៅនៃគណៈកម្មការសុរិយាធិ), Article 10.

39 Sub-decree no. 47 (អនុក្រឹត្យលេខ ៤៧ អនក្រ.បក ស្តីពី ការរៀបចំ និងការប្រព្រឹត្តទៅនៃគណៈកម្មការសុរិយាធិ), Article 11.

40 Michael G. Karnavas, *Bringing Domestic Cases into Compliance with International Standards* (2014) <http://cambodialpj.org/article/bringing-domestic-cases-into-compliance-with-international-standards/>.



has recognized, especially the Convention on the Rights of the Child.<sup>41</sup> The Extraordinary Chambers in the Courts of Cambodia (ECCC) have also contributed important decisions, including that Article 15 of the UN Convention against Torture is directly applicable before the court.<sup>42</sup>

There is an additional dimension to the legal framework which can impact on business. Cambodia has signed several bilateral (between two countries) agreements dealing with **investment** which might affect human rights -- in particular, the Turkey-Cambodia Agreement on Protection of Investments (2018)<sup>43</sup> and Hungary-Cambodia Agreement on Protection of Investments (2016).<sup>44</sup> These contain undertakings not to undermine or compromise health, safety and environmental measures and, indeed, to enable higher standards of protection to be enforced.<sup>45</sup> Chapters 3 and 10 provide a more detailed analyses of these matters.

### 3. Applications

**A**s all law students quickly learn, the law can be complicated (and fascinating). It is never static and is constantly evolving. New laws are constantly being enacted, sometimes changing existing law, sometimes adding new laws. The 2023 consolidated Environment and Natural Resources law and Tax law are examples. From a business perspective, Cambodia, like all countries, has its own, unique legal system. Its constitution, laws and institutions combine to provide a **complex web of laws and policies**. The UNGP and their insistence on observing international human rights standards, in addition to complying with national laws, are, in part, a response to the imperfections in content and enforcement of laws existing in Cambodia and any other country. The UNGPs refer to 'governance gaps' and RBC is a modality employed to narrow such imperfections in national laws and policies.

There are many case studies on RBC and human rights in Cambodia offered in this book. A company setting up business in Cambodia needs to consider its compliance with a wide variety of laws, whether it is Cambodian-based or foreign-based. First steps must be taken to ensure the entity is **registered** correctly and eligible to do business in Cambodia. There are various requirements, depending on the type of enterprise and the line of business in which they are engaged.

Care must be taken to comply with the **Labour Law** for all employees. This can include working with relevant trade unions. Trade unions use collective bargaining effectively when engaging in intense annual discussions with the Ministry of Labour and Vocational Training on the minimum wage for those working in Cambodia's textile sectors.<sup>46</sup> There are no similar arrangements for other sectors. This sector is somehow unique because it is export-oriented and faces notorious human rights abuses, which has brought unusual international attention and pressure from international brands sourcing from Cambodia. Regarding minimum wages, it should also be remembered that textile workers are often working away from home and have considerable accommodation, subsistence and travel costs.

41 Decision of the Constitutional Council No.092/003/2007 of 10 July 2007 regarding the applicability of the international human rights treaties by the courts of Cambodia (Case-file No. 131/003/2007 dated 26 June 2007).

42 ECCC Supreme Court, No.002, *Decision on Objection to List of Documents (Full Reason)* F26/12 (2015) para. 34; See generally, <https://www.eccc.gov.kh/en>.

43 Agreement Between The Government Of The Republic Of Turkey And The Government Of The Kingdom Of Cambodia On The Reciprocal Promotion And Protection Of Investments, (21 October 2018) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5833/download>

44 Agreement Between Hungary And The Kingdom Of Cambodia For The Promotion And Reciprocal Protection Of Investments (14 January 2016) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5988/download>.

45 Cambodia-Turkey Agreement, Article 4 (General Exceptions).

46 See for example, ILO, *Employment, wages and productivity in the Asian garment sector: Taking stock of recent trends*, (June 2022) [https://www.ilo.org/asia/publications/WCMS\\_848624/lang--en/index.htm](https://www.ilo.org/asia/publications/WCMS_848624/lang--en/index.htm).

Relevant **tax requirements** must be considered, both for the company and for employees. In 2018, a major English-language newspaper based in Cambodia, closed down when faced with a huge bill for alleged unpaid tax.<sup>47</sup> Provision under the National Social Security Fund must also be considered – this covers occupation risk insurance for work-related accidents, healthcare insurance and a pension scheme (paying out to those aged 60 and over who have paid into the scheme for at least a year).<sup>48</sup>

If land is required, it must either be bought (the law permits Cambodian ownership only) or leased. The terms of any economic **land concession** must be clearly understood, including agreements on relocating any people to be displaced. With land titling and communal land titles (for indigenous peoples) still being rolled out, problems can arise. An example is the contiguous land concessions granted to Chinese businesses in Preah Vihear including those relating to a vast sugar mill. Kui indigenous peoples had not completed their communal land title process and found ‘their’ lands were being encroached on by sugar-cane plantations.<sup>49</sup> Businesses can secure the necessary government approvals to lease and farm/build factories on a piece of land, but those living on that land may not be made aware of the new ownership.<sup>50</sup> Consequently, businesses can encounter problems when persons living on the land (and often doing subsistence farming) that the business has acquired object to being asked/forced to move.

**Relocation** efforts are also fraught with difficulties, as people are often relocated far from the land or water they previously obtained a living from. Economic Land Concessions in particular can cause problems for people with livelihoods dependent upon land and forestry resources and for those indigenous peoples with connections to the spiritual forests. The multiple relocations of thousands of indigenous peoples before flooding their land for the Lower SeSan II hydropower dam in Stung Treng Province is one example.<sup>51</sup> The relocation inland of peoples previously making a living fishing in Koh Kong for the UDG development (including the Dara Sakor Seashore Resort) is another.<sup>52</sup>

It is worth noting that navigating the legal system can prove difficult even for the government and can be caused by, or result in, ‘**regulatory incoherence**’. Differences in practical application of laws at the provincial and national level occur. This can be evident with restrictions on protests and trade union or civil society activities. There have been occasions when local restrictions, not mandated by national law, have been applied in provinces. This highlights the need to research legal provisions carefully, as the government is continually reviewing and revising laws. Such regulatory incoherence, not unique to Cambodia, endangers the protection of human rights and creates legal uncertainty and unpredictability for businesses. Therefore, recent RBC laws have received unexpected support from parts of the business community and investors, such as in the case of the EU due diligence legislation (see chapter 12).

## 4. Further discussion

**I**n this final section, the chapter will consider the national legal framework from the perspective of business, identifying some of the challenges faced by international businesses trying to do business in Cambodia. This leads to consideration of gaps in the legal framework, policy and enforcement. Having

47 Andrew Nachemson, ‘*The Cambodia Daily confirms it will close on Monday*’, Phnom Penh Post (3 September 2017) <https://www.phnompenhpost.com/national/cambodia-daily-confirms-it-will-close-monday>.

48 National Social Security Fund webportal <http://www.nssf.gov.kh/about-us-2/history/>.

49 For a short summary, see Report of the Special Rapporteur on the situation of human rights in Cambodia A/HRC/33/62 at para 40.

50 The Government of China outlined some of the problems, including court processes, in a response to a communication from UN special procedures on tensions between the company and communities in Preah Vihear, see *Response by PR China to Joint Communication from Special Procedures Joint Allegation Letter CHN 18/2018*, (2018) <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34450>

51 Human Rights Watch, *Underwater: Human Rights Impacts of a China Belt and Road Project in Cambodia*, (2021) <https://www.hrw.org/report/2021/08/10/underwater/human-rights-impacts-china-belt-and-road-project-cambodia>

52 This development is discussed in chapters 16 and 22.

reference to the Royal Government's guiding strategy in the context of the international and regional frameworks, some comments on future direction will be offered to conclude the discussion.

### **The international view of compliance of the Cambodian laws with international standards**

As Chapter 3 discusses, Cambodia's international commitments mean the government is required to ensure that the national law respects, protects and promotes international human rights in fulfilment of its treaty obligations, and to ensure that businesses in Cambodia meet the same standard. Cambodia's compliance with international human rights is monitored by a range of UN mechanisms, and by other stakeholders. Any failure is a **breach of international law**. For example, some draft laws have been analysed by the Office of the High Commissioner on Human Rights (OHCHR) in Cambodia to determine compliance with human rights standards.<sup>53</sup> These commentaries are offered to the government to inform the legislative process, though some laws are fast-tracked in the legislature and may be promulgated before the OHCHR review is considered. As the Royal Government has indicated its intention to review and revise existing laws, any such review should consider whether the law still serves its intended purpose given the changing contexts and, of course, whether the law reflects the country's international legal commitments.

Some of Cambodia's current laws, however, have been criticized for not reflecting **good practice** vis-à-vis international human rights. The Law on Associations and Non-Governmental Organizations which impacts on civil society organizations is an example.<sup>54</sup> The government has undertaken a series of meetings with sections of civil society to identify areas for revision, though national civil society organizations have been divided on progress.<sup>55</sup> The application of laws has also been commented on; for example, the Committee on Economic, Social and Cultural Rights questioned the independence of environmental impact assessments.<sup>56</sup>

Balancing **development projects** for the country (e.g., energy) with individual rights is difficult as has been acknowledged. Particular issues arise when land rights are traded off against development and energy needs. Cambodia imports energy from surrounding states, and the government rightfully wishes to ensure energy sustainability as required by Sustainable Development Goal 7. Hydropower has been identified as a preferred option though its impact on the environment, land rights and related rights needs careful consideration and thorough consultations with those affected.<sup>57</sup>

### **National laws in tension with international laws**

As has been suggested, there are areas in which Cambodian law is found to not meet the international standards. This can present a dilemma for businesses, especially foreign businesses. UNGP Principle 23 outlines a general way forward, recommending businesses honor the principles of international human rights as far as possible when faced with conflicting national and international requirements. Moreover, as international human rights standards are themselves a minimum standard, it is always open for businesses to offer a **higher level of protection** than the national law provides (e.g. better housing, higher wages, better paid leave for ill-health and new parents, etc.).

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53 Those reviews completed by OHCHR Cambodia are available online from the Office website, see <https://cambodia.ohchr.org/en/law/analysis-draft-legislation>.

54 Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Other Letter* (8 May 2015) KHM 2/2015; Recommendations to revise the law were received during universal periodic review third cycle, A/HRC/41/17, from France para 110/24, Germany 110.25 and New Zealand 110.27.

55 LICADHO, *Joint statement from names civil society organisations* (2020) available <https://www.licadho-cambodia.org/pressrelease.php?perm=446>.

56 Committee on Economic, Social and Cultural Rights, E/C.12/KHM/CO/2 (2023), para 10.

57 Sentences paraphrased from Report of the Special Rapporteur re Lower Sesan II dam, A/HRC/33/62 (5 September 2016) para 41.

It should be noted that rarely does national law explicitly prohibit the protection of human rights. More often, it is **informal practices** and the prevailing culture which can cause challenges. Local cultural practices should be respected by foreign companies. However, issues like additional payments to ease legal compliance issues and recognize local level support and assistance is considered to constitute corruption. This is a challenge for businesses. Whilst some businesses find advantages in exploiting the opportunities offered through corrupt officials, some practices do not comply with principles of RBC and are technically against the law in Cambodia. The government is pursuing the eradication of corruption across a range of areas of society, albeit with varying levels of commitment and success.<sup>58</sup>

### Gaps in the law and areas for future codification

In terms of areas in which we feel practice indicates that further codification of law or consolidation of policy would be helpful in strengthening RBC, an obvious example is the minimum wage. As is noted above, the **minimum wage** is only applicable in the textile sector. Given the improvements offered with the national social security fund, moving towards minimum wages would be helpful. There are also aspects of health and safety law which could be reviewed to ensure compliance with the highest international standards. Similarly, the wider labour laws, especially re non-discrimination and equality, could be reviewed and strengthened. Finally, the regulatory systems, including those relating to inspections, could be improved. There is a lot of good work being done, but many industries have limited independent regulatory oversight of conditions.

The **reviews** of all relevant Cambodian laws and policies revealed that there are pieces of laws and policies that are not directly related to RBC and human rights. Laws do not clearly mention the liability of private businesses, and the effective remedies for victims of human rights violations committed by businesses. Laws have not been applied effectively. There are no specific mechanisms and institutions assuming responsibility in the field of responsible business conduct. Likewise, stakeholders, including lawyers, could offer more comprehensive advice and support for businesses to ensure respect for rights and increase compliant responsible business conduct. It is necessary, if Cambodia is to really promote business without impacting human right, to have laws and institutions providing protection of victims against corporate human rights violations as recommended in the UNGPs, and provide effective remedies to victims.

## 5. Conclusions

**C**ambodia's institutional legal framework and wide range of laws and policies should be followed by businesses so that they can both support responsible business conduct and offer remedies to those whose rights may be violated by businesses. There is scope for improvement in terms of expanding the legal framework and extending the accessible remedies, as discussed further in the next chapter.

Clear national laws are essential to guide business as to responsible business conduct and to ensure the government meets international treaty obligations. At the present time, the government has not enacted the UNGPs in national law or in a national action plan on RBC. Where there are discrepancies, the UNGPs direct businesses to follow national laws and honour the principles of internationally recognized human rights as far as possible.

The government should keep all laws under review to ensure they remain relevant in a fast-developing country, and are applied in a manner which reflects its international legal commitments. This includes ensuring that the legal framework is further developed to ensure that both businesses in Cambodia and the Cambodian government observe the UNGPs.

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<sup>58</sup> For the Anti-Corruption Laws in English and various reports, see the web portal of the Anti-Corruption Unit, available from [http://acu.gov.kh/en\\_index.php](http://acu.gov.kh/en_index.php); in 2022 the UN Human Rights Committee reiterated concern on progress combatting corruption - CCPR/C/KHM/CO/3 paras 8+9.

1. Hor Peng, Kong Phallack and Jorg Menzel (eds), *Introduction to Cambodian Law* (2012) Konrad Adenauer Stiftung, Phnom Penh, and online [https://www.kas.de/c/document\\_library/get\\_file?uuid=06c676e4-ba12-d4c5-0a9e-5de4070272e9&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=06c676e4-ba12-d4c5-0a9e-5de4070272e9&groupId=252038).
2. Texts of Cambodian laws in English, and some only Khmer, see OHCHR <https://cambodia.ohchr.org/en/laws>, US Library of Congress, <https://guides.loc.gov/law-cambodia/legal-guides#s-lib-ctab-26369216-0> and ILO Natlex database (for labour laws) [www.ilo.org/dyn/natlex/natlex4.countrySubjects?p\\_lang=en&p\\_country=KHM](http://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=KHM).
3. The Universal Human Rights Index <https://uhri.ohchr.org/>. (For extracts of UN mechanism comments and recommendations on Cambodian laws and compliance with international human rights. it offers thematic/mechanism/date searches)
4. Hor Peng et al, ed., *Cambodian Constitutional Law*, Konrad-Adenauer-Stiftung (2016)
5. Human Rights Resource Centre, *Business and Human Rights in ASEAN: A Baseline Study*, (2013) <http://hrrca.org/wp-content/uploads/2015/09/Business-and-Human-Rights-in-ASEAN-Baseline-Study-ebook.pdf>.

# **CHAPTER 5**

## **Access to Remedies in Cambodia**



**Nak Srey and Leang Sok**

**A**ccess to remedies is a human right and a practical way to seek justice when one's rights are violated or abused.<sup>1</sup> States are obliged to respect, protect and fulfil human rights; proving access to remedies is also a key obligation of states to rights holders in the context of human rights in businesses.<sup>2</sup> Providing access to remedies is to **prevent, investigate, punish and redress**.<sup>3</sup> Access to remedies shall be progressively improved; it would, otherwise, affect all types of rights owing to the remedies.<sup>4</sup> According to the UNGPs, human rights can be protected and fulfilled by forming mechanisms providing access to remedies such as state-based judicial and non-judicial mechanisms, and non-state-based grievance mechanisms.

As an ASEAN member, the access to effective **remedies in Cambodia** remains questionable for several reasons. Between 1975 and 1979, there were serious human rights violations throughout Cambodia as the ruling regime made decisions on a non-legal basis to execute the suspected persons, including scholars. Schools and pagodas were used as detention and killing centres. After 1979, Cambodia still faced rampant civil war and conflicts preventing the country from restoring its development. Despite acknowledging the complete peace achieved and the noticeable development, the current regime's governance system does not provide sufficient access to effective remedial mechanisms, i.e. judicial and non-judicial mechanisms of access to remedies.

This **chapter** will explore the concepts and frameworks, mechanisms and characteristics of access to remedies in the context of human rights in business in Cambodia. In so doing, the chapter analyses international human rights legal principles based mainly on the UNGPs, and national laws relevant to human rights. The application section highlights key challenges and underpinning factors Cambodia has faced in relation to the right to access to effective remedies. The chapter then offers further discussions, followed by concluding remarks.

## 2. Frameworks

**T**his section introduces readers to the concepts of 'access to remedies' and presents the relevant international and national legal frameworks. These will be used as a basis for the analysing cases and challenges regarding access to remedies in Cambodia.

The **human right to a remedy** is mentioned in the Universal Declaration of Human Rights. Thus Article 8 provides that 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.'<sup>5</sup>

The definitions of access to remedies have been transformed in a wider scope since the 1970s. Before the 1970s, access to remedies referred to state-based judicial mechanisms.<sup>6</sup> After World War II, access to remedies was interpreted based on and connected with 'equality before the law', in which legal support is also deemed as access to remedies.<sup>7</sup> Since the 1970s, it has been defined as referring to **state, non-state, judicial and non-judicial mechanisms**.<sup>8</sup>

1 Council of Europe, *Effective remedies* (n.d.) <https://www.coe.int/en/web/freedom-expression/effective-remedies>; UNGA, *Human rights and transnational corporations and other business enterprises* (18 July 2017) p.4, <https://www.ohchr.org/en/documents/thematic-reports/a72162-report-access-effective-remedy-business-related-human-rights>.

2 OHCHR, *Guiding principle on business and human rights* (2011) p.27, [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf).

3 UNGA, *Human rights and transnational corporations and other business enterprises* (18 July 2017) p.4, <https://www.ohchr.org/en/documents/thematic-reports/a72162-report-access-effective-remedy-business-related-human-rights>.

4 Id.

5 UDHR (1948) [www.ohchr.org/en/human-rights/universal-declaration/translations/english](http://www.ohchr.org/en/human-rights/universal-declaration/translations/english).

6 M. Galanter, 'Access to justice in a world of expanding social capability', *Fordham Urb. LJ* 37 2010, p.115.

7 Id.

8 Id, p.116.



Sandefur views access to remedies as a ladder to accessing justice. Without equalising access to remedies, there would not be **equal access to justice**.<sup>9</sup> Equal access to justice, from a scholarly perspective, also includes non-discrimination between genders, social status and races. To achieve equal access to justice, mechanisms of access to remedies should be designed and functioned. It is deemed as effective when it is 'accessible', 'affordable', 'adequate', and in a 'timely' manner.<sup>10</sup>

## 2.1 International Frameworks

According to the UNGPs, the nature of remedies has **procedural and substantive aspects**. The substantive aspects of access to remedies refers to benefits for the victims and can take many forms: 'apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.'<sup>11</sup> This is also known as 'remediation' and is about repairing harm and thus 'counteract or make good any human rights harms that have occurred'.<sup>12</sup> In their conceptualisation of remedies, the UNGPs draw on the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which provide five types of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>13</sup>

The procedural aspect refers to **complaint mechanisms** or remedial mechanisms. As explained in the UNGPs, 'the term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.' Such mechanisms can take many forms and can be categorised in judicial and non-judicial procedures. They can be state-based or non-state based.

The judicial procedure, in court of law, shall be 'accessible', 'independent', 'unbribeable', non-political, and in accordance with due process. In the non-judicial procedure, the access to remedies can be made through creating grievance mechanisms, such as 'ad-hoc tribunals', 'mediation mechanisms', 'national human rights institutions', and 'ombudspersons'.

Guiding Principle 1 of the UNGPs sets out state obligations to protect human rights in business by taking 'appropriate steps to prevent, investigate, punish and redress' the business-related human rights abuses within their territory and/or jurisdiction. **Guiding Principle 25** guides the state to provide access to remedies through the judicial system, the state's administration, legislation, and other mechanisms considered substantial to ensure effective remedies when abuses arise.

The **UN Human Rights Committee** states that the right to access to remedies for both judicial and non-judicial procedures can be deemed effective only when such mechanism is fairly compensated, aims for legitimacy, is non-politically justified, and shows a sign of action to prevent repetitive abuse.<sup>14</sup> Even though this comment rests upon the states' obligations, they are legitimate for businesses to set up a proper accountability mechanism.

9 Cf. R. Sandefur, 'Fulcrum point of equal access to justice: Legal and Nonlegal institutions of remedy', *Loyola of Los Angeles Law Review* 42(4) 2009, p. 951.

10 UNGA, *Human rights and transnational corporation and other business enterprises* (2017) p.11, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/218/65/PDF/N1721865.pdf?OpenElement>.

11 UNGPs, Principle 25 Commentary.

12 *Id.*

13 OHCHR, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (2005) <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

14 Human Rights Committee, *General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant* (2004) <http://hrlibrary.umn.edu/gencomm/hrcom31.html>.

### State-based mechanisms

Cambodia has ratified various international human rights treaties (See Chapter 3), which have a binding obligation to respect, protect and fulfil those rights. Article 2(3) of the **ICCPR** enshrines the right to effective remedies as below:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

Moreover, Article 8 of the Universal Declaration of Human Rights (UDHR), and General Principle 5 of the **ASEAN Human Rights Declaration** have stipulated similarly. This principle has also been incorporated in the Civil and Criminal Code of the Kingdom of Cambodia. These obligate the state of Cambodia to provide availability of access to remedies when human rights are violated and to redress the harm.

Judicial and non-judicial mechanisms are both important and complementary. UNGPs provides that, in the judicial mechanism, the state is obligated to tackle **barriers preventing access to remedies**, in which the barriers may entail ‘corruption’, ‘economic and political pressure’, the act of preventing human rights defenders from ‘peaceful and legitimate activities’, and ‘legal barriers’.<sup>15</sup> The legal barriers include the issues of legislation and lack of accountability. Despite the binding effects of the judiciary’s decisions, the state is encouraged to adopt non-judicial mechanisms such as ‘mediation’, ‘national human rights institutions’, or other mechanisms that can establish and implement a rights-based perspective, since they are complementary to the judicial system and more suitable for some circumstances.<sup>16</sup>

### Non-state-based grievance mechanisms

The UNGPs emphasise that businesses are accountable for human rights abuses that they have caused, contributed to, and those which are directly linked to their products, services, or operations. Guiding Principle 22 provides that where ‘business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their **remediation** through legitimate processes.’ Guiding Principle 23 draws the attention of the businesses, in all contexts, to ‘(a) comply with all applicable laws and respect internationally recognized human rights, wherever they operate; (b) seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements; (c) treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.’

To be considered effective, the UNGPs provides that non-judicial grievance mechanisms, both state-based and non-state-based, shall be ‘legitimate’, ‘accessible’, ‘predictable’, ‘equitable’, ‘transparent’, ‘rights-compatible’, a source of continuous learning; and for operational-level mechanisms, they should be based on engagement and dialogue. Details of these **effectiveness criteria** are as follows:

- **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes.
- **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face barriers to access.

15 UN Guiding Principle on Business and Human Rights (2011), Guiding Principle 26.

16 Id., Guiding Principle 27.

- Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.
- Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair, informed and respectful terms.
- Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.
- Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights.
- A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.
- Operational-level mechanisms should also be based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance and focusing on dialogue as the means to address and resolve grievances.<sup>17</sup>

### Cross-border and international mechanisms

Many home countries are now working to ensure their overseas business operations respect human rights (see Chapter 12). Such laws with extraterritorial effects can be seen as providing additional incentives and support for businesses operating in Cambodia to respect human rights. The commitment by the host country to respect and ensure human rights within its territory would be complementary. Thus, the host and home states working together will achieve the global objectives of the UNGPs -- that is, for businesses to respect human rights in their value chains. Access to remedies and complaint mechanisms is a key element of this effort. For example, the OECD countries have established the **National Contact Points (NCP)** to receive complaints and review business (see Chapter 3) and foreign courts have increasingly considered complaints from foreign plaintiffs affected by business activities (Chapter 12).

## 2.2 National frameworks

The **Constitution** of the Kingdom of Cambodia enshrines the right to access to remedies through the judiciary. Article 51 (New) of the Constitution of the Kingdom of Cambodia stipulates that there shall be a separation of power between judiciary, legislature, and execution. Further, Article 39 sets out that competence courts are the core framework of providing access to remedies the same as other countries around the world:

Khmer citizens have the right to denounce, make complaints, or file claims for reparations of damages caused by any breach of law by state and social organisations or by staff of those organisations. The settlement of complaints and the reparations of damages are of the competence of the courts.<sup>18</sup>

The **judicial system in Cambodia** consists, in the first instance, of twenty-five municipal and provincial courts, four regional courts of appeal, and one central supreme court in the capital of Phnom Penh city. Currently, all the courts at all levels adjudicate all matters, including civil, criminal, and others, without separating specialised jurisdiction. The state has no administrative, constitutional, or human rights courts as sometime happens in other countries. However, those whose rights are violated can use other laws, including but not limited to civil and criminal codes, as legal substances for lawsuits. In the

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<sup>17</sup> Id., Guiding Principle 31.

<sup>18</sup> *Constitution of the Kingdom of Cambodia* (1993), Article 39.

meantime, the state has a constitutional council that provides interpretation of the constitutional law.<sup>19</sup> Cambodia has planned to create specialised commercial and labour courts, but it has not yet been decided when these specialised courts are to be established.

**Non-judicial mechanisms** exist in the form of arbitration, mediation, as well as traditional practice of dispute resolutions in the form of (re)conciliation such as in the National Commercial Arbitration Centre (NCAC), and the Arbitration Council (AC). The NCAC deals with non-judicial (but also quasi-judicial) commercial cases, while the AC addresses labour cases.

### 3. Applications

**T**his section will examine in more detail the functioning of various state-based judicial and non-judicial mechanisms, as well as non-state-based grievance, and how affected persons and communities seek alternative ways to have their grievances addressed.

#### 3.1 State-based judicial mechanisms

According to Article 128 (New) of Cambodia's Constitution, 'The Judicial power is an independent power. The Judicial power is the guarantor of impartiality and the protector of the citizen's rights and liberties. The Judicial power covers all litigations, including administrative litigation.' However, some civil society organisations view that the **independence of the judicial system** is still doubtful owing to 'corruption' and 'political interference'.<sup>20</sup> Particularly, access to remedies in commercial activities depends, to some extent, on commitments from businesses based on the relationship between business leaders and the current ruling party.<sup>21</sup> In some cases, victims whose rights have been affected by claiming and being denied justice have often got arrested and taken a long time to receive remedies. Poor victims found it expensive to even spend money on travelling to join the court proceedings when the court was delayed without prior notice.<sup>22</sup> This affects the due process of the right to effective remedies. Since 2022, Cambodia has made progress on the digitalisation of the court management processes with the aim of reducing the delays in court processes.<sup>23</sup> Case delays are not only contrary to due process, but they are also a barrier to accessing remedies and justice.

Further, although half of the arising cases brought regarding **economic land concessions** in 2015 were resolved,<sup>24</sup> there is a lack of publicly accessible information on the details of remedies to assess if they are fairly compensated. These issues were addressed in the recommendations provided in the UPR in 2019 for Cambodia to 'strengthen the independence and functioning of the judiciary, in particular by repealing or significantly amending the law on the organisation of courts, the law on the statute of judges and prosecutors and the law on the organisation and functioning of the Supreme Council of the Magistracy',<sup>25</sup>

19 Constitutional Council of Cambodia, *What is the constitutional council* (2020) [https://www.ccc.gov.kh/whatisccc\\_en.php](https://www.ccc.gov.kh/whatisccc_en.php).

20 L. West, 'The limits to judicial independence: Cambodia's political culture and the civil law' 26(3) 2019.

21 See Global Witness, *Who profits from the death of Cambodia's democracy?* (2018) <https://www.globalwitness.org/en/campaigns/cambodia/who-profits-death-cambodias-democracy/>.

22 Mongabay, *No justice for Indigenous community taking on a Cambodian rubber baron* (2022) <https://news.mongabay.com/2022/12/no-justice-for-indigenous-community-taking-on-a-cambodian-rubber-baron/>; Business & Human Rights Resource Centre, *Cambodia: UN human rights experts say arrests of Naga World's unionists may amount to human rights law violations & call on the govt. to explain the actions* (2022) <https://www.business-humanrights.org/en/latest-news/cambodia-un-human-rights-experts-say-arrests-of-naga-worlds-unionists-may-amount-to-human-rights-law-violations-call-on-the-govt-to-explain-the-actions/>.

23 Omesti, *Cambodia's Ministry of Justice Gains First-Hand Insights Into Digital eCourts System* (2022) <https://www.omesti.com/interacts-cambodias-ministry-of-justice-gains-first-hand-insights-into-digital-ecourts-system/>.

24 The NGO Forum on Cambodia, *Statistical analysis of economic land concession in Cambodia 2015* (2016) p.17, <http://ngoforum.org.kh/files/4b9b4015062aa12475997c98936bbeab-Layout-ELCs-report-2015-Eng.pdf>.

25 UPR (2019), Recommendation 110.125.

and 'amend the laws on the organisation of courts, the statute of judges and prosecutors and the organisation and functioning of the Supreme Council of the Magistracy to guarantee and protect the independence of the judiciary.'<sup>26</sup>

Access to effective remedies can be facilitated by **specialised government bodies**. A case in point is when the Ministry of Justice (MOJ) had to take rigorous and robust measures to reduce the enormous case backlog back in 2020. In just 222 days after the launch of a campaign to address the court case backlog throughout the Kingdom, the Ministry of Justice has cleared 35,100, or 89 per cent, out of a total of 39,152 cases that were pending.<sup>27</sup>

There have also been instances when, instead of providing remedies regarding human rights in business, the authorities made accusations against affected individuals or communities based on the **criminal code**. The UN Special Rapporteur reported that 'the instrumentalization of various laws potentially raises the spectre of rule by law'<sup>28</sup> and may lead to criminalising human rights victims.

### 3.2 State-based non-judicial mechanisms

Cambodia lacks specialised grievance mechanisms to deal with human rights abuses by businesses. Also, the lack of an independent judiciary does not convince the workers to bring their cases to the court; instead, they would rather turn to international arenas for advocacy to help address their issues. Garment workers, via trade unions, prefer to appeal to the brands to put pressure on the employers to respect labour rights and to redress labour rights violations. For example, in the garment and textile industry, the only trusted state-based non-judicial grievance mechanism is the **Arbitrator Council (AC)**. However, when the businesses fail to comply with the AC decision, the last available channel is to bring the AC's decision to the court.

The AC is mandated to administer collective labour disputes, covering rights and interests, as one of the most reliable and trusted arbitration bodies. Since its inception in 2003, 3042 cases have been registered, **2106 arbitral awards** have been issued, with a success rate of 75.16%, and 935 agreements have been reached.<sup>29</sup> AC specifically focuses on labour rights disputes and violations between employers and employees. So far, AC is the only state-based non-judicial mechanism addressing industrial relations issues, particularly labour rights. AC's arbitral awards can be binding or not depending on the decisions by the parties. There were a few cases in which workers, who won the arbitral awards, brought the cases to the court when the employers did not obey the arbitral awards. This was because they believed the court in Cambodia was not reliable and corrupt. However, the AC, which has two decades of experience in dealing with labour rights issues with credible reputations, has not expanded its scope and mandate to address broader sectoral issues of business and human rights abuses. Moreover, other state-based mediation mechanisms, in terms of the Justice Service Centre (JSC) and CDRC, after more than a decade of experience, do not function anymore due to the lack of a sustainability plan.

In contrast to the textile industry, many **development projects**, including economic land concession, agribusiness, mining, or hydropower projects, have caused various human rights violations. The recent Special Rapporteur (SR) on the Situation of Human Rights in Cambodia (2021) reveals that 'commercial activities on such lands initiated by the business sector act as a push factor, marginalising the livelihood

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<sup>26</sup> Id, Recommendation 110.127.

<sup>27</sup> The Phnom Penh Post, *Justice ministry: 89 per cent court case backlog cleared* (2020), <https://www.phnompenhpost.com/national/justice-ministry-89-cent-court-case-backlog-cleared>.

<sup>28</sup> UNHRC, *Situation of human rights in Cambodia: Report of the Special Rapporteur on the situation of human rights in Cambodia* (2021) [https://cambodia.ohchr.org/sites/default/files/Annual-reports/Special%20Rapporteur%20Annual%20A\\_HRC\\_48\\_79\\_E.pdf](https://cambodia.ohchr.org/sites/default/files/Annual-reports/Special%20Rapporteur%20Annual%20A_HRC_48_79_E.pdf).

<sup>29</sup> Arbitration Council, *Our Impact 2003-2022* (2023) <https://www.arbitrationcouncil.org/>.

of poorer communities, as well as their existence, unless precautionary measures are adopted, such as due diligence-related impact assessments and measures to mitigate harm.<sup>30</sup> Moreover, the SR also reported on the harm caused by businesses to the environment: ‘Construction and related modernisation might also cause environmental harm unless there are checks and balances in the development process.’<sup>31</sup> Given the harm to human rights and the environment by businesses, the SR has directly called for the government of Cambodia to observe the UNGPs, mentioning that ‘... there is also a need to incorporate human rights into environmental impact assessments to be carried out prior to project implementation as part of due diligence.’<sup>32</sup>

Another state-based non-judicial mechanism concerns **land disputes**. People with land dispute cases can file complaints to the commune council as a local dispute mechanism.<sup>33</sup> When the disputes cannot be settled, parties can bring their cases to the Cadastral Committee at the district level, then the Cadastral Committee at the provincial/municipal level.<sup>34</sup> If still not settled, the cases could be brought up to the national-level Cadastral Committee.<sup>35</sup> If all those non-judicial mechanisms do not provide a satisfactory outcome, the last resort is to bring the case to the court.

**State-based non-judicial mechanisms** include human rights commissions at the Senate, the National Assembly and the Cambodian Human Rights Committee. The Senate Commission on Human Rights receives complaints and investigates the matters. Furthermore, the Senate’s Commission on Human Rights receives all types of complaints from individuals on human rights issues, investigates, observes, and initiates the draft law proposals to implement laws and regulations on human rights.<sup>36</sup> The National Assembly Commission on Human Rights accepts complaints.<sup>37</sup> The National Assembly’s Commission on Human Rights receives and addresses human rights complaints caused by state and public institutions. The Cambodian Human Rights Committee (CHRC) accepts and resolves complaints on human rights and reports on human rights to the United Nations<sup>38</sup> in writing.

Cambodia is in the process of creating the independent **National Human Rights Institution (NHRI)**. In the middle of 2021, the CHRC finished the first draft of the law on establishing NHRI whose aims are to assess human rights situations and provide recommendations and advice.<sup>39</sup> However, civil societies have expressed concerns about this establishment owing to the lack of commitment in the current leadership patterns to promoting democratic principles and transparency.<sup>40</sup> This is echoed by the UPR recommendation that Cambodia should accelerate the establishment of a national human rights institution in accordance with the Paris Principles.<sup>41</sup>

30 Human Rights Council, *Situation of human rights in Cambodia: Report of the Special Rapporteur on the situation of human rights in Cambodia* (2021) p.15,  
[https://cambodia.ohchr.org/sites/default/files/Annual-reports/Special%20Rapporteur%20Annual%20A\\_HRC\\_48\\_79\\_E.pdf](https://cambodia.ohchr.org/sites/default/files/Annual-reports/Special%20Rapporteur%20Annual%20A_HRC_48_79_E.pdf).

31, 32 *Id.*

33 Narin, K & Sokmean, K. *Villagers in the land dispute hope new commune councillors will help* (May 2022)  
<https://cambojanews.com/villagers-in-land-dispute-hope-new-commune-councillors-will-help/>.

34 Cambodia, *Sub Decree on organization and functioning of the Cadastral Commission* (2002) art. 2,  
<https://faolex.fao.org/docs/pdf/cam204538.pdf>.

35 *Id.*, art.4, <https://faolex.fao.org/docs/pdf/cam204538.pdf>.

36 CCHR, *Volume 3: National human rights bodies in Cambodia* (2012)  
<https://cchrcambodia.org/storage/posts/1763/2012-03-30-factsheets-eng-national-human-rights-bodies-in-cambodia.pdf>.

37 *Id.*

38 Cambodian Human Rights Committee, *Welcoming Remarks by Minister attached to the Prime Minister and a Chairperson of Cambodian Human Rights Committee* (n.d.) <https://www.chrc.gov.kh/>.

39 The Phnom Penh Post, *National human rights institution establishment one step closer* (2021)  
<https://www.phnompenhpost.com/national/national-human-rights-institution-establishment-one-step-closer>.

40 International Federation of Journalists, *Cambodia: concerns rise over governments establishment of National Human Rights Institution* (2021) <https://www.ifj.org/media-centre/news/detail/category/-press-releases/article/cambodia-concerns-rise-over-governments-establishment-of-national-human-rights-institution>.

41 The Paris Principles refers to ‘Principles Relating to the Status of National Human Rights Institutions’ endorsed by the UN General Assembly in 1993 <https://www.ohchr.org/en/instruments-mechanisms/instruments/-principles-relating-status-national-institutions-paris>.



In 2021, an **office of legislation and local mediation** was established under the municipal/district public administration. The new district administrative reform has been realised through the creation of an official District office of Legislation and Local Dispute Mediation in all municipalities<sup>42</sup>, Capital's Khans<sup>43</sup>, and districts<sup>44</sup> nationwide. Moreover, Cambodians, including indigenous people, have practised various traditional dispute resolution mechanisms using their traditional knowledge and practice, and trust in the local traditional or religious leaders and the well-respected elders and so on.<sup>45</sup>

### 3.3 Other grievance mechanisms and cross-border access to remedies

The lack of trust in state-based judicial and state-based non-judicial grievance mechanisms and power imbalance between the affected groups and businesses have made victims of abuses take their cases/complaints elsewhere. Some file complaints to human rights NGOs, UN human rights offices, parent companies, international brands, lender financial institutions, other country's national human rights institutions, and so on. **Local NGOs**, such as the Cambodia Human Rights and Development Association (ADHOC), the Cambodian League for the Promotion and Defence of Human Rights (LICADHO), Equitable Cambodia (EC), OHCHR and others have received complaints directly from the affected communities.

For example, in 2022, ADHOC received and investigated 182 cases related to land rights, affecting 77,361 victims.<sup>46</sup> LICADHO and EC, on behalf of Cambodian **microloan borrowers**, filed a complaint to the Compliance Advisor Ombudsman (CAO), the internal accountability mechanism of the International Finance Corporation (IFC), which would open an investigation into six banks or MFIs in Cambodia, in the hope of advancing borrowers' right to remedy and beginning to address the serious harms caused by these investments.<sup>47</sup>

In the case of **NAGA World**, trade union leaders, the majority of whom are women, were subject to harassment and their rights to strike against their employer were hindered after they had exhausted all legal avenues. The authorities and security guards conducted the harassment and rights abuses. CEDAW has, in their 2021 monitoring report, suggested that the government should train all security guards regarding how they should treat female protesters, unions as well as employees.<sup>48</sup> The failure to have an effective grievance mechanism in place has brought this Naga case to international advocacy, currently being campaigned by the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF), which launched three demands: '(1) the Government of Cambodia must release LRSU President Sister Chhim Sithar and drop all criminal charges against her and other union leaders; (2) NagaCorp must reinstate all laid-off workers who wish to return to work; and (3) NagaCorp must recognize LRSU and engage in good-faith collective bargaining with workers.'<sup>49</sup>

42 Royal Government of Cambodia, *Sub-decree on the functions and structure of municipal administration*. Sub-decree 182, ANKr.BK, dated 2 December 2019

43 Royal Government of Cambodia, *Sub-decree on the functions and structure of Khan administration of Phnom Penh Capital City*. Sub-decree 183, ANKr.BK, dated 2 December 2019

44 Royal Government of Cambodia, *Sub-decree on the functions and structure of district administration*. Sub-decree 184, ANKr.BK, dated 2 December 2019

45 See Food and Agriculture Organization of the United Nations, *Women's land rights and agrarian change: Evidence from indigenous Communities in Cambodia* (2019) p. 23, <https://www.fao.org/3/ca4004en/ca4004en.pdf>.

46 ADHOC, *Report on Human Rights Situation* (2022) [https://www.adhoccambodia.org/wp-content/uploads/2023/05/%E1%9E%91%E1%9E%B6%E1%9E%89%E1%9E%99%E1%9E%80%E1%9E%9A%E1%9E%94%E1%9E%B6%E1%9E%99%E1%9E%80%E1%9E%B6%E1%9E%9A%E1%9E%8E%E1%9F%8D%E1%9E%9F%E1%9F%92%E1%9E%90%E1%9E%B6%E1%9E%93%E1%9E%97%E1%9E%B6%E1%9E%96%E1%9E%9F%E1%9E%B7%E1%9E%91%E1%9F%92%E1%9E%92%E1%9E%B7%E1%9E%98%E1%9E%93%E1%9E%BB%E1%9E%9F%E1%9F%92%E1%9E%9F%E1%9E%86%E1%9F%92%E1%9E%93%E1%9E%B6%E1%9F%86%E1%9F%A2%E1%9F%A0%E1%9F%A2%E1%9F%A2\\_EN.pdf](https://www.adhoccambodia.org/wp-content/uploads/2023/05/%E1%9E%91%E1%9E%B6%E1%9E%89%E1%9E%99%E1%9E%80%E1%9E%9A%E1%9E%94%E1%9E%B6%E1%9E%99%E1%9E%80%E1%9E%B6%E1%9E%9A%E1%9E%8E%E1%9F%8D%E1%9E%9F%E1%9F%92%E1%9E%90%E1%9E%B6%E1%9E%93%E1%9E%97%E1%9E%B6%E1%9E%96%E1%9E%9F%E1%9E%B7%E1%9E%91%E1%9F%92%E1%9E%92%E1%9E%B7%E1%9E%98%E1%9E%93%E1%9E%BB%E1%9E%9F%E1%9F%92%E1%9E%9F%E1%9E%86%E1%9F%92%E1%9E%93%E1%9E%B6%E1%9F%86%E1%9F%A2%E1%9F%A0%E1%9F%A2%E1%9F%A2_EN.pdf).

47 LICADHO and EC, *Joint Statement: IFC Board to Review Decision to Investigate Cambodia MFI Complaint* (2023) [https://www.licadho-cambodia.org/press/files/513CAO\\_Compliance\\_Statement\\_In\\_Review\\_20230703.pdf](https://www.licadho-cambodia.org/press/files/513CAO_Compliance_Statement_In_Review_20230703.pdf).

48 CEDAW, *CEDAW Monitoring Report for Cambodia* (2021)

<https://ngocedaw.org/wp-content/uploads/2023/08/2021-Annual-CEDAW-Monitoring-Report-for-Cambodia-ENG.pdf>.

49 IUF, *Nagaworld: The fight for justice for hotel workers in Cambodia* (n.d.) <https://www.iuf.org/campaigns/nagaworld/>.



In 2006, the Cambodian government illegally granted nearly 10,000 hectares of land in southwestern Cambodia's **Koh Kong** province to two businesses, Koh Kong Sugar Industry and Koh Kong Plantation, a joint Thai, Cambodian and Taiwanese venture, to develop sugar plantations and refineries.<sup>50</sup> It resulted in a violent land grab by sugar companies that pushed 500 families off their land, violating their rights to life, livelihoods and self-determination. The affected villagers filed civil and criminal complaints against the companies in the local court, calling for a cancellation of the land concession, which was soon stalled.<sup>51</sup> The case was brought to the National Human Rights Commission of Thailand (NHRCT), alleging that Thai corporation Khon Kaen Sugar Ltd. had violated Cambodian and international law.<sup>52</sup>

Affected communities, in collaboration with and support from EarthRights International and a Cambodian CSO Community Legal Education Centre (CLEC), also pursue justice through the following mechanisms: Bonsucro, a sugar cane industry initiative for responsible and sustainable growing; the U.S. **National Contact Point** (NCP) for the OECD Guidelines on Multinational Enterprises; and the United Kingdom court system.<sup>53</sup> Previous sugar business transactions implicated other stakeholders in the following order: The Koh Kong companies sold sugar to the UK-headquartered company, Tate & Lyle Sugars, in 2009, which was later acquired by American Sugar Refineries, Inc. (ASR), which markets Domino, C&H and Redpath Sugar. Complaints were subsequently filed in connection to those stakeholders.<sup>54</sup>

After almost **10 years of struggle**, the final report by the NHRCT recognized, in 2015, the human rights violations at the Koh Kong plantation, stating that this land grab violated the local population's rights to life and self-determination, including their right to manage and benefit from natural resources and the right to development.<sup>55</sup> This first transboundary case accepted by the NHRCT has set a legal precedent on the Commission's jurisdiction. The report found that KSL is responsible for human rights violations due to its decision to receive and benefit from the land concession that resulted in these violations, even if the business did not itself commit the abuses.<sup>56</sup> In April 2023, the fund was finally distributed to affected villagers.<sup>57</sup>

## 4. Further discussion

**T**he UNGPs is an authoritative framework adopted by the UN and Cambodia as a member state of the UN. However the UNGPs constitute a non-binding instrument and cannot itself create effective remedies for victims of corporate abuse. This framework cannot be directly enforced in Cambodia. However, it may have indirect **effects in Cambodia** by stimulating governmental action and policies and by legitimising non-state grievance mechanism and the rights of victims to file complaints. Businesses are expected to provide remediation when they caused and contributed to abuses (see Chapter 6) and this is part of their responsibility to respect human rights. Furthermore, businesses that have grievance mechanisms can benefit from new data on how their policies and systems work and whether they are successful in reducing adverse impacts on human rights. In this manner, grievance mechanisms reinforce the monitoring and tracking of the effectiveness of corporate policies, and thus support human rights due diligence.

In 2021, Cambodia's Minister of Justice directed the formation of a committee to begin the process of establishing separate **court for labour disputes**<sup>58</sup>. The proposal to create a special court on labour should draw on the experience of the Labour Arbitration Council (AC), or AC should play a role as a judicial

50 EarthRights International, *Koh Kong Sugar Plantation* (n.d.) <https://earthrights.org/case/koh-kong-sugar-plantation/>.  
51, 52, 53, 54, 55, 56 Id.

57 Equitable Cambodia, *Sugar Community from Sre Ambel district's Chikor Leu Commune in Koh Kong province have reached a settlement* (2023) <https://equitablecambodia.org/website/article/3-2509.html>.

58 Chheng Niem (January 2021). *Cambodia set to have trade, labour courts by end of 2021*. The Phnom Penh Post. <https://phnompenhpost.com/national/cambodia-set-have-trade-labour-courts-end-2021>.

system for labour issues in the country. This could ensure that the judicial mechanism to deal with business-related human rights abuses does not start from scratch. The experience of AC, which is already well-known and well-respected in domestic and international arenas, can be instrumental in bringing attention not only to labour issues but also to existing human rights abuses.

The **gig-economy** poses special challenges regarding access to effective remedies. Businesses have grown with new and emerging technological advancements; those who have worked in new technology sector, such as app-based business -- logistics and deliveries, and transportation -- have faced labour rights abuses. The access to justice via judicial and non-judicial mechanisms is inaccessible by the workers in the sector. These self-employed or freelance job opportunities make it necessary to spend a lot of money on the equipment and devices, and thus be able to work and earn a commission. For example, taxi or tuk-tuk drivers have to spend on cars, motorbikes or good smartphones in order to join this platform-based employment. Delivery workers also have to spend their own money upfront for similar equipment. Not only labour rights emerge as an issue, the informal characteristics of the work could make it even harder for the workers to access the remedies as some of these businesses do not have access to remediation mechanisms in place.

## 5. Conclusions

**U**nderstanding and identifying potential human rights impacts are important to prevent and address the adverse impacts at an early stage. The investment in early human rights assessment could also prevent the impacts from happening. However, preventing the abuse as much as possible does not guarantee that there will be no human rights impacts. In essence, having in place the grievance mechanisms at all levels will ensure that, if prevention fails, human rights impacts are addressed through these mechanism. Businesses would benefit from having remedial mechanisms in place as this provides new sources of data for their due diligence efforts and systems.

Even though Cambodia has a binding obligation as a party to many international human rights treaties and ILO conventions, the state has not demonstrated that they have made every effort to protect human rights and further obligate businesses to respect human rights to have responsible business conducts. Also, when impacts or harms happen, the existing remediation mechanisms do not function sufficiently or are ineffective. The victims of business misconduct have little hope in the current remediation system and would choose other channels beyond the state's mandate. They have turned to the UN to report human rights violations by the public authorities and businesses. Also, the victims have reached out to the courts of home states where parent companies are incorporated or to international mediation mechanisms, such as those provided by the international financial institutions that support business projects in Cambodia.

1. ICJ, *Achieving justice for gross human rights violations in Cambodia* (2017) <https://www.icj.org/wp-content/uploads/2017/10/Cambodia-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2017-ENG.pdf>.
2. L. McGrew, & V. Doung, *Access to justice project in Cambodia: Final evaluation report* (2010) <https://erc.undp.org/evaluation/documents/download/3971>.
3. Open Society Foundations, *Legal remedies for grand corruption: Litigation lessons from contesting a corrupt land grab in Cambodia* (2016) <https://www.justiceinitiative.org/uploads/10af194b-cd83-45db-9359-4bf551c08afa/legal-remedies-9-keo-20161025.pdf>.
4. R. Einzenberger, 'Conference report: Land grabbing, conflict, and agrarian-environmental transformations: Perspectives From East and Southeast Asia', *Advances in Southeast Asian Studies*, 8(2) 2015 [https://www.eur.nl/sites/corporate/files/CMCP\\_28-\\_Bugalski\\_\\_Ratha.pdf](https://www.eur.nl/sites/corporate/files/CMCP_28-_Bugalski__Ratha.pdf).
5. R. Mares, K. P., Charman, & S. Kimsan, *Human rights frameworks: The laws and policies for responsible business conduct*, in *Business and Human rights in Cambodia – A compendium of instruments and materials* (2021) [https://cshl-kh.org/wp-content/uploads/2022/06/2021-PART-I-HUMAN-RIGHTS-FRAMWORKS\\_Final.pdf](https://cshl-kh.org/wp-content/uploads/2022/06/2021-PART-I-HUMAN-RIGHTS-FRAMWORKS_Final.pdf).

# **CHAPTER 6**

## **Corporations and Human Rights Due Diligence**



**Socheata Sao and Sophia Aspesi Areias**

**P**illar II of the UNGPs created a clear framework for the corporate respect for human rights and increased expectations for businesses everywhere to undertake human rights due diligence (HRDD) in their operations and value chains. Shortly after the adoption of the UNGPs, the Organisation for Economic Cooperation and Development (OECD) revised its Guidelines for Multinational Enterprises and referred to HRDD as essential for RBC. This **chapter** will discuss the international standards for due diligence and how businesses implement them through corporate policies and systems. It will also highlight challenges that businesses may face in fulfilling their human rights responsibilities, especially in Cambodia.

To **respect human rights**, businesses should: 1) develop and implement a human rights policy; 2) conduct HRDD; and 3) establish or participate in a remediation process. The business responsibility to respect human rights extends to all internationally recognised human rights; at a minimum, this includes those outlined in the International Bill of Human Rights and the International Labour Organisation (ILO)'s Declaration on Fundamental Principles and Rights at Work. Increasingly, regulators (Chapters 12 and 4) and investors (Chapter 10) expect businesses to respect human rights across their value chains. For many businesses, conducting HRDD presents a myriad of challenges given the complexities of supply chains, market pressures and sensitive political contexts.

## 2. Frameworks

### 2.1 International Frameworks

#### UNGPs

**T**o ensure respect for human rights, the UNGPs expect businesses to have a **policy commitment** that provides the basis for embedding respect for human rights across their operations. This can be a corporate code of conduct, code of ethics or similar statement of principles. Importantly, the policy commitment should be informed by the company's understanding of its risks and adverse impacts on human rights, which should include engagement with internal and external stakeholders, especially affected and potentially affected individuals or communities.

The UNGPs require businesses to conduct **HRDD** to identify, prevent, mitigate, and account for how they address their adverse human rights impacts. Principle 17 lays out the framework for businesses to conduct HRDD to identify and address their adverse impacts. Businesses should start by identifying and assessing actual and potential adverse impacts or rights violations that they cause or contribute to through their operations, products, or services. Businesses can also be directly linked to adverse impacts through their business relationships with, e.g. business partners and any non-State or State entities directly linked to their business operations, products, or services. Businesses should prevent, mitigate, or address potential adverse impacts, and address harms that occur. Where businesses cause or contribute to harms, they need to provide appropriate remedies to those affected.

HRDD is an **ongoing and iterative process** by which businesses manage their impacts on human rights. HRDD is, thus, different from other due diligence exercises as it focuses on the risks to people. HRDD should be conducted before commencing a new activity or project, and it should be ongoing, recognising that human rights risks may change over time as the business context changes and evolves. Importantly, HRDD should go beyond a 'tick the box' approach. Whilst many businesses use social audits to assist in identifying human rights impacts in their value chains, effective HRDD requires identifying risks through a variety of processes, including engaging directly with rightsholders.

HRDD is also different from a **human rights impact assessment** (HRIA). An HRIA is a first step to ensuring business respect for human rights and is a core component of HRDD. Using a human rights-based methodology, it involves thoroughly analysing the effects that a business project or set of activities may have on rightsholders, e.g. workers, local communities, and consumers.<sup>1</sup> Drawing on this analysis of impacts, HRDD encompasses the full range of actions and processes through which a business prevents and corrects its potential or actual adverse human rights impacts, and includes remedies for victims of harm. It also requires tracking results and communicating the same to internal and external stakeholders, especially potentially affected or affected individuals or communities.<sup>2</sup>

**All businesses**, regardless of size, are expected to conduct HRDD to understand the impacts of their operations or activities on people. This also includes state-owned enterprises, which have a dual role as a state entity expected to respect and protect human rights (Pillar 1) and the business responsibility to respect human rights (Pillar 2). Thus, all companies, state-owned or private businesses, large and small, in all industries and sectors are expected to respect human rights and undertake due diligence. However, due diligence systems and actions will not be identical in all cases. Indeed, the form, scale, complexity, and severity of human rights impacts or violations vary from one business, sector, and operating environment to another, and thus determine the specifics of the HRDD process. Also, corporate size, sector, operational context, ownership, and structure of the business will affect how HRDD is designed and implemented.<sup>3</sup> Importantly, to fine-tune HRDD to specific circumstances, the UNGPs call for meaningful consultations with key stakeholders, especially affected or potentially affected individuals or groups.

### OECD Guidelines

In line with the UNGPs, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines on RBC),<sup>4</sup> last revised in 2023, cemented the expectation for businesses to conduct HRDD. The OECD Guidelines encourage and provide recommendations to businesses on how to conduct a risk-based approach to HRDD to ensure respect for human rights, including those of indigenous peoples and other vulnerable groups.<sup>5</sup> The 2023 revision also recommends that businesses align with international agreements on climate change and biodiversity.

To offer further detail, in 2018, the OECD issued the OECD Due Diligence Guidance for Responsible Business Conduct (OECD Guidance on DD), specifying practical steps for businesses to avoid and address adverse impacts related to workers, human rights, environment, bribery, consumers, and corporate governance associated with their operations, business relationships, and value chains. The OECD Guidance's due diligence process involves **six steps**:

- 1 embed responsible business conduct into policies and management systems;
- 2 identify and assess actual and potential adverse impacts from the business operations, products, or services;
- 3 cease, prevent, and mitigate adverse impacts;
- 4 track implementation and outcomes;
- 5 communicate how impacts are addressed; and
- 6 provide or cooperate in remediation for harms occurred.<sup>6</sup>

1 The Danish Institute for Human Rights, *Human rights impact assessment guidance and toolbox* (2020) <https://www.human-rights.dk/tools/human-rights-impact-assessment-guidance-toolbox>. See, e.g. Facebook, Facebook Response, *Cambodia Human Rights Impact Assessment* (2021) <https://about.fb.com/wp-content/uploads/2021/03/FB-Response-Cambodia-HRIA.pdf>.

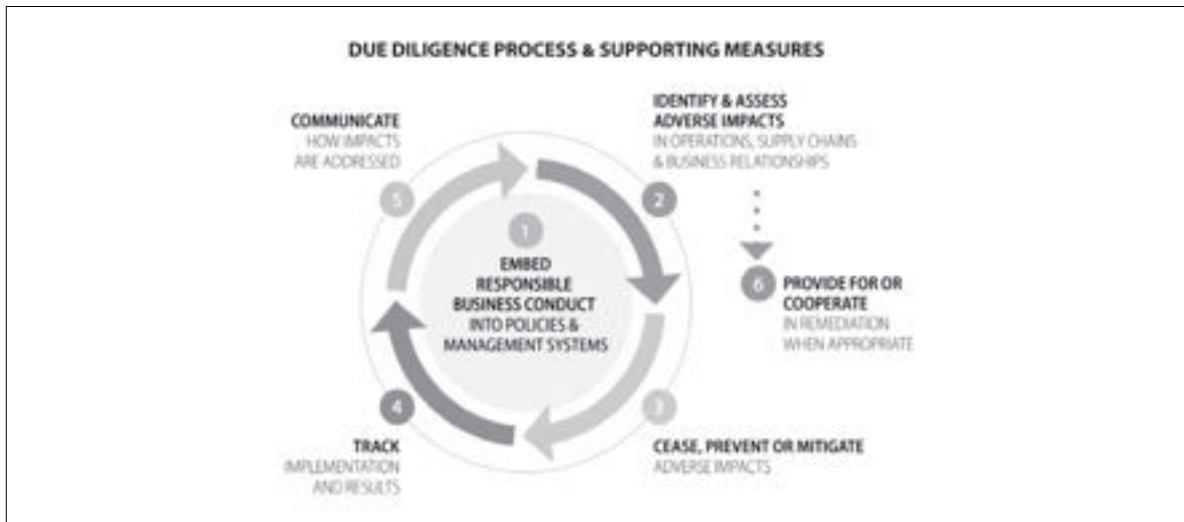
2 UNGPs, Principle 17 and Commentary. For detailed guidance on each step of the HRDD, see, Principles 18-21.

3 Id., Principle 14.

4 OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023) <https://www.oecd-ilibrary.org/docserver/81f92357-en.pdf?expires=1689645279&id=id&accname=guest&checksum=E12794BF45092570451F9DED15321080>.

5 Id., Chapter 4.

6 OECD, *OECD Due Diligence Guidance for Responsible Business Conduct* (2018) <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.



Source: OECD 2023)

The **OECD Guidance** follows the UNGPs' approach to HRDD, but embeds human rights policy and remediation into a complete process. What the UNGPs call the 'corporate responsibility to respect human rights' is referred to in the OECD Guidance as corporate 'due diligence'. Otherwise, the OECD Guidance is fully aligned with the UNGPs regarding all concrete steps expected from businesses. To help businesses operate responsibly, the OECD also issued sector-specific, due diligence guidance for the mining, extractive, garment & footwear, agriculture, and financial sectors.<sup>7</sup>

### Other HRDD Guidelines

There are various other HRDD guidelines, some of which focus on specific human rights, sectors, or contexts. For labour rights, the **ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy** draws on the UNGPs and encourages businesses to conduct due diligence exercises to identify and assess their actual or potential adverse impacts on labour rights and workplace issues in their own operations or business relationships. Just like in the UNGPs, the due diligence should involve meaningful consultations with affected and potentially affected groups and other relevant stakeholders, including unions, as appropriate to the business size, its nature, and operational context.<sup>8</sup>

There are numerous soft-law tools created by international **multi-stakeholder schemes** or business associations that promote business respect for human rights. Some provide HRDD guidance for businesses to avoid infringing on human rights in their operations or value chains. For instance, Amfori members and their business partners need to observe the Amfori BSCI Code of Conduct, carry out HRDD, and ensure environmental protection in their value chains. The Code of Conduct provides guidance to help these businesses identify, prevent, mitigate, account for, and remediate adverse human rights and environmental impacts.<sup>9</sup> Some HRDD guidance focuses on specific human rights<sup>10</sup> or sectors<sup>11</sup>.

<sup>7</sup> Id.

<sup>8</sup> ILO, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, Paragraph 10(d) and (e). (1976, amended 2022) [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

<sup>9</sup> Amfori, *amfori BSCI Code of Conduct* (2021) [https://www.amfori.org/sites/default/files/amfori%20BSCI%20Code%20of%20Conduct%20-%20English%20-%20December%202021\\_v2.pdf](https://www.amfori.org/sites/default/files/amfori%20BSCI%20Code%20of%20Conduct%20-%20English%20-%20December%202021_v2.pdf). Another example, see Responsible Business Alliance (RBA) <https://www.responsiblebusiness.org/>; RBA, *Assessment* <https://www.responsiblebusiness.org/tools/assessment/>; Fair Labour, *Fair Labour Accreditation* <https://www.fairlabor.org/accountability/fair-labor-accreditation/>.

<sup>10</sup> International Organisation for Migration (IOM), *Fair and Ethical Recruitment Due Diligence Toolkit* <https://www.iom.int/fair-and-ethical-recruitment-due-diligence-toolkit>.

<sup>11</sup> Ipieca, *Human rights due diligence guidance: A practical guidance for the oil and gas and alternative energy industry* (2021) <https://www.ipieca.org/resources/human-rights-due-diligence-guidance#>.



Further, businesses may also refer to context-specific HRDD guidance, e.g. COVID-19 and conflict-affected contexts.<sup>12</sup>

## 2.2 National Framework of Cambodia

In Cambodia, there is no specific hard law or soft law that requires corporate directors or managers, or the business for which they work, to respect human rights and to implement HRDD processes and systems. For instance, Law on Commercial Rules and Register (1995, amended 2022) and **Law on Commercial Enterprises** (2005, amended 2022) and related laws govern the general description of the legal structure, type, ownership, legal rights, and responsibilities of businesses, including state-owned enterprises.<sup>13</sup> These laws do not impose human rights responsibility on businesses, their subsidiaries, directors, or managers. Directors and corporate officers only have a duty of care towards the business and its shareholders, not individuals or communities that may be impacted by the business operations or activities.<sup>14</sup>

To legally operate in Cambodia, businesses need to **comply with all relevant laws** and regulations, some of which protect human rights such as labour rights, land rights, right to a safe and clean environment, and right to health, to name a few (see Chapter 4). Some of these laws and regulations, as well as the Civil Code (2007), Criminal Code (2009), and Code of Civil Procedures (2006), provide legal grounds for corporate accountability and remedy for affected individuals or communities, depending on whether the human rights violation is a civil and/or criminal wrong.<sup>15</sup> Some businesses need to comply with the environmental law and regulations to avoid causing harms to the environment. Businesses may also refer to some soft-law tools as guidance to avoid harming people and the environment.

## 2.3 HRDD-Related Legislation

In the last decade, there has been a **global increase** of HRDD-related soft laws and, more recently, the development of hard laws. These laws tend to either establish reporting requirements for businesses to demonstrate they have been conducting HRDD on specific issues, such as modern slavery. More recently, the regulations have evolved to require not just reporting on HRDD processes they might have, but also requiring businesses to set up and implement HRDD. Examples of these HRDD regulations, many of which were initiated in the Global North, include the EU Non-Financial Reporting Directive (2014), UK Modern Slavery Act (2015), French Duty of Vigilance Law (2017), Australian Modern Slavery Act (2018), Dutch Child Labour Due Diligence Act (2019), and German Supply Chain Act (2021). Additionally, the EU is developing a directive on mandatory human rights and environmental due diligence which, if passed, would create the basis for HRDD laws across the EU (Chapter 12). By contrast, in Asia, there has been a slow growth of HRDD legislation or guidelines.<sup>16</sup>

12 Shift, *Human Rights Due Diligence During COVID-19 and Lessons for the Future* (2020) <https://shiftproject.org/resource/human-rights-due-diligence-during-covid-19-and-lessons-for-the-future/>; OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (2016) <https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>; and International Alert, *Human Rights Due Diligence in Conflict-Affected Settings: Guidance for Extractive Industries* (2018) <https://www.international-alert.org/app/uploads/2021/08/Economy-Human-Rights-Due-Diligence-Guidance-EN-2018.pdf>.

13 All rules and regulations which govern business enterprises shall apply to state-owned-enterprises too. Law on the General Statute of Public Enterprises (1996), Article 4.

14 Law on Commercial Enterprise, Article 289. For public listed companies (PLCs), see, the Law on the Issuance and Trading of Non-Government Securities (2007); and Prakas on Corporate Governance on Listed Public Enterprises (2010). There are no provisions explicitly requiring PLCs to respect human rights.

15 Criminal Code, Chapter IV, Article 42 (a legal entity may be held criminally responsible for offences committed on their behalf by their organs or representatives). See also, Labour Law, Chapter 16.

16 Global Witness, *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains* (2015) [https://www.globalwitness.org/documents/18138/201512\\_Chinese\\_Due\\_Diligence\\_Guidelines\\_for\\_Responsible\\_Mineral\\_Supply\\_Chains\\_-\\_En\\_K83fxzt.pdf](https://www.globalwitness.org/documents/18138/201512_Chinese_Due_Diligence_Guidelines_for_Responsible_Mineral_Supply_Chains_-_En_K83fxzt.pdf); and Ministry of Economy, Trade, and Industry, *Guidelines on Respect for Human Rights in Responsible Supply Chains* (2022) [https://www.meti.go.jp/shingikai/economy/supply\\_chain/pdf/20220808\\_2.pdf](https://www.meti.go.jp/shingikai/economy/supply_chain/pdf/20220808_2.pdf).

**F**undamentally, the business responsibility to respect human rights applies fully and equally to all businesses. They have to comply with national laws in the countries where they operate, as well as observe international standards of human rights. This means, in practice, the responsibility may require a business to go beyond compliance with domestic laws, or even put a business in tension with domestic laws in countries where they operate, if such national laws are in conflict with international treaties. The UNGPs recognised such challenges, indicated a practical, step-by-step process of HRDD, and changed CSR as practiced by businesses before 2011 (Chapter 3).

### 3.1 HRDD in Practice

The UNGPs in Principles 15-22 explain the main steps in a HRDD process. These are also reflected in the OECD Guidance on RBC and due diligence

#### 3.1.1. Policy Commitment

Some businesses may develop the policy commitment to inform their **human rights policies** before conducting HRDD. The decision to start with one or the other may depend on company culture, including a decision as to which method would effectively gain internal buy-in. Further, to embed human rights across their operations, businesses should work towards policy coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships. For example, the seafood company, Thai Union, published its human rights policy in 2021 setting out the company's commitment to respect human rights throughout its value chain. The policy extends to all individuals whose lives may be negatively impacted by their operations, products, or services. It also refers to an accompanying HRDD framework that operationalises the company's HRDD process.<sup>17</sup>

To **embed respect for human rights**, businesses should establish a tone from the top so that senior leadership are genuinely committed and support the company's human rights policy. For example, CP Group requires sign-off from their Sustainability Committee and Executive Board on their human rights policy or changes to it.<sup>18</sup> Embedding also requires that the company's commitment extends across all business functions, including legal and compliance, procurement, human resources, sustainability, and marketing. Many businesses thus develop training programmes for employees to better understand the policy and implement HRDD. The training can also be tailored to the function.

#### 3.1.2. Identifying Human Rights Risks

As the first step, businesses should identify and assess their 'salient' human rights impacts. Salient human rights impacts are those that are likely to be most at risk – in terms of severity of harm and probability that harm will occur – for the specific situation of a business. For example, **Unilever**, a British consumer goods multinational enterprise, identified the following salient areas of risk to upholding human rights: 1) discrimination; 2) fair wages; 3) forced labour; 4) freedom of association, 5) harassment; 6) health and safety; 7) land rights; and 8) working hours.<sup>19</sup>

According to the UNGPs and OECD guidance, to begin identifying and assessing salient human rights impacts, businesses may want to undertake desk-research to catalogue activities and locations of risks,

17 Thai Union, *Human Rights Due Diligence Framework* (2023)

<https://www.thaiunion.com/files/download/sustainability/policy/tu-human-rights-en.pdf>

18 CP Group, *Human Rights and Labor Processes*, <https://www.cpgroupglobal.com/en/sustainability/heart-living-right/human-rights-and-labor-practices#:~:text=The%20actions%20to%20ensure%20that,rights%20on%20a%20continuous%20basis>.

19 Unilever, *Salient Human Rights Issues* (2023)

<https://www.unilever.com/planet-and-society/respect-human-rights/our-salient-human-rights-issues/>



and relevant human rights standards that may be impacted. Businesses can implement in-depth processes to understand the human rights impacts of their operations, products, or services, and also draw on the expertise of internal and external stakeholders. Businesses should **engage meaningfully** with potentially affected and affected groups and other relevant stakeholders to understand their human rights impacts. Where appropriate, businesses can engage human rights defenders and civil society organisations as partners to inform their HRDD and identify adverse human rights impacts.

While identifying and assessing their impacts, companies should consider impacts to **vulnerable and marginalised people** or communities that may be at heightened risk of harms, e.g. women, children, and indigenous communities. Charoen Pokphand Group (CP Group) conducts a human rights risk assessment every three years to proactively identify and determine a strategic approach to the Group's human rights risks. The process consists of issue prioritisation, integration of affected stakeholders, and verification of the issues with other stakeholders. To engage stakeholders, CP Group regularly conducts dialogues with potentially affected stakeholders, including employees and communities directly affected by the company's operations, but also customers and more physically remote stakeholders in its value chain.<sup>20</sup>

### 3.1.3. Addressing Human Rights Impacts

Once human rights risks are identified, assessed, and ranked in order of priority, companies should integrate and act upon their findings across relevant **internal functions and processes** and take appropriate action. Integration requires that responsibility to address impacts is assigned to the appropriate level and function of the business, and that decision-making, budget allocations, and oversight enable effective responses to the impacts.

Appropriate action means businesses should **prevent** potential human rights impacts from occurring and seek to **correct** harms where they have already occurred. That means HRDD is about ceasing, mitigating, and addressing human rights impacts that occur. Businesses are not expected to address all human rights issues simultaneously, but need to prioritise the most severe human rights impacts. The latter can be determined by assessing their scale, scope, and irremediable character, as well as the likelihood of the impacts occurring or recurring.

In determining the appropriate action to an adverse impact, a business must understand the nature and extent of its involvement, e.g. whether it **causes, contributes, or is directly linked** to the impact, as well as its leverage to address the impact.

#### **Involvement: Cause, Contribute, and Directly Linked**

**Causation** occurs when a business causes an impact through its own operations or activities. For example, a factory requires workers to work overtime without compensation. Here, the business causes labour rights violations and is expected to cease the violation and address harm that occurs. If the company alone can address the adverse impact or right violation without the need to influence others to act, then we are likely speaking about causation.

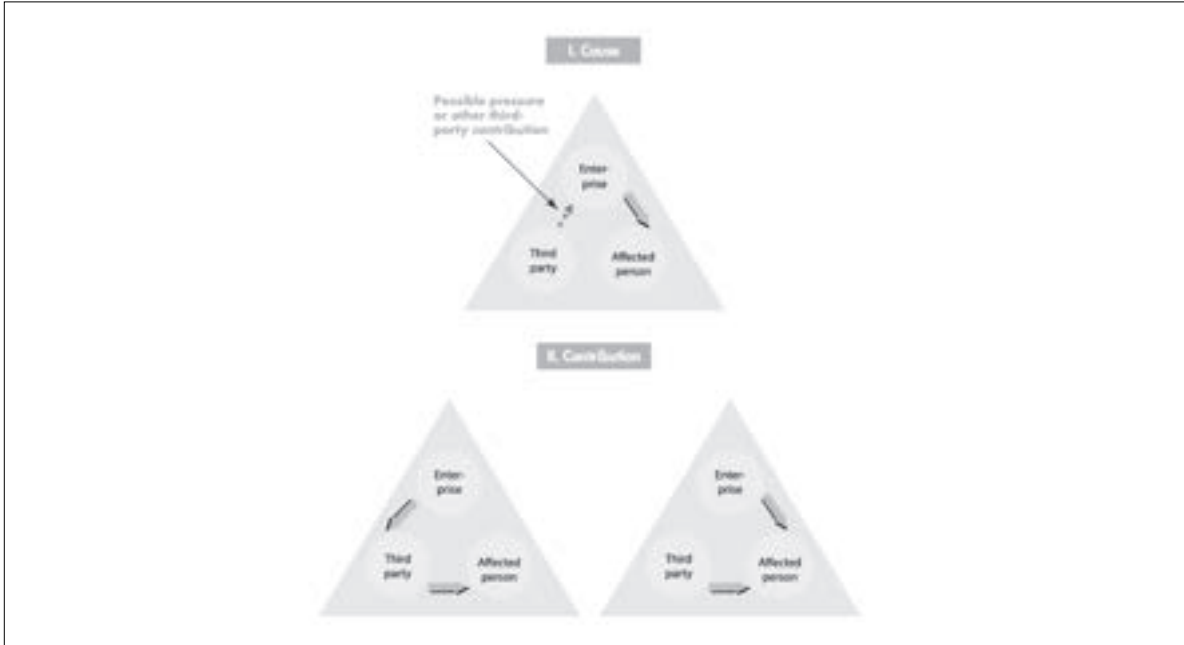
**Contribution** is a situation where a business contributes to an adverse impact through its own activities directly or through another entity. For example, a clothing brand puts unrealistic timeline expectations on its suppliers for the same low prices, thus causing its suppliers to force workers to work overtime

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<sup>20</sup> CP Group Global, *Human Rights and Labour Practices* (2022)

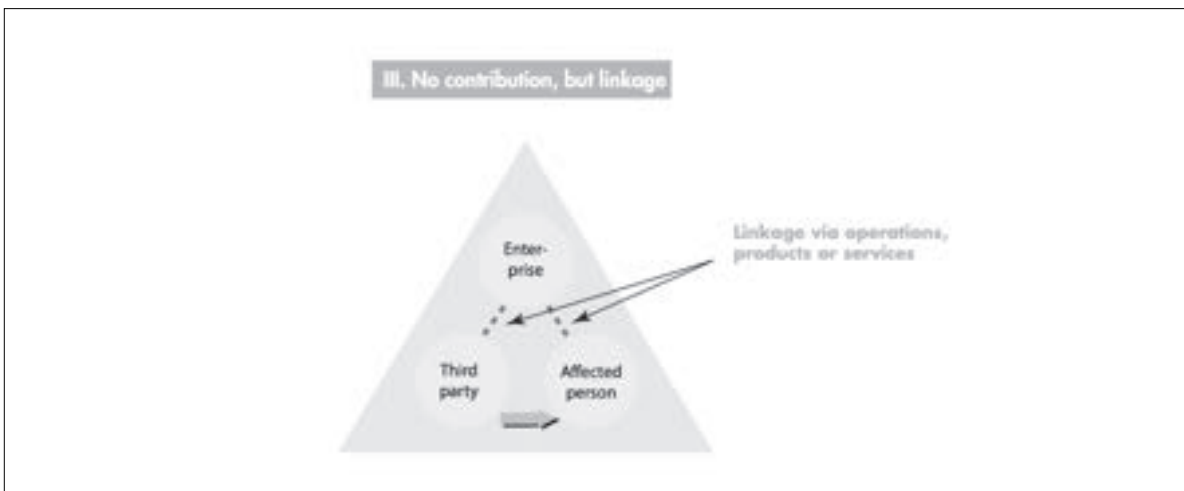
<https://www.cpgroupglobal.com/en/sustainability/heart-living-right/human-rights-and-labor-practices>.

without compensation. In ‘contribution’ situations, the company should cease contributing to the harm and address the adverse impacts. When an impact cannot fully be addressed by the company, then the company should use its leverage to ensure the impact is addressed. If a business needs to influence others to address impacts, it is likely a contribution or direct linkage scenario.



(Source: UNGPs Interpretative Guide, 2012)

A business can be **directly linked** to an impact through its operations, products, or services through its relationships with others. For example, a factory contracts with a security company that does not adequately compensate the security guards at its factory or that uses excessive force against those protesting against the factory. In this situation, the factory should use its influence (leverage) over the security company to address the impact. When there is a credible link between a company’s operations, products, or services and the adverse impact or rights violation, then we are likely talking about a direct linkage.



(Source: UNGPs Interpretative Guide, 2012)

### Corrective action: Leverage

When an impact cannot fully be addressed by the company, the company should use its **influence** or ‘leverage’ over its partners to ensure the impact is addressed. There are several ways to exert influence or increase leverage over third parties. Thus, in cases of ‘contribution’ or ‘direct linkage’, the company can collaborate with stakeholders to increase its leverage and create a shared understanding of the issue and agree on appropriate solutions. Industry-level collective action can be helpful to set common standards to ensure respect for human rights.<sup>21</sup> If a company does not have leverage, or cannot increase it, to prevent or mitigate adverse impacts, the company should consider ending the relationship. However, the company should carefully consider the impact of terminating the business relationship and mitigate such impact.

In 2022, **Nestlé** developed action plans to address their identified salient human rights issues. These action plans seek to address the company’s human rights impacts by considering, in the company’s response, the context and affected rightsholders. For example, their action plan for forced labour and responsible recruitment lays out the key actions the company will take to address forced labour in its operations and activities, including: 1) strengthen Nestlé’s commitments on forced labour and responsible recruitment in line with best practices; 2) train relevant employees and staff on forced labour risks; 3) strengthen direct supplier’s capacity to uphold Nestlé’s requirements on forced labour and responsible recruitment; and 4) identify and prioritise specific interventions to address, at the national and subnational levels, forced labour risks.<sup>22</sup> Often, following social audits, if a company identifies human rights issues in its value chain, it will develop corrective action plans to resolve potential or adverse human rights impacts with suppliers.

#### 3.1.4. Tracking Effectiveness

To verify whether human rights impacts are being addressed, businesses should track the effectiveness of their responses. Tracking should be based on **qualitative and quantitative indicators** and should draw on feedback from internal and external stakeholders, including affected communities. Tracking can help a business understand whether its human rights policies and measures to address adverse impacts are implemented effectively. Further, it can drive continuous improvement to ensure respect for human rights across the business operations and activities. Tracking effectiveness can be one of the most challenging tasks for businesses as it often requires putting quantitative measurements on outcomes that are inherently qualitative.

Some businesses build Key Performance Indicators (KPIs) into their approach to track some of the quantitative aspects of embedding human rights across the business; for example, the number of staff who have been trained on human rights or the number of grievances that have been resolved. Businesses often track this data themselves and include it in their sustainability reports. The tools that businesses put in place to track their effectiveness should include inputs from internal and external stakeholders and impacted rightsholders in order to gain an accurate understanding of the effectiveness. Many businesses, however, do not include these inputs or find it challenging to do so at scale. Some businesses look to benchmarking tools to understand whether their HRDD is effective, and compare it to other businesses in their sector, for example, through the **Corporate Human Rights Benchmark (CHRB)**.<sup>23</sup> The CHRB assesses a company’s approach to human rights management, looking specifically at the

21 Global Business Initiative on Human Rights, *Using leverage* <https://gbih.org/business-practice-portal/using-leverage>.

22 Nestle, *Salient Issues Action Plan on Forced Labor* (2023) <https://www.nestle.com/sites/default/files/2023-02/nestle-salient-issues-action-plan-forced-labor-feb-2023.pdf>.

23 World Benchmarking Alliance, *The Methodology for the 2022-2023 Corporate Human Rights Benchmark* (2021) <https://www.worldbenchmarkingalliance.org/research/the-methodology-for-the-2022-corporate-human-rights-benchmark/>



company's management and governance, whether it has embedded human rights across the business, and its work on remedies and grievance mechanisms. The data for the CHRB comes from what businesses report themselves and consultations with regional stakeholders.

### 3.1.5. Communicating Results

Finally, businesses should communicate publicly how they address their human rights impacts. Businesses whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. **Corporate reporting** should be of a form and frequency that reflects an enterprise's human rights impacts and be accessible to stakeholders, especially potentially affected and affected individuals or groups. Reports should provide information that is sufficient to evaluate the adequacy of the company's response. Importantly, the reporting should not pose risks to affected stakeholders or to personnel (e.g. whistle-blower).

Reporting can help a company engage with various stakeholders to share the company's human rights risks and challenges and create a better understanding of the company's operating context. Businesses can use the **UN Guiding Principles Reporting Framework** as a tool to strengthen formal reporting and develop a comprehensive picture of the company's HRDD process.<sup>24</sup> Businesses may choose to include reporting on their human rights in their annual reports, sustainability reports, or standalone human rights reports.

### 3.1.6. Remediation

Identifying harm that has occurred and responding to grievances is an important part of a company's responsibility to respect human rights. Businesses are expected to remediate harms they caused or contributed to in their own operations and value chains (UNGP 22). Businesses should establish an **operational-level grievance mechanism** to identify and address grievances from stakeholders, including employees and communities. When designed well and with an eye towards effectiveness,<sup>25</sup> grievance mechanisms can be a tool for businesses to better understand their human rights risks. They can also assist businesses to handle grievances early and directly, thus avoiding the escalation of impacts into serious human rights violations. Engaging with stakeholders (including the intended users of the grievance mechanism) in the mechanism's design helps to ensure its legitimacy and accessibility.

Grievance mechanisms can be hotlines operated by the company or by independent third-parties or by communicating directly with those affected, e.g. through worker voice programmes. To give an example, H&M Group maintains a grievance mechanism through its Speak Up platform, which allows employees and other stakeholders to file a complaint with the company. The platform explains what people can expect when they file a complaint, allows them to check the complaint status, and explains the company's human rights policy commitment. The platform also allows people to call confidentially to speak to someone in the different countries where **H&M Group** operates. Lastly, besides its own operations, H&M Group requires its suppliers and business partners to establish their own operational-level grievance mechanisms.

## 3.2 Compliance with Cambodian Laws

As noted, businesses must comply with all domestic laws and regulations governing or related to their operations, activities, products, services, or industry. Some Cambodian laws are in line with, or may be construed to encourage responsible business conduct, as the laws are designed to protect the people and

<sup>24</sup> UN Guiding Principles Reporting Framework (n.d.) <https://www.ungpreporting.org>

<sup>25</sup> See UNGPs, Principle 31, and Chapter 5 in this Textbook.





the environment. Some human rights violations, e.g. labour rights or forced evictions, are **violations of domestic laws**. Labour rights, which are relevant across sectors, are protected under the Labour Law (1997, amended 2021), Law on Social Security (2019), and other employment-related regulations. For instance, businesses have to ensure that they do not cause or contribute to forced labour, illegal child labour, wage theft, etc., while ensuring the occupational safety and health of workers.<sup>26</sup> A range of domestic laws protect property and land rights of individuals and groups, e.g. indigenous peoples.<sup>27</sup> Tort provisions in the Civil Code may also be used, especially if interpreted broadly and through a rights-based lens, to require companies to compensate (remediate) for harm they have caused or contributed to.<sup>28</sup>

Some businesses also need to comply with the **environmental law** and regulations. The comprehensive Environmental Code (2023) requires all owners of proposed, existing, and ongoing investment projects, either public or private, to assess their adverse impacts on the environment, health, economy, society and culture inside and, if applicable, outside Cambodia.<sup>29</sup> Whether investment projects require a full Environmental Impact Assessment (EIA), an Initial Environmental Impact Assessment (IEIA) or environmental protection contract depends on the level of the impacts, i.e. serious, medium or minor.<sup>30</sup> The Environmental Code specifies the principles, conditions, process, and evaluation of EIAs, including cross-borders EIAs.<sup>31</sup> It requires public participation in EIA processes and incorporates the principle of free, prior and informed consent (FPIC) of affected peoples.<sup>32</sup> Among others, the Code also lays out obligations of project owners to prevent, mitigate and address adverse impacts<sup>33</sup> and imposes administrative and/or criminal liability on infringing project owners.<sup>34</sup>

In June 2021, the Ministry of Environment issued five **Prakas**, setting out the procedures and implementation guidelines for checklists when preparing IESIA reports for sectors such as livestock and aquaculture, tourism, construction, petrol and gas station, and SMEs projects.<sup>35</sup> The Prakas require project owners to prepare IESIA reports that must involve consultations with affected individuals or communities and relevant state authorities. For instance, owners of fuel and gas stations must conduct an IESIA, in which consultation with potentially impacted people is required.<sup>36</sup> The explicit social impact assessment requirement is new in Cambodia, and the IESIA under the domestic legal framework covers some aspects of HRDD. Previously, only investment projects financed by international financial institutions such as the International Finance Corporation and the Asian Development Bank were required to conduct ESIA under their loan conditions.

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26 Labour Law, Articles 15, 173, 174 and 83.

27 See, e.g. the Civil Code, Land Law, Environmental Code (2023); and Sub-Decrees related to the management of state land and other property or land-related regulations.

28 Due to limited access to court cases, it is unclear whether there has been a case where a court interpreted tort provisions to demand corporate accountability.

29 Articles 649, 650 and 651 (on exception) of Environment and Natural Resources Code (2023). The Code will take effect and supersede the Law on Environmental Protection and Natural Resources Management (1996) in June 2024. See also, Sub-Decree No. 72 on the Environmental Impact Assessment Process (1999), Article 6; Prakas on General Guidelines for Developing Initial and Full Environmental Impact Assessment Reports (2009).

30 Article 657 of Environmental Code. See also, Article 5 of Prakas No. 021 on Classification of Environmental Impact Assessment for Development Projects (2020).

31 See Book 5 of Environmental Code.

32 On the mandatory public participation, see, e.g. Articles 638, 643(c), 645, 649, 655, 687-693, 697. On the FPIC principle, see, Articles 691, 693, 697.

33 See e.g. Articles 649, 650, 718, 722, 724, and 725.

34 See Book 10 of Environmental Code, e.g., Article 825.

35 Vansok Khem, *Cambodia: Procedures and Implementation Guidelines for Checklist in Preparing the Initial Environmental and Social Impact Assessment Report* (2021) <https://www.dfdl.com/insights/legal-and-tax-updates/cambodia-procedures-and-implementation-guidelines-for-checklist-in-preparing-the-initial-environmental-and-social-impact-assessment-report/>.

36 Prakas No. 229 on Procedures and Implementation Guidelines for Conducting Initial Environmental and Social Impact Assessment for Fuel Stations and Fuel-gas Stations (2021).



While socioeconomic impacts are considered as part of the IEIA or full EIA, or under the IESIA, there is no explicit reference to human rights. In principle, socioeconomic aspects to be considered include demography and settlement, employment and income, land use, water use, energy use, infrastructure, education, public health and wellbeing, cultural heritages, ethnic minorities or indigenous peoples, and tourism.<sup>37</sup> These aspects cover some human rights, e.g. rights to adequate living standard, water, education, health and indigenous peoples' rights to their lands and cultural practices, but not all internationally-recognised human rights.

Compliance with **sector-specific laws** and regulations may also be relevant to HRDD exercises. For instance, the Construction Law (2019) imposes specific requirements to ensure occupational safety and health of workers.<sup>38</sup> The Consumer Protection Law (2019) requires sufficient and proper labelling information on products to ensure the health safety of consumers. The Law on Food Safety (2022) establishes the legal framework and regulatory mechanism on food safety, quality, and sanitation for all food production and food businesses, except for street foods. It seeks to prevent and mitigate harms arising from food consumption, thus, protecting the right to health.

In terms of soft-law tools, Environmental, Social, and Governance (**ESG**) compliance has gained traction in recent years, especially in the financial sector. Some businesses and financial institutions prepare ESG compliance reports that cover issues including governance, corporate social responsibility, consumer protection, business ethics, corporate code of conduct, and environmental impacts (see Chapter 10). Currently, Cambodia does not have clear ESG-related benchmarks for banks and businesses in different sectors, which results in environmental and social risks inadequately assessed, mitigated, and addressed.

### 3.3 Business Case for Respecting Human Rights

The business case, which helps to express human rights in a language business understands by focussing on **risks and opportunities for businesses** (see Chapter 1), thereby making the respect of human rights easier to understand and work with in practice. As legal expectations on BHR harden, it has become a matter of legal compliance and legal risk management for businesses. The uptick in HRDD legislation, particularly in Europe, has arisen out of the recognition that corporate respect for human rights needed to move from voluntary standards to mandatory measures. A report commissioned for the EU in 2020 cited low uptake of HRDD in value chains as evidenced by the CHRB. It revealed a 'deeply concerning' picture, with most businesses scoring poorly on the benchmark, and 40% of businesses scoring no point across the HRDD section of the assessment.<sup>39</sup> This low uptake pushed the EU to develop the proposal for a corporate sustainability due diligence directive. The development of HRDD regulations is viewed by some businesses as a mechanism to level the playing field so that irresponsible businesses do not obtain a competitive advantage by infringing human rights.

Additionally, **investors** are beginning to consider the human rights implications of their investments. In recent years, there have been record numbers of shareholder resolutions on climate and human rights issues. Apart from increased expectations from shareholders and regulators, there remain the same reputational risks for involvement in adverse human rights impacts, and businesses can lose the 'social

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37 Prakas on General Guidelines for Developing Initial and Full Environmental Impact Assessment Report (2009), p. 9. See also, Prakas No. 229 on Procedures and Implementation Guidelines for Conducting Initial Environmental and Social Impact Assessment for Fuel Stations and Fuel-gas Stations (2021).

38 Construction Law, Articles 7-9, 39, 42. For the garment and shoes industry, occupational safety and health issues are regulated under Prakas No. 307 on Occupational Hygiene and Safety in Garment and Shoes Factories (2007).

39 European Commission, *Study on due diligence requirements through the supply chain: final report* (2020) <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

licence to operate' when harming employees and communities. Overall, respect for human rights can ensure long-term growth and resilience in value chains, as businesses that respect human rights enjoy better relationships with communities, employees, investors, consumers, business partners, and governments.

Businesses operating under the jurisdiction of countries with **HRDD laws** are required to conduct HRDD on their value chains and to publicly disclose the findings. That means these laws have extraterritorial effects and create new requirements – directly or indirectly – for companies in the Global South, including Cambodia, while potentially providing additional grounds and mechanisms for affected individuals and communities to seek remedies from businesses.<sup>40</sup> Non-compliance may result in legal sanctions for businesses covered by HRDD laws and, therefore, in commercial pressures on their suppliers to undertake and prove RBC. Businesses – and their suppliers – that start implementing HRDD under existing international standards like the UNGPs and the OECD Guidance will be better placed than those that wait until legislation comes into force.

## 4. Further discussion

**E**nsuring respect for human rights is not without challenges for businesses. It can be difficult to embed human rights across the enterprise and to gain buy-in from different departments, including senior executives. Equally challenging is conducting HRDD on complicated and **opaque value chains**. Multinational enterprises, for example, can have value chains with thousands of suppliers in the first tier alone. Frequently, it takes a crisis to get the attention and buy-in from senior management, thus making their commitment to human rights a reactive rather than preventative measure. Another enduring challenge is commercial competition. It is costly, at least in the short run, to establish and implement measures and procedures to ensure respect for human rights across operations, products, and services. Lastly, the expectation for businesses to responsibly disengage in situations where they have no leverage, for example, in conflict settings, can prove extremely challenging.

In Cambodia, while some laws serve to protect people, there is yet clear legal requirement or guidance for businesses to respect all internationally-recognised human rights or conduct HRDD. Arguably, the comprehensive Environmental Code imposes legal requirements most relevant to HRDD. Further, there remains a lack of awareness from businesses, especially local ones, about their responsibility to respect human rights or how they might conduct HRDD. Many businesses in Cambodia are **SMEs**; which are often not registered. HRDD can be a difficult undertaking for many SMEs as they often have far less resources than multinational enterprises or large businesses. That said, their smaller size, shorter decision-making pathways, and less complex value chains can give SMEs an advantage in implementing HRDD over large and multinational enterprises with complex value chains and complicated decision-making processes.<sup>41</sup> Nevertheless, the cost consideration imposes an additional challenge in encouraging the business case to respect human rights. To date, most businesses prefer corporate social responsibility and philanthropic activities to address, and sometimes 'whitewash', their impacts on people and the environment. Compounding the matter, Cambodia's weak regulatory ecosystem on responsible business conduct and corruption allow businesses, including subsidiaries of multinationals, to sideline human rights considerations and preference their business interests.

40 Office of UN High Commissioner for Human Rights, *UN Human Rights "Issues Paper" on legislative proposals for mandatory human rights due diligence by companies* (2020)

[https://www.ohchr.org/sites/default/files/Documents/Issues/Business/MandatoryHR\\_Due\\_Diligence\\_Issues\\_Paper.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/MandatoryHR_Due_Diligence_Issues_Paper.pdf).

41 Global Compact Network Germany, *What does effective human rights due diligence look like for SMEs?* (2022)

[https://www.globalcompact.de/fileadmin/user\\_upload/UNGCD\\_Insights\\_Series\\_human\\_rights\\_due\\_diligence\\_SME.pdf](https://www.globalcompact.de/fileadmin/user_upload/UNGCD_Insights_Series_human_rights_due_diligence_SME.pdf).

**T**he growing expectation for business respect for human rights has led to a clear imperative for businesses to conduct HRDD. The HRDD process helps businesses identify, assess, and address human rights risks of their operations or activities. Businesses are increasingly required to conduct HRDD as a matter of legal compliance, particularly in Europe, but HRDD can also be a valuable tool in preventing reputational harm, business risks, building resilience in operations and value chains, and ensuring businesses maintain the social licence to operate. If done correctly, HRDD can be a process of continuous learning for businesses as their operating contexts or activities change. With more stringent regulations and enforcement, investors, consumers and employees will increasingly expect businesses to comply with the law, observe international RBC standards, and take practical steps to minimise harm and avoid adverse impacts on people's human rights.

## 6. Further readings

1. Business & Human Rights Resource Centre, *Human Rights Due Diligence & Impact Assessment* (n.d.)  
<https://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/human-rights-due-diligence-impact-assessment/>.
2. Ikigai law, *Human Rights Due Diligence and Impact Assessment for Tech Companies* (2021)  
<https://www.ikigailaw.com/article/125/human-rights-due-diligences-and-impact-assessment-for-tech-companies>.
3. Phallack Kong, 'Cambodia' in C. Kaufmann et al, 'Business and Human Rights in ASEAN: A Baseline Study', *Human Rights Resource Centre* (2013)  
<http://hrrca.org/wp-content/uploads/2015/09/03.-BHR-Cambodia.pdf>.
4. UNDP, *Human Rights Due Diligence: An Interpretative Guide* (2021)  
<https://www.undp.org/thailand/publications/human-rights-due-diligence-interpretive-guide#:~:text=The%20interpretative%20guide%20provides%20additional,how%20to%20put%20the%20UNGPs>.
5. World Business Council on Sustainable Development, *CEO Guide to Human Rights*, (2019)  
<https://www.wbcsd.org/Programs/People-and-Society/Tackling-Inequality/Human-Rights/Resources/CEO-Guide-to-Human-Rights>.
6. Shift, "Signals of Seriousness" for Human Rights Due Diligence (2023)  
[https://shiftproject.org/wp-content/uploads/2021/02/Shift\\_SignalsofSeriousness\\_Draft1\\_Feb4.pdf](https://shiftproject.org/wp-content/uploads/2021/02/Shift_SignalsofSeriousness_Draft1_Feb4.pdf).

# **CHAPTER 7**

## **Civil Society and RBC**



**Sophia Aspesi Areias and Pitour Sok**

**C**ivil society's roles in engaging States and businesses to advocate for responsible business conduct are multifaceted. Civil society can serve as an advocate to the government in encouraging greater protection of human rights from harm caused by business. Civil society can also demand accountability from businesses and States for adverse human rights impacts caused by business. Lastly, civil society can be a partner to business to offer technical support in identifying adverse human rights impacts and supporting businesses to develop their grievance mechanisms and offer remedies to affected people. They also engage with business to improve the systems and to lead them to understand the risks to people associated with their operations. All the different roles that civil society can play are pivotal to promoting, preventing, and advancing responsible business conduct.

Historically, civil society has shone a spotlight on the adverse human rights impacts caused by business operations and activities. In Cambodia, civil society has advocated for and brought litigation against businesses who failed to respect human rights, in order to achieve remedies for affected rightsholders. This **chapter** will explore the different roles of civil society organisations (CSOs) in advancing responsible business conduct, while also outlining the legal framework that both enables and restricts the ability of civil society to operate in Cambodia.

## 2. Frameworks

**T**here is no single **definition** of civil society. The United Nations Office of the High Commissioner for Human Rights (OHCHR) defines civil society actors as individuals and groups who voluntarily engage in various forms of public participation and actions around shared interests, purposes or values that are compatible with the goals of the UN: the maintenance of peace and security, the realisation of development and the promotion and respect of human rights.<sup>1</sup> They can be journalists, non-profit or non-governmental organisations (NGOs), trade unions, and human rights defenders. The civil society is generally distinct from the 'government and commercial for-profit actors.'<sup>2</sup>

### 2.1 International Frameworks

The various roles of civil society are protected under substantive international human rights instruments. For example, the International Convention on Civil and Political Rights (ICCPR) protects the right to freedom of expression, the right to peaceful assembly, and the right to freedom of association. These rights protect journalists, NGOs, human rights defenders, and trade unions. The **Declaration on Human Rights Defenders** was adopted by consensus by the UN General Assembly in 1998. The declaration identifies human rights defenders as individuals or groups who act to promote, protect or strive for the protection and realisation of human rights and fundamental freedoms through peaceful means. The Declaration calls for everyone to protect human rights defenders, which includes States and business. The Declaration is not binding; however, it does contain principles and rights that are based on binding human rights standards. Its adoption by consensus also represents a strong commitment from States. In addition to substantive human rights, procedural human rights also protect the work of civil society. For example, several regional human rights systems, including the Inter-American and the European human rights systems, have recognised the right to access to information from States.<sup>3</sup> Additionally, under international human rights law, the State is required to facilitate access to remedy for those whose human rights have been adversely impacted.

1 UN OHCHR, *Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society* (2014). [https://www.ohchr.org/sites/default/files/Documents/AboutUs/CivilSociety/CS\\_space\\_UNHRSsystem\\_Guide.pdf](https://www.ohchr.org/sites/default/files/Documents/AboutUs/CivilSociety/CS_space_UNHRSsystem_Guide.pdf).

2 World Health Organization, *Commission on Social Determinants of Health: Civil Society Report* (2007) <https://www.who.int/publications/m/item/commission-on-social-determinants-of-health-civil-society-report>

3 Council of Europe Convention on Access to Official Documents, CETS No. 205, 01/12/2020, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=205>. Council of Europe, Platform to promote the protection of journalism and safety of journalists, The right to access of information, *A key prerequisite for the freedom of expression*, (June 2018). OAS, Department of International Law, Access to Information, [https://www.oas.org/en/sla/dil/access\\_to\\_information.asp](https://www.oas.org/en/sla/dil/access_to_information.asp).

The UN **Human Rights Committee** outlined that the Covenant on Civil Political Rights ‘envisages in some articles, certain areas where positive obligations on State Parties address the activities of private persons or entities.’<sup>4</sup> Similar acknowledgements have been recognised by the UN Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. Civil society can also access the Special Procedure mechanisms to seek accountability for State failure to protect human rights in the context of corporate accountability.<sup>5</sup> For example, in 2009, the Special Rapporteur on adequate housing denounced the forced eviction of 130 families in Phnom Penh to enable a private company to redevelop the land. The Special Rapporteur noted that, in Cambodia, a consistent pattern of violation of rights was observed in connection with forced evictions, including: a systematic lack of due process and procedural protections; inadequate compensation; lack of effective remedies for communities; excessive use of force; and harassment and criminalization of NGOs and lawyers. The Special Rapporteur urged the Cambodian authorities to end evictions until their policies and actions could be brought in line with international human rights obligations.<sup>6</sup>

The **OECD Guidelines and the UNGPs** create a clear framework for States to protect and business to respect human rights, and for both States and business to facilitate access to remedy to adversely impacted rightsholders. Both the UNGPs and the OECD Guidelines offer civil society additional tools to promote responsible business conduct. Throughout the UNGPs, States and business are called upon to engage with civil society to respect and protect human rights. The OECD Guidelines require Member States to establish National Contact Points (NCPs) for responsible business conduct. The objective of the NCP in each country is to promote the implementation of the Guidelines and to handle complaints on the alleged violations of the Guidelines by businesses who are headquartered in the country where the NCP is located.<sup>7</sup> The NCP’s complaint mechanism is a non-judicial and voluntary mechanism through mediation or conciliation, and cannot order any compensation to the victims. Individuals or organisations, including from countries that do not adhere to the OECD guidelines, can submit a complaint to the specific NCP through its website.<sup>8</sup> Since 2012, Cambodian NGOs have submitted eight cases to NCPs in five different countries – the Netherlands, the United Kingdom, Australia, Austria, and the United States. Five of the cases ended up with no resolution (e.g. the companies withdrew from the process, or there was no breach of responsibilities), and two resulted in agreements between the company and the complainant.<sup>9</sup>

**Multilateral development banks** and private banks also have their own independent complaint mechanisms. For example, the Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the World Bank Group. Individuals can file complaints with CAO if they think they are affected or to be affected by activities or the project of the World Bank Group’s members – the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The victims can also be represented by the NGOs. The mechanism is also non-judicial and voluntary so cannot force the companies to participate if they refuse. There have been six cases in Cambodia addressed under the CAO mechanism.<sup>10</sup>

4 Human Rights Committee, *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant* (2004) <https://www.refworld.org/docid/478b26ae2.html>.

5 Committee on the Rights of the Child, *General Comment No 16 (2013) on State obligations regarding the impact of the business sector on children’s rights* (17 April 2013) <https://www.refworld.org/docid/51ef9cd24.html>. Committee on Economic, Social, and Cultural Rights, *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social, and Cultural rights in the context of business activities* (10 August 2017) <https://www.refworld.org/docid/5beaecba4.html>.

6 OHCHR, *Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context* (2009).

7 OECD, *What are national contact points for RBC?* <https://mneguidelines.oecd.org/ncps/>.

8 OECD, *Frequently asked questions: National Contact Points for the OECD guidelines for multinational enterprises* (2017).

9 OECD Watch, *Complaints database* (n.d.) [https://www.oecdwatch.org/complaints-database/?fwp\\_oecd\\_complaint\\_country=cambodia](https://www.oecdwatch.org/complaints-database/?fwp_oecd_complaint_country=cambodia).

10 IFC, Compliance Advisor Ombudsman, *Welcome to Cases Center*, <https://www.cao-ombudsman.org/cases>.

## 2.2 National frameworks of Cambodia

In 2015, the Royal Government of Cambodia adopted the **Law on the Association and Non-governmental Organization (LANGO)**. It defines a domestic association as a membership organisation established under the law, aiming to represent and protect the interests of its members, without generating or sharing profits; a domestic NGO is defined as a non-membership organisation established under the law and aiming at providing funds and services in one or several sectors for the public interest, without generating or sharing profits. A foreign NGO or association is referred to as a legal organisation outside Cambodia aimed at conducting activities in Cambodia to serve the public interest without generating profit.<sup>11</sup> The law does not define other categories of civil society actors such as community-based organisations (CBOs) or social movements/informal networks. LANGO requires NGOs and associations to register with the relevant authorities<sup>12</sup> in order to be able to operate. This causes concerns if the definition also includes CBOs, informal networks or social movements, as their purposes are usually the same or similar to those of NGOs/association as defined in LANGO.

The Ministry of Interior approves **registrations** and rejected NGOs can appeal to the court. Foreign NGOs/associations need to have a Memorandum of Understanding (MoU) with the Ministry of Foreign Affairs and International Cooperation (MoFAIC). The maximum validity of an MoU is three years, though agreements are subject to extension. Unregistered NGOs/associations are not allowed to conduct any activities in Cambodia; if they do they may face administrative and/or criminal punishment.<sup>13</sup> LANGO requiring NGOs and associations to register with the relevant authorities to be able to operate is seen, due to the lack of clarity around CBOs or informal networks being considered as NGOs/associations,<sup>14</sup> as a restrictive measure for the NGOs/associations, especially for community-based organisations or informal networks. After the adoption of the law, an informal coalition of around 40 NGOs working to promote free and fair elections, including election monitoring in the 2013 national election, were banned from conducting activities, and were faced with legal consequences under LANGO.<sup>15</sup> The law allows the competent authorities to deny the registration and/or to deregister the NGOs/association whose activities or purpose is to endanger the security, stability, public order, national unity, culture, traditions, and customs of Cambodian national society without providing any definition of those terms or fail to comply with their statute (e.g. implementing the activities outside their stated mandates or contrary to the purposes stated in the organization's bylaws). However, the requirement of an informal coalition or working group of NGOs to register with the relevant authorities in order to be able to conduct the activities is not systematically enforced.<sup>16</sup>

The United Nations and the European Union (EU) have repeatedly expressed concerns about the **shrinking space for civil society** to operate freely in Cambodia. Specifically, they criticised the use of laws like LANGO to limit the ability of civil society to advocate for human rights. Before the passage of LANGO, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association called for a rejection of the law, as it would 'threaten the very existence of a free and independent civil society in Cambodia' and would fall short of international human rights norms governing freedom of association.<sup>17</sup> During the

11 Cambodia, *Law on the Associations and Non-Governmental Organizations* (2015).

12 Domestic NGOs and Association is registered with the Ministry of Interior and Foreign NGOs/Association is registered with the Ministry of Foreign Affairs.

13 LANGO and Yaziji, M., & Doh, J., *NGOs and Corporations: Conflict and Collaboration, Article 32* (2009), p.23.

14 Office of the United Nations High Commissioner for Human Rights in Cambodia, *A human rights analysis of the law on association and non-governmental organizations* (2015) <https://cambodia.ohchr.org/sites/default/files/Final%20OHCHR%20analysis%20of%205th%20LANGO%2C%20En%2C%20August%202015.pdf>.

15 Neb, S., O'Leary, D., & Khieu, V., *Civil society organisations: Enabling environment and inclusive partnership-Cambodia* (2019) p.23.

16 For example, the Digital Rights Working Group is a group of civil society organizations consisting of 13 NGOs working with relevant government authorities to promote digital rights and internet freedom in Cambodia. See [https://www.camboja.net/wp-content/uploads/2022/01/Press-Release-of-National-Conference-DRWG\\_English-Version.pdf](https://www.camboja.net/wp-content/uploads/2022/01/Press-Release-of-National-Conference-DRWG_English-Version.pdf).

17 Maina Kiai, 'Cambodia's NGO Bill threatens a free and independent civil society'-UN expert urges Senate to reject it,' *OHCHR Press Release* (15 July 2015) <https://www.ohchr.org/en/press-releases/2015/07/cambodias-ngo-bill-threatens-free-and-independent-civil-society-un-expert>.





COVID-19 pandemic, several UN Special Rapporteurs, including Vitit Muntarbhorn (SR Cambodia) expressed concern about the use of emergency measures to prevent trade unions from peacefully striking and to justify the arrest of trade union leaders.<sup>18</sup> In August 2020, following a review, the EU decision to partially withdraw Cambodia's duty-free quota-free access to the EU market went into effect 'due to serious and systematic concerns related to human rights ascertained in the country'. The withdrawal applied to garments, footwear and travel goods. The EU had opened a procedure for withdrawal in 2019 based on serious concerns about the deterioration of political, human, land, and labour rights in Cambodia. A report from the EU Commission demonstrated serious and systematic violations of the ICCPR linked to political participation, freedom of expression and freedom of association.<sup>19</sup>

## 3. Applications

### 3.1 CSOs as drivers of accountability

**C**ivil society is a driver for corporate accountability through **litigation**. Such efforts to use the judicial system have sought to offer redress to those harmed by business operations and, more broadly, to promote corporate accountability. These efforts include appeal to international mechanisms, as well as the domestic courts in Cambodia. Since there is no binding international framework for accountability on BHR, CSOs have sought accountability through a variety of methods, including international human rights mechanisms and domestic courts. Because international human rights mechanisms are only binding on States to protect human rights, complaints brought under international human rights mechanisms are generally concerned with State protection from human rights abuses involving private actors.

In Cambodia, after the Peace Agreement in 1991 that transformed Cambodia from a communist political system to a democracy, international NGOs flocked to the country and national NGOs started to boom. Currently, there are more than **6,000 NGOs** and associations in Cambodia. NGOs have played important roles in the development of the country, from basic service delivery to advocacy in sensitive fields, including the respect of human rights, democratic reform, civic and political engagement, and natural resource management.<sup>20</sup> As a result of the NGOs' projects, there are an estimated 25,000 community-based organisations (CBOs), most of which are not registered in terms of LANGO, as well as a number of ad hoc social movements and informal networks formed to address specific issues.<sup>21</sup>

The Cambodian public have generally perceived CSOs as good institutions due to their contribution to the country in the 1990s and 2000s; however, this positive perception has been reduced over time, especially after 2013, due to the rapid growth of the private sector and the political conditions that challenge NGOs' ability to advocate while possessing minimal or no influence over the government.<sup>22</sup> Generally, one of the conditions that allow NGO advocacy to increase is the social and political environment that allows them to operate and work without repression and to enjoy fundamental freedoms. The government tends to have good partnerships with **service delivery NGOs** but not advocacy NGOs, particularly when the latter focus on human rights or the law. This leads to a reluctance from some NGOs to conduct human rights advocacy, as it may lead to confrontations with the authorities.<sup>23</sup>

18 UN Special Procedures, 'Cambodia: Stifling new measures against striking workers are 'unjustified'-UN human rights experts,' OHCHR Press release (16 February 2022) <https://www.ohchr.org/en/press-releases/2022/02/cambodia-stifling-new-measures-against-striking-workers-are-unjustified-un>.

19 EU Commission, 'Cambodia loses duty-free access to the EU market over human rights concerns,' Press Release, (12 August 2020) [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1469](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1469).

20 Sor, M., Long, K., & Yem, S., *Study on Image of Civil Society Organisations Perceived by Cambodian Public* (2019).

21 Dennis McMahon and Kem Ley, *Political Economy Analysis of Civic Space in Cambodia: Challenges and Opportunities for Active Citizenship* (2015) <https://cambodia.oxfam.org/latest/publications/political-economy-analysis-civic-space-cambodia>.

22 Sor, M., Long, K., & Yem, S., *Study on Image of Civil Society Organisations Perceived by Cambodian Public* (2019).

23 Neb, S., O'Leary, D., & Khieu, V., *Civil society organisations: Enabling environment and inclusive partnership-Cambodia* (2019), p.26.

There are concerns that the law could also be used by **businesses to influence the government** to take action against NGOs that are critical of them. Prior to the adoption of the LANGO, there was an allegation, though not verified, that an unidentified consultant of the Asian Development Bank (ADB) suggested the government take action against a few NGOs that had criticized them for a development project funded by ADB.<sup>24</sup> After the adoption of the LANGO, a land rights NGO that supported a community in a conflict with a private company was suspended by the Ministry of Interior after a group of people who were allegedly paid by the company protested and requested the Ministry of Interior deregister the NGO for inciting the community to protest against the company.<sup>25</sup> When dealing with sensitive issues, especially on human rights, domestic NGOs are sometimes considered as the political opposition party by both the government and domestic business.<sup>26</sup> Therefore, a few CSOs in Cambodia utilise transnational advocacy networks (TANs), working with international partners to bring cases of alleged human rights violations in Cambodia to the attention of authorities in the company's home country through value chain analysis.<sup>27</sup>

Civil society has also sought accountability through other mechanisms, including UN mechanisms, NCPs and the World Bank CAO. Often decisions to use these **international mechanisms** require strategic considerations on the part of the NGO about their objectives in driving accountability. One such objective can be compensation for the harm occurred. For example, Societe Concessionnaire de l'Aeroport was granted a 45-year concession from the Royal Government of Cambodia to operate the Sihanoukville Airport (SIA). The International Financial Corporation (IFC) had financed the runway investments for SIA. In December 2009, a local NGO filed a complaint with the CAO on behalf of 79 families alleging the project was not compliant with the IFC requirements on community consultation and due diligence. CAO accepted the case and worked with relevant stakeholders to address the issues. As a result, the victims received compensation and various programs to assist with resettlement, and livelihood initiatives were undertaken by the Government of Cambodia with the assistance of NGOs.<sup>28</sup>

In terms of national courts, an important concept to understand is **extraterritorial corporate liability**, as the concept has either aided or hindered accountability in national courts. Extraterritorial civil liability allows for businesses to be held liable for human rights abuses in countries where they are headquartered, but not where the human rights abuse occurred. This is important because individuals who have been adversely impacted often cannot receive redress in the countries where the harm occurred due to lack of political will or insufficient capacity of local authorities. However, bringing a case in the national courts of host states can be challenging; often courts require personal jurisdiction or a connection to the place where the case is being heard. Often, there is a statute of limitations or time limit determining when a case may be brought. In spite of the barriers, civil society has been successful in seeking civil liability in national courts for adverse human rights impacts caused by businesses.

For example, in 2019 the Supreme Court of the **United Kingdom** confirmed that parent companies can owe a duty of care to people affected by the harmful activities of foreign subsidiaries.<sup>29</sup> The Supreme Court did indicate parameters, including that there be a 'real triable issue' against the United

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24 The Phnom Penh Post, *STT blasts its suspension* (20 September 2011)

<https://www.phnompenhpost.com/national/stt-blasts-its-suspension>.

25 The Phnom Penh Post, *Villagers suspect protesters were sent by sugar company* (2017)

<https://www.phnompenhpost.com/national/villagers-suspect-protesters-were-sent-sugar-company>.

26 Harrison White, *LICADHO at it again: Biased reports, misleading donations and political agenda questioned*, Khmer Time (2020)

<https://www.khmertimeskh.com/50745458/licadho-at-it-again-biased-reports-misleading-donations-and-political-agenda-questioned/>.

27 Young Sokphea, *Transnational advocacy networks in global supply chains: a study of civil society organizations' sugar movements in Cambodia*, *Journal of Civil Society* (2017) <https://www.tandfonline.com/doi/full/10.1080/17448689.2016.1265787>.

28 The information is extracted from Compliance Advisory Ombudsman: Cambodia: Cambodia Airports-01/PreahSihanoukville. Available at <https://www.cao-ombudsman.org/cases/cambodia-cambodia-airports-01preah-sihanoukville>

29 *Vedanta Resources plc v. Lungowe*, UK Supreme Court, [2019] UKSC 20

Kingdom-based parent company and that there existed a real risk that justice would not be obtained in the foreign jurisdiction. This decision is one example of routes CSOs can use to seek accountability outside of the jurisdiction where the harm occurred.

As mentioned above, sometimes NGOs may seek to partner with international organisations (e.g. through TANs) and lawyers to bring forward cases to promote corporate accountability. In Cambodia, following the violent forced eviction of over 2000 families in 26 villages in Oddar Meanchey in 2008 to make way for an industrial sugarcane plantation, Inclusive Development International, Equitable Cambodia (EC), and the League for the Promotion and Defence of Human Rights (LICADHO) brought a case against the owner of the sugarcane plantation, the Thai sugar company **Mitr Phol**, in Thailand, in 2018. The case was brought after exhausting other avenues to advocacy to gain remedy for the evicted families, including through the Thai National Human Rights Commission. The case was initially denied class action status by the court of first instance, but this was overturned by the court of appeals. The Bangkok South Civil Court recognised class action status for the complaint in July 2020. In 2022, the court denied Mitr Phol's request to dismiss the case and the trial is set to go forward.<sup>30</sup> The case was bolstered by EC's and LICADHO's work with international lawyers to support the case for over a decade. The case is on-going at the time of writing.

Cases against businesses for human rights abuses can often take **many years**, or even decades, to reach a resolution. In these situations, CSOs and international partners should consider the costs, both financial and mental for survivors and victims, in continuing litigation. In 2023, ExxonMobil, an oil and gas company headquartered in the United States, reached a settlement in a human rights lawsuit that had originally been brought against the company in US Federal Court in 2001. The case had been brought by villagers from Aceh who alleged human rights violations, including sexual assault, battery, and unlawful detention by Indonesian military officials who were providing security for ExxonMobil in Indonesia between 1999 and 2003.<sup>31</sup>

These cases highlight some of the successful attempts from civil society to achieve accountability for the human rights abuses caused by businesses. However, the cases also highlight the challenges to achieving that accountability, including time, funds, and legal barriers to achieving justice.

### 3.2 Civil society as partners with business

Under the UNGPs and the OECD Guidelines, businesses are encouraged to engage with civil society which can offer inputs on their human rights policy and processes, develop their grievance mechanism, and inform their understanding and analysis of their human rights impacts. The UNGP corporate guidance recommends to business that engaging with external experts, including civil society, can be a method for ensuring that decisions are credible. Civil society can also be an interlocutor for engaging with impacted rightsholders, particularly when direct engagement is not possible. In complex operating environments, **multistakeholder initiatives** can provide support and advice to business.

While conducting their human rights due diligence (HRDD), businesses are expected to conduct **meaningful stakeholder engagement**. Ensuring a meaningful stakeholder engagement can often be very challenging for business, as it requires an understanding of the dynamics and context of the employees, trade unions, and communities where it operates. However, if done effectively, meaningful stakeholder engagement can be an essential tool for business to understand their human rights impacts and to mitigate and address them effectively. In assessing the human rights impacts identified during their

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<sup>30</sup> Inclusive Development International, *Cambodia: Challenging Mitr Phol land grab*, <https://www.inclusivedevelopment.net/cases/mitr-phol/>.

<sup>31</sup> BBC, *ExxonMobile settles decades old torture case with Indonesian villagers* (2023) <https://www.bbc.com/news/world-asia-65601644>.

HRDD, if business is not able to engage directly with affected stakeholders, they should consider reasonable alternatives, including engaging with civil society. Because of the explicit acknowledgement in the UNGPs for business to meaningfully engage with stakeholders, civil society can also call for business to meaningfully engage with stakeholders in conducting their HRDD under the UNGPs.

For example, the British multinational retailer, **Marks and Spencer**, published a guidance on HRDD and remedy, to highlight its own Human Rights Standards due to the lack of clarity as to whether CBOs or informal networks are considered to be an NGO/association.<sup>32</sup> The guidance recommends building the views of key stakeholders into companies' human rights impact assessments, including workers, women, minority groups, trade unions, and non-governmental organisations (NGOs). Marks and Spencer's Global Sourcing Principles highlights 12 specific human rights impacts, namely: modern slavery; responsible recruitment; child labour and juvenile workers; and occupational health and safety; gender equality; discrimination and equal opportunities; and freedom of association, consultation, and collective bargaining. Worker support organisations, charities, and NGOs are also recommended as sources of reliable data that businesses could use to better understand their human rights impacts. Lastly, the guidance recommends working with civil society to address human rights impacts.<sup>33</sup> As part of the company's commitment to respecting human rights, they also commit to working collaboratively with CSOs to inform their approach, share experience, and help to address root causes.<sup>34</sup>

**Thai Union Group** is a Thailand-based seafood producer that collaborates with NGOs and labour unions to implement and continuously improve their HRDD. Since Thai Union's human rights impacts include forced migrant labour and violations of health and safety, the company partnered, in 2018-2019, with the Transport Workers' Federation to deliver health and safety training workshops for fishers in Thailand. Since 2014, the company has organised training sessions for migrant workers in collaboration with the Labour Promotion Network on Thai labour and social welfare regulations. Thai Union also partnered with the Issara Institute, a Thai NGO, to provide workers with access to Issara's independent worker helpline, which is available in five languages and located in all factories and ports in the company's value chain.<sup>35</sup>

An example of civil society engaging with a garment brand to raise awareness about the impact of workers with their suppliers, and convening stakeholders to discuss a resolution is the **Kingsland case**. In 2012, the Swedish clothing retailer, H&M, placed an order with a supplier, which contracted the work to Kingsland, a garment manufacturer in Cambodia, without informing H&M and in violation of H&M's policies. Kingsland completed the order and shipped the product in June 2012. In September and October, Kingsland suspended production at their factory and laid off 200 workers. Kingsland failed to pay compensation during the period of suspended production and ultimately closed permanently. Upon its closure, the factory did not pay severance or outstanding wages, which triggered worker protests. CSOs sought to approach Kingsland brands and buyers to prompt further action. A Cambodian NGO, the Community Legal Education Centre, informed H&M of the situation. Former Kingsland employees, the Community Legal Education Centre, and the Workers' Rights Consortium sent letters to H&M requesting the company compensate the 200 workers. The workers were able to prove that Kingsland produced the garments for H&M via the company's direct suppliers. H&M adopted its human rights policy in December 2012. In response to the situation with Kingsland, H&M reviewed its responsibility from a human rights perspective and consulted human rights experts for advice. H&M contacted the original

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32 Office of the United Nations High Commissioner for Human Rights in Cambodia, *A human rights analysis of the law on association and non-governmental organizations* (2015) <https://cambodia.ohchr.org/sites/default/files/Final%20OHCHR%20analysis%20of%205th%20LANGO%2C%20En%2C%20August%202015.pdf>.

33 Marks and Spencer, *Food Human Rights Standards: Human Rights Due Diligence and Remedy Guidance* (2021).

34 Marks and Spencer, *Human Rights in our Supply Chain* (n.d.)

<https://corporate.marksandspencer.com/sustainability/human-rights-our-supply-chain>.

35 Thai Union, *Human Rights Due Diligence Framework* (2020 Update).

supplier, who was willing to contribute to compensation for the workers. A stakeholder meeting was organised in March 2013, involving Better Factories Cambodia and the American Centre for International Labour Solidarity. The stakeholder meeting concluded that factory assets and contributions from suppliers would cover the workers compensations and the former workers received compensation in mid-March 2013. Civil society played a large role in strategically engaging the brands who were buying from Kingsland and in convening relevant stakeholders in discussions.<sup>36</sup>

In Cambodia there are examples of business and civil society partnering to better understand responsible business conduct. In 2017, Oxfam in Cambodia implemented a project aimed at influencing businesses operating in Cambodia to promote responsible business practices. Oxfam identified a lack of awareness about good responsible business practices. To bridge this gap, Oxfam in Cambodia developed the CSR Platform Cambodia, which consisted of 40 member companies, chambers of commerce, and CSOs. The objective of the platform was to share best practice and leadership and to strengthen connections between businesses and CSOs.<sup>37</sup> The platform created a space for CSOs and companies to engage on responsible business practices, including human rights due diligence, business integrity, and good environmental management practices.

**Multi-stakeholder initiatives** (MSIs) are collaborations among business, CSOs, and potentially other stakeholders to promote responsible business conduct. Multi-stakeholder initiatives can create an open forum to discuss common issues and explore solutions together. In some cases, multi-stakeholder initiatives can also help business to establish and increase leverage by collaborating with different stakeholders to be able to change a situation. MSIs often create independent frameworks for business, States, and civil society to address particular issues. These frameworks often seek to fill governance gaps where businesses operate.

Following the Rana Plaza tragedy in Bangladesh in 2010, trade unions and garment factories worked together to establish the **Accord on Fire and Building Safety in Bangladesh**. The Accord is an independent, legally binding agreement between garment brands and trade unions to elevate safety standards in garment factories. In order to establish the accord, trade unions worked with brands to convene meetings to develop principles around health and safety in factories in Bangladesh. Initially, the trade unions focussed on MOUs with brands on health and safety, but following additional deaths in factories and a factory fire that killed 112 people in 2012, increased pressure was placed on brands to develop a more concrete mechanism.<sup>38</sup> The Accord ensures workers' right to: refuse unsafe work; participate in factory Safety Committees; file complaints; non-retaliation; and the right to freedom of association. An independent complaints mechanism was created for workers and their representatives to raise concerns about health and safety confidentially. Building on the success of this Accord, in 2021 global trade unions (IndustriALL Global Union and UNI Global Union) and international textile retailers concluded the International Accord for Health and Safety in the Textile and Garment Industry, which is being rolled out to other countries.

Another example of multistakeholder initiatives is the **Fair Labour Association** (FLA) which works with civil society, businesses and universities to develop standards and policies around human rights. The FLA offers accreditation for businesses who meet international standards for labour and human rights.

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36 GBI and the BHRRC, Multi-Stakeholder Engagement Across, *'Protect, Respect, Remedy' Report from a Session at the United Nations Fourth Annual Forum on Human Rights: 16-18 November 2015*, (Report published: 2016).

37 Oxfam in Cambodia, *Responsible business practices: Cambodia's changing business landscape*, GRAISEA Stories of Change, Issue No. 1, (2017).

38 Clean Clothes Campaign, Maquila Solidarity Network, *The History behind the Bangladesh Fire and Safety Accord* (2013) [https://ecommons.cornell.edu/bitstream/handle/1813/102182/C-CC\\_2013\\_Report\\_History\\_behind\\_the\\_Bangladesh\\_Fire\\_and\\_Safety\\_Accord.pdf?sequence=1](https://ecommons.cornell.edu/bitstream/handle/1813/102182/C-CC_2013_Report_History_behind_the_Bangladesh_Fire_and_Safety_Accord.pdf?sequence=1).





Businesses must make a commitment to the Principles of Fair Labour and Responsible Sources and the Principles of Fair Labor and Responsible Production, and must agree to uphold the FLA Workplace Code of Conduct in its supply chain. The companies are regularly assessed against the Principles and accredited by the FLA. The Fair Labor Principles focus on the frameworks, policies and procedures that a business must have to ensure human rights for workers are respected throughout their supply chains.

By addressing governance gaps, MSIs can be powerful tools in addressing adverse human rights impacts linked to business actions. In some cases, however, since business co-develop and accept the standards, MSIs can be more easily influenced by business members. Additionally, business can sometimes use MSIs as cover for their poor behaviour. MSIs can also be resource intensive for CSOs to participate in, but funding for participation can be limited. CSOs can also be frustrated by the lack of progress made in MSIs, or by a deference to business within the MSI.

### 3.3 Civil society as advocates for change

The growth of the private sector in Cambodia sees violations of human rights by some businesses, including multinational enterprises from the Global North.<sup>39</sup> Advocacy NGOs have targeted these businesses to respect human rights, as a company requires legitimacy<sup>40</sup> and its consumers and host government 'have direct influence over the firm's behaviour, economic performance, or both.'<sup>41</sup> Civil society organisations are acting as advocates for change, with some notable success.

The **Clean Clothes Campaign** is a worker-centric network that seeks to elevate the complaints of workers in the garment and sportswear industries to advocate on behalf of the workers. The Campaign also collaborates with workers to jointly develop advocacy campaigns for various issues, including a living wage. This Campaign also works to raise awareness amongst consumers and to advocate on behalf of workers to businesses and governments.<sup>42</sup> In Cambodia, the Campaign has advocated for increased wages for workers, improved working conditions, repayment of wages, and protection of trade unionists.

In 2013, the international NGO, Oxfam, launched the **Behind the Brands Campaign**. The campaign aimed to raise awareness from brands, consumers, and regulators about the agricultural sourcing policies of the world's 10 largest food and beverage companies. The campaign focusses on publicly available information to understand the sourcing of agricultural commodities from developing countries. The campaign scores companies based on 7 issues: 1) transparency at corporate level; 2) women farm workers and small-scale producers in the supply chain; 3) workers on farms in the supply chain; 4) farmers growing commodities; 5) land, both rights and access to sustainable use; 6) water, both rights and access to water resources and sustainable use; and 7) climate in reducing greenhouse gas emissions and helping farmers to adapt. Businesses are then assigned a scorecard based on these seven issues and accompanying indicators.<sup>43</sup> Following the launch of the campaign, the Coca Cola Company was implicated in land grabs in Cambodia, most notably the Mitr Phol case. The Coca Cola Company announced a commitment to zero tolerance for land rights abuses in their value chain and committed to conducting sweeping social and environmental assessments across sugar supply chains in Colombia, Guatemala, Brazil, India, South Africa, and other countries. The company recognised its role as the largest purchaser of sugar in the world, and its ability to influence suppliers and the sugar industry.<sup>44</sup>

39 Cambodian Center for Human Rights, *Briefing note on business and human rights: Corporate accountability in land rights violations* (2020).

40 Yaziji, M., & Doh, J., *NGOs and corporations: Conflict and collaboration* (2009) p.57.

41 Id., p.60.

42 Clean Clothes Campaign, *About us*, <https://cleanclothes.org/about>.

43 Oxfam, *Behind the Brands*, <https://www.behindthebrands.org/about/>.

The **Business and Human Rights Resource Centre** was established to amplify the voices of human rights advocates, civil society, media and businesses by creating a space for communities and NGOs to address human rights concerns regarding corporate behaviour, while also giving business an opportunity to respond to concerns and allegations. The Centre takes up alleged abuses quickly and directly with businesses, and publishes their responses on the Centre's website.<sup>45</sup> The Centre created a valuable opportunity for CSOs to voice their allegations of human rights abuses committed by companies, which sometimes also raises awareness within and among the companies themselves.

Additionally, as part of their advocacy efforts, NGOs can submit evidence-based **shadow reports to UN** human rights mechanisms that highlight issues around business and human rights. These reports can be an important tool for NGOs to advocate for changes through the UN system. NGOs are often the source of credible and reliable information, which states during UPR rely on. Treaty bodies of special procedures elect to investigate further and possibly initiate action.

## 4. Further discussion

**W**hile there are several different roles that civil society can take in their approach to promoting human rights, there are also dilemmas that civil society can encounter. As mentioned above, in their efforts to seek corporate accountability, CSOs and law firms must decide whether to continue litigation efforts to establish precedent or **settle the case** to provide faster remedy to affected rightsholders.

This dilemma leads to an additional dilemma around **representation** of affected rightsholders. Business should engage with potentially affected rightsholders or their representatives in their HRDD and grievance mechanism design. NGOs can sometimes act as representatives in those consultations, which can raise questions about proper representation and potential divergence of interests between civil society and affected rightsholders.

Lastly, with **limited resources** based on donor interests and specific timelines it can be a challenge for CSOs to maintain their involvement in litigation, MSIs, or other initiatives. This is a growing challenge and can lead to dilemmas of difficult decisions for CSOs about which approach to take in promoting business and human rights.

## 5. Conclusions

**C**SOs are essential for the various roles they can play in promoting responsible business conduct, either as advocates, partners, or striving for accountability. The role of civil society is firmly protected under international human rights law, though in Cambodia, the passage of LANGO has served to restrict the operation of CSOs in Cambodia.

Continued protection of CSOs to engage in their various roles is essential to furthering the responsible business agenda. Alongside their various roles, there are numerous mechanisms civil society can access to achieve their objectives and promote corporate respect for human rights and the State's duty to protect human rights.

44 Oxfam, *Press release: The Coca Cola Company declares Zero Tolerance Land Grabs in Supply Chain* (8 November 2013) <https://www.oxfam.org/en/press-releases/coca-cola-company-declares-zero-tolerance-land-grabs-supply-chain#:~:text=Coca%2DCola%20today%20committed%20to,bottlers%20to%20do%20the%20same>.

45 Business and Human Rights Resource Centre, *About Us* <https://www.business-humanrights.org/en/about-us/>.





In the future, the role of civil society in promoting responsible business conduct may become even more concrete as various pieces of legislation in the European Union stress the role of civil society in business efforts to conduct HRDD. In this way, the various ways to promote responsible business conduct can be adapted to the context and the situation to ensure more positive outcomes.

## 6. Further readings

1. The Netherlands, *Responsible Business Conduct (RBC) agreements* (website) [www.government.nl/topics/responsible-business-conduct-rbc/responsible-business-conduct-rbc-agreements](http://www.government.nl/topics/responsible-business-conduct-rbc/responsible-business-conduct-rbc-agreements).
2. MSI Integrity, *Not Fit-for-Purpose - The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance* (2020) [https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI\\_Not\\_Fit\\_For\\_Purpose\\_FORWEBSITE.FINAL\\_.pdf](https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL_.pdf).
3. Surya Deva, *Role of business in realizing the right to development, Report of the Special Rapporteur on the right to development, A/78/160* (2023) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/203/69/PDF/N2320369.pdf?OpenElement>.
4. Shift, *How to Use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy: A Guide for Civil Society Organisations* (2012) <https://shiftproject.org/resource/how-to-use-the-un-guiding-principles-on-business-and-human-rights-in-company-research-and-advocacy-a-guide-for-civil-society-organisations>.
5. *Civil society statement on the proposed EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE* (2022) [https://corporatejustice.org/wp-content/uploads/2022/05/CSO\\_statement\\_CSDDD\\_EN.pdf](https://corporatejustice.org/wp-content/uploads/2022/05/CSO_statement_CSDDD_EN.pdf).

# **CHAPTER 8**

## **Trade Unions and RBC**



**Sophal Chea and Joana Maria Cassinerio**

**T**he Constitution of the Kingdom of Cambodia, the 2016 Law on Trade Union and the 1997 Labour Law jointly provide the legal framework for the protection of workers and trade union rights and thus promote a core element of responsible business conduct (RBC) in Cambodia. For example, the Constitution enshrines the rights for Cambodian people to form and to be a member of a trade union.<sup>1</sup> Furthermore, both the Labour Law and the Law on Trade Union echo the constitutional provision by indicating that both workers and employers have the **right to form organisations** of their own choice, which carry out functions of studying, promoting the interests and protecting the rights – both collectively and individually – of their members.<sup>2</sup> Once trade unions are established, they can perform key roles such as: exercising rights to collective bargaining between trade unions and employers; promoting good industrial relations between workers, employers and government; and encouraging businesses to be responsible through ensuring decent work, creating safe workplaces and enhancing productivity.<sup>3</sup>

This **chapter** will look at the crucial roles of trade unions in ensuring RBC. It will provide an overview of the relevant legal frameworks and policies and examine the challenges trade unions have faced and how they have dealt with those challenges in order to protect the interests of their members, and to promote RBC.

## 2. Frameworks

### 2.1 International Framework

**B**oth national union federations or alliances and enterprise-level trade unions expect businesses to apply the United Nations Guiding Principles through putting in place policies and due diligence systems to prevent and address adverse **human rights impacts**.<sup>4</sup> For example, the business is expected to respect the rights of workers to form or join a trade union by not making any rules which could have the consequence of preventing or intimidating workers from enjoying this right.<sup>5</sup>

The labour rights of freedom of association and collective bargaining for trade unions are enshrined in the **legal instruments** locally and internationally. The International Covenant on Economic, Social and Cultural Rights, ratified by Cambodia, grants a number of rights such as the right: to work; to enjoy just and favourable conditions of work; to form and join trade unions; to strike; as well as the right to social security, including social insurance.<sup>6</sup> Cambodia is also a party to the International Covenant on Civil and Political Rights (ICCPR), which grants everyone the right to freedom of association with others, including the right to set up and join trade unions for the protection of their interests.<sup>7</sup> This means that Cambodia, as a State Party to the Covenant and the ILO Convention on Freedom of Association and Protection on the Right to Organise, shall not take any legislative actions that would harm the guarantees provided.

The ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, and the Convention No. 98 on the Right to Organise and Collective Bargaining are based on the basic principle of the ILO Constitution: the right of everyone to organise and to bargain collectively for the protection of their interests. These labour principles are crucial to building enterprise-level trade unions and their federations and for them to organize and bargain collectively.<sup>8</sup> Although the **ILO Conventions** do not

1 The Constitution of the Kingdom of Cambodia (1993), art. 36.

2 Cambodia, Labour Law (1997), art. 266.

3 Cambodia, Law on Trade Union (2016), art. 2.

4 Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011), [https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

5 UNGPs, Principle 12.

6 International Covenant on Economic, Social and Cultural Rights <https://cambodia.ohchr.org/sites/default/files/Treaty/ICESCR-EN.pdf>.

7 International Covenant on Civil and Political Rights, article 22 [https://cambodia.ohchr.org/sites/default/files/Treaty/ICCPR\\_2009E.pdf](https://cambodia.ohchr.org/sites/default/files/Treaty/ICCPR_2009E.pdf).

8 International Labour Organisation (ILO), *Right to Organize and Collective Bargaining Convention, 1949* (No.98) [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312243](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243).

place direct legal obligations on private actors (for example businesses), Cambodia, as a ratifying state, is responsible for enacting and enforcing national laws and policies that require businesses respect human rights including the right to just and favourable work conditions, freedom from discrimination, mandating a minimum working age and ensuring health and safety in the workplace (see Chapter 3).

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) is the ILO body that monitors the implementation of ILO Conventions. It noted both the concerns and achievements made on the application of ILO Convention No. 87 by Cambodia.<sup>9</sup> The **concerns raised by CEACR** are related to the continuing acts of violence against workers, the arrests of trade unionists in connection with their activities, as well as the absence of effective and timely investigation to those incidents. The Committee urged the Government to investigate all allegations of violent repression of trade union activity and detention of trade union leaders, and take measures to stop arbitrary arrest, detention and prosecution of trade unionists who carried out their legitimate trade union activity. The positive steps noted by CEACR relate to bringing the Law on Trade Union in line with the Convention. However, there are still some further issues of non-compliance that need to be addressed such as swift investigation into the acts of discrimination against trade unions, establishing a code of practice on settling of industrial and protest actions, and setting up simple and transparent processes for registering trade unions.

Concerning compliance with Convention No. 98, CEACR noted the concerns from ITUC alleging that the 2019 amendments of the **Law on Trade Union** are not in line with the Convention in relation to anti-union discrimination; in particular, it cited the extended use of short-term contracts to terminate the employment of trade union leaders and members and weaken active trade unions. In its response to the Committee, the Government expressed its view that the Law on Trade Union provides mechanisms for remedies for both dismissal of union leaders and non-renewal of fixed term contracts due to anti-union discrimination. The Government indicated that union leaders can be reinstated, or the employers be given a substantial fine for being involved with anti-union discrimination. CEACR urges the Government to ensure that all measures are taken to monitor the use of fixed term contracts or their non-renewals as a target for anti-union discrimination purposes.<sup>10</sup>

## 2.2 National Framework

The **Constitution** of the Kingdom of Cambodia states that Cambodia recognises human rights as mentioned in the Charter of the United Nations, the Universal Declaration of Human Rights, the international covenants, and conventions. Article 31 of the Constitution considers the Conventions and Covenants ratified by Cambodia as part of Cambodian law. By now, Cambodia has ratified eight out of nine existing core human rights treaties<sup>11</sup> and 13 International Labour Organisation Conventions, including eight core conventions which provide a fundamental legal framework for the promotion and protection of labour rights of trade unions and their members (see Chapter 3).

The **Cambodian Labour Law** states in Article 266 that workers and employers have the right to form organisations of their own choice for the purposes of studying, promoting their interests, and protecting their rights (freedom of association). The law also guarantees the right to choose any employment, collective bargaining, and the right to strike and to engage in non-violent demonstration. It also stipulates the right to protection of workers' representatives, health and safety, and other rights regarding working conditions. The Cambodian Constitution, in Article 36, grants Cambodian people the right to form and to be members

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9 ILO, Observation (CEACR), adopted 2021, published 110th ILC session (2022), *Freedom of Association and Protection of the Right to Organize Convention, 1948* (No.87) [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4122256](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:4122256).

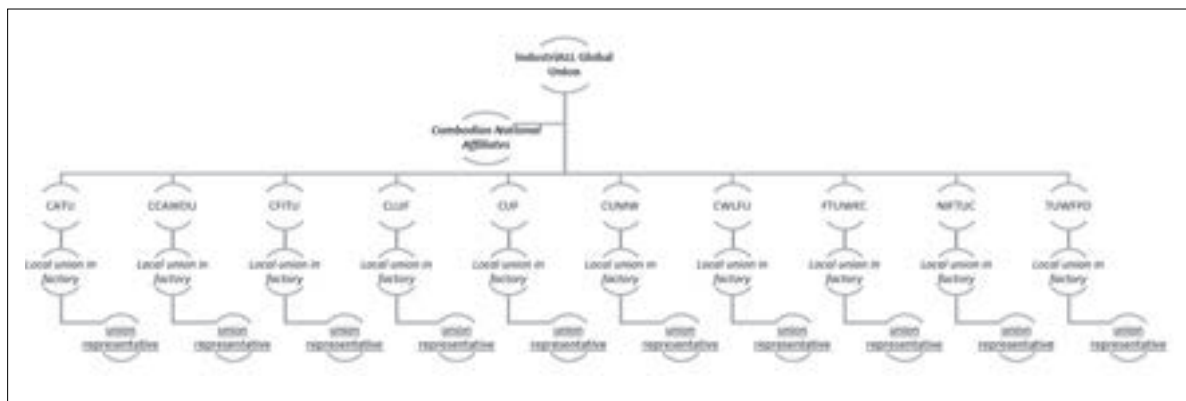
10 ILO, Observation (CEACR) -Adopted 2020, published 109th ILO sessions (2021), *Right to Organize and Collective Bargaining Convention, (1949)* (No. 98) [https://www.ilo.org/dyn/normlex-/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4057896,103055](https://www.ilo.org/dyn/normlex-/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4057896,103055).

11 For further info on core human rights treaties' ratification, please see: Office of the United Nations High Commissioner for Human Rights (OHCHR), *UN Treaty Body Database* (2023) [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx).

of trade unions. Article 42 further outlines the right for Khmer citizens to establish associations. Lastly, the Law on Trade Union echoes these provisions. Just like workers, the employers also have the right to set up or join an employers' organisation through taking part in the establishment of an employer association, being a member and taking part in the legitimate activities of the association.<sup>12</sup>

Although the Constitution mentions the **right to strike** and to organise peaceful demonstrations within the framework of law, it does not explicitly provide for the right to collective bargaining and does not have any provision on the lockout, which is a total or partial closure of an enterprise by the enterprise owner during a labour dispute.<sup>13</sup> However, the right of employees to strike and the right of employers to conduct a lockout are guaranteed by the Labour Law.<sup>14</sup>

A minimum number of members is necessary in order to **create a workers'** union and also an employer's organisation. For the trade union, it needs at least ten workers of a particular enterprise and at least seven registered local trade unions to establish a union federation within a sector or industry. For setting up national level union confederation or a coalition of union federation(s), it needs at least five registered union federations. Similar provisions apply to set up an employers' organisation. There are least nine enterprises required to create an employer association, and six registered employer associations to establish an employer federation at national level.<sup>15</sup> Figure 1 below provides a brief hierarchical overview of GFT trade unions and their affiliations at national and global level.



(Figure 1: Common Hierarchical Structure of GFT-related Trade Unions on Cambodia. Source: authors)

The Law on Trade Union designates the **most representative** status union, which has the right to represent all workers (at least 30%)<sup>16</sup>, and importantly acquires the exclusive right to negotiate with the employer in order to conclude a collective bargaining agreement (CBA).<sup>17</sup>

The Law on Trade Union offers several provisions in relation to **collective bargaining**. Collective bargaining is defined as free and voluntary negotiations between an employer, a group of employers or one or more employers' organisation and one or more workers' organisations so that they can determine working conditions, terms of employment, or regulating relations between employers and workers. The main purpose of a CBA is to define the working conditions and employment relations between workers and employers, or between their organisations. And its scope can extend from the enterprise level to the national level. Moreover, it can have an occupational focus related to a particular occupation, a combination of occupations and even an industrial sector. The CBA produces effects from the

12 Cambodia, Law on Trade Union (2016), art. 5.

13 The Constitution of the Kingdom of Cambodia (1993), arts. 36; 37; 42.

14 Cambodia, Labour Law (1997), arts. 318, 319, and 322.

15 Cambodia, Law on Trade Union (2016), art. 10.

16 For further info, see the Royal Government of Cambodia's Prakas:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108887/134812/F-866016378/CAM108887.pdf>.

17 Cambodia, Law on Trade Union (2016), art. 26.



signing date if both parties clearly state that, or one day after being registered with the MoLVT.<sup>18</sup> Labour Law suggests CBA can be for a definite term or indefinite term.<sup>19</sup>

Collective bargaining is a human right (part of the right to freedom of association) and also a form of social **dialogue** in creating sustainable, effective industrial relations, as it involves the negotiation between employers and trade unions. There are various forms of social dialogue, as this includes all types of negotiation, consultation, or exchange of information between or among representatives of government, employers, and workers on certain issues such as common interest in relation to economic and social policy. The parties, who have rights to collectively bargain, are representatives of employers and workers through the employment relation which is a legal construct.

### 3. Applications

In this section, there will be a focus on industry cases and the involvement of relevant social actors such as trade unions, employers' association, Arbitration Council (AC), and ILO's Better Factories Cambodia (BFC) project. Furthermore, this section also looks at the support provided by International Trade Union Confederation (ITUC) and IndustriALL to their affiliated members in Cambodia.

#### 3.1 Industry cases

Under the ILO system, there were **12 freedom of association (FOA)** cases (two active, nine closed, and one follow-up) documented on the ILO FOA database, with the date of submission from the earliest in 1997 to the latest in March 2022.

The latest one referred to **Naga World** and was related to the complaint on the violations of trade union rights by the Government in relation to the arrests and detention of union leaders and activists, anti-union discrimination and union-busting. This complaint was submitted in May 2022 by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association (IUF). Workers at Naga World established a trade union, the Labour Rights Supported Union of Khmer Employees of Naga Hotel (LRSU), in 2002, with currently over 4,000 members out of a total of 8,000 people formerly working at Naga World. Both IUF and ITUC provided supplemental information on the case in September, October, and December 2022. The complaint cited that there was a shortcoming in the Law on Trade Union in relation to the rights, including the Most Representative Status (MRS) certificate and restrictions on the ability of union members to exercise their rights to the Arbitration Council (AC) and their collective bargaining right. In its latest communication and conclusion, the complainants pointed out that there were ongoing cycles of arrest and imprisonment which constituted a serious interference with trade union rights; they demanded that the company reinstate sacked workers, recognize LRSU, bargain with the trade union and provide fair compensation for dismissed workers.<sup>20</sup>

After reviewing the **complaints and replies** from the Government, the CEACR noted deep concerns that penal sanctions could be imposed on any worker participating in a peaceful strike, and that confiscation and occupation of property of leaders of employers' or workers' organisations are contradictory to freedom of association. Among other recommendations, the Committee asked the Government to provide information on the status of the LRSU's request for MRS and also requested the Government to provide necessary information on the steps taken to ensure that LRSU at least has the right to represent their members with regard to their individual grievances. Furthermore, the Committee asked the Government to ensure that all charges brought against LRSU leaders and members for participating in a peaceful strike be dropped.<sup>21</sup>

18 Id., arts. 69; 73; and 98.

19 Cambodia, Labour Law (1997), art. 96.

20 ILO, *Freedom of Association Cases, Cambodia* <https://www.ilo.org/dyn/normlex/en/f?p=1000:20060::FIND:::>

21 ILO, *Interim Report – Report No. 401 (March 2023)*

[https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:4341061](https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4341061).

Despite the comprehensive Cambodian legal framework on trade union rights, there have been cases of **discrimination** against unions, resulting in termination of employment or non-renewal of contracts for union leaders and activists. Moreover, unionised workers were specifically targeted with regard to work contract renewals: Despite their eligibility for undetermined duration contracts, they often continuously received fixed duration contracts, hence making them more vulnerable to sudden firing and less eligible for work-duration related bonuses. According to the Arbitration Council in Cambodia, the most common factors leading workers to strike were related to anti-union discrimination, such as dismissal of union leaders, and a lack of employers' respect for occupational health and safety at work.<sup>22</sup> The Ministry of Labour and Vocational Training (MoLVT) indicated that there were 68 strikes in 2022 with 95.59 percent resolved, while there were also 5 cases of demonstrations which required intervention from the MoLVT. The MoLVT's Annual Report 2022 did not elaborate on the demands and root causes of those strikes.<sup>23</sup> Marking its 20th Anniversary in 2023, the Arbitration Council revealed there had been over 3,000 resolved cases of collective labour disputes, with a success rate of 75%.<sup>24</sup> There were 44 cases in 2021 (down from 66 cases in 2020) in which two cases involved strikes. This decrease can most likely be assumed to be due to the fact that fewer cases were found to be eligible to be processed at the Arbitration Court, due to an overall rise in anti-union behaviour and increasing discriminatory practices.

There was no indication of how many cases the **Arbitration Council (AC)** received in 2022.<sup>25</sup> Among the top ten issues brought to the AC in 2021 related to trade unions, the AC documented 19 cases related to the demand for discipline, termination, and transfer, 10 union discrimination cases, and 10 cases on union contribution fees.<sup>26</sup>

Under the **ILO's BFC project**, which measures dozens of labour indicators in garment export factories, there are still cases involving trade union rights although, overall, there has been a high percentage of compliance. Those cases, publicly available on ILO/BFC's Transparency database, involved unions under management control, workers not freely able to join or form unions, and interference by management.<sup>27</sup> Among a total number of 722 factories assessed and reported publicly, there were 31 cases of factories where unions were under management control, while in another 26 cases of factories, the management was interfering with the union.



Figure 2: BFC Transparency Database (2023)

22 Megan Reeve and Hun Chenda, *Study on Labour Dispute and Use of Strikes in the Cambodian Garment and Footwear Industry* (2015)

23 MoLVT, *Annual Congress on 2022 Achievements and 2023 Objectives of Ministry of Labour and Vocational Training* <https://www.mlvt.gov.kh/>.

24 The Arbitration Council, *Celebrating the 20th Anniversary of the Arbitration Council 2003-2023* <https://www.arbitrationcouncil.org/14409/>.

25 The Arbitration Council Foundation, *Annual Report 2021* (Jul 2022) <https://www.arbitrationcouncil.org/resources/annual-reports/#..>

26 The Arbitration Council, *Celebrating the 20th Anniversary of the Arbitration Council 2003-2023*, p.2. <https://www.arbitrationcouncil.org/14409/>.

27 ILO/BFC, *Transparency Database: Critical Issues Graph View* [https://betterfactories.org/transparency/en/issues/graph\\_view/critical\\_issues](https://betterfactories.org/transparency/en/issues/graph_view/critical_issues).



The International Trade Union Confederation (ITUC), through its **survey of violations of trade union rights**, indicated several cases where the business is not respecting trade union rights, either in terms of union termination or when employers opposed collective bargaining. Trade unions also faced challenges in registering their enterprise-level union. For example, the Collective Union Movement of Workers (CUMW) brought up the case of summary dismissal of their 724 garment workers affiliated to CUMW and IndustriALL in 2020, urging the factory owner to reinstate those terminated workers (including their local union leaders). CUMW and IndustriALL called for the company to demonstrate responsible business conduct by the reinstatement of all those terminated and to put an end to union busting.<sup>28</sup>

The ITUC has three confederation members from Cambodia, namely, the Cambodia Confederation of Trade Unions (CCTU), the Cambodian Confederation of Unions (CCU) and the Cambodian Labour Confederation (CLC), but it does not list how many union members each confederation has. CLC has over 100,000 members from federal members, though its website does not indicate which sectors those members are from; however, the garment sector constitutes the majority.<sup>29</sup> The ITUC listed a number of projects and areas of intervention in Cambodia. For example, Labour Rights in Cambodia (2019-2024), funded by USAID, focusses on improving labour rights protection, representation of workers, and strengthening linkages among labour, business and civil society.<sup>30</sup> Other projects for enhancing responsible business conduct with the involvement of trade unions include: Decent Work along the Value Chain; Empowerment of Participation of Young and Female Workers in Trade Unions and Its Decision Making Processes in Asia; and Promoting the Right to Social Protection.

**IndustriALL Global Union** has 10 affiliated union federations from Cambodia.<sup>31</sup> Some of the focus areas for its affiliated federations have included building stronger unions, fighting for trade union rights, promoting industrial policy, sustainability, social justice, and safe workplaces.<sup>32</sup>

### 3.2 Analysis

The MoLVT indicated (through its annual congress in 2023) that by 2022 there were a total of **6,014 trade unions**, including 5,694 enterprise-level trade unions, 267 union federations, 40 union confederations, and 13 employers' associations registered with the MoLVT.<sup>33</sup> However, the annual report did not mention if any of those enterprise-level unions are not operational since there have been cases of suspensions and/or closure of business operations.

The ILO's CEACR acknowledges the Government efforts on consultation with relevant stakeholders to review the content of relevant laws such as the **Law on Trade Union** and to improve their implementation through organising training of relevant stakeholders. In dealing with the allegations of restricting union registration, the Government replied that they encouraged workers and trade unions to submit any complaint to the body in charge of Labour related to irregularity of registration or violation of freedom of association covered by the Law on Trade Union -- i.e. MoLVT. Related to Article 2 of ILO Convention No. 87, the Committee further encourages the Government to promote full enjoyment of the right under this Convention by domestic workers and workers in the informal economy, and to take necessary measures to allow these workers to organise by sector or profession.<sup>34</sup>

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28 ITUC, *Survey of Violations of Trade Union Rights: Freedom of Association, Collective Bargaining, Strike* <https://survey.ituc-csi.org/Cambodia.html?lang=en#tabs-3>.

29 CLC, *Cambodia Labour Federation: About us* <https://www.clccambodia.org/about-us/>.

30 ITUC, *Trade Union Development Projects Directory: Labour Rights in Cambodia (LRIC)* <https://projects.ituc-csi.org/labour-rights-in-cambodia-lric>.

31 IndustriALL, *Affiliates* <https://www.industriall-union.org/affiliates/cambodia>.

32 IndustriALL, *What we do* <https://www.industriall-union.org/what-we-do>.

33 MoLVT, *Annual Congress on 2022 Achievements and 2023 Objectives of Ministry of Labour and Vocational Training* <https://www.mlvvt.gov.kh/>.

34 ILO, *Observation (CEACR)-adopted 2021, published 110th ILC session (2022), Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87)* [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4122256,103055:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122256,103055:NO)

Cambodia still has a limited number of **collective bargaining agreements**, predominantly in larger hotels, garment factories and service businesses.<sup>35</sup> It is not possible to locate the number of CBAs from a public list. The latest figure on the number of CBAs (from 2014) was 442, covering 85,036 workers.<sup>36</sup> Five Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU) grassroots unions, as part of the Laudes Foundation's project, "Using Publicly Disclosed Data to Improve Apparel Sector Working Conditions", concluded, from April 2018 to August 2020, four collective bargaining agreements covering 14,212 workers for better working conditions and benefits.<sup>37</sup>

Often, there are **difficulties** in enabling collective bargaining, such as changes in business operations, suspension of the business, and sub-contracting arrangements that end collective bargaining structures and relationships.<sup>38</sup> The international trade union movement observed that there are some barriers to the recognition of the collective bargaining agents such as prior authorization or approval by relevant authorities to have the most representative status (MRS) to be able to bargain. MRS of a union is recognized for the purpose of collective bargaining or collective labour dispute resolution. If any union does not have MRS status, they cannot carry out collective bargaining with the employer.<sup>39</sup>

The **Worker Rights Consortium (WRC)**, an independent labour rights monitoring organisation based in the US, conducts factory investigations on suppliers of clothing and merchandise bearing US university names and logos. Over the past years, WRC documented the misuse of temporary contracts in Cambodia. It called on supplier factories to abide by the two-year legal limit on the length of time workers can be employed under Fixed Duration Contracts (FDCs) and, after that, to provide long-term contracts (UDCs or undetermined duration contract).<sup>40</sup> The MoLVT then issued an Instruction on Determination of Types of Employment Contracts allowing the contract to be renewed repeatedly as long as the renewal does not exceed the maximum of two years. After that the contract will become UDC if the total duration of one or more renewals exceeds two years.<sup>41</sup>

Typically, union leaders and union activists with FDCs feel that their **employment contracts** are not secure, as they could face non-renewal of their contracts when they expire. Relating to the right to organise, WRC indicated that they helped thousands of workers in several countries, including Cambodia, to be reinstated to their jobs after being illegally fired from work, and to receive proper backpay compensation. The WRC conducted investigations into two FOA cases at Trax Apparel in 2023 and B.D Cambodia in 2022. WRC found that Trax Apparel violated the right to organise by illegally firing eight workers in retaliation for forming a union to seek to better working conditions. WRC extensively engaged with an international brand sourcing from Trax Apparel and, following requests from the brand, Trax Apparel agreed to rehire all workers and provide full back pay to the eight worker leaders.<sup>42</sup> Similarly, in the case of B.D Cambodia, WRC worked with licensors (brands) sourcing from the factory to solve the case of a workplace leader whose contract was illegally terminated. The worker attempted to return to work after conciliation by the MoLVT, but the factory refused to follow the decision, so WRC then engaged two licensors to solve the case. The worker then received compensation for his lost wages and benefits, but he no longer wished to resume work at the factory.<sup>43</sup>

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35 ILO, *Decent Work Country Programme (DWCP): 2019-2023*

[https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_710183.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_710183.pdf).

36 Danish Trade Union Council for International Development Cooperation, *Labour Market Profile: Cambodia*

[https://www.ulandssekretariatet.dk/wp-content/uploads/2020/03/Cambodia\\_Imp\\_2015.pdf](https://www.ulandssekretariatet.dk/wp-content/uploads/2020/03/Cambodia_Imp_2015.pdf).

37 Loundes Foundation and Solidar Suisse, *Piloting Union Capacity Building to Engage in Evidence-based Bargaining Using Public*

*Data* [https://solidar.ch/wp-content/uploads/2021/04/Solidar\\_Suisse\\_Using\\_Public\\_Data\\_Project\\_Public\\_Report\\_Dec\\_2020.pdf](https://solidar.ch/wp-content/uploads/2021/04/Solidar_Suisse_Using_Public_Data_Project_Public_Report_Dec_2020.pdf).

38 MoLVT, *Annual Congress on 2022 Achievements and 2023 Objectives of Ministry of Labour and Vocational Training p.8.*

<https://www.mlvt.gov.kh/>.

39 Cambodia, Law on Trade Union (2016), art. 56.

40 Scott Nova and Ben Hensler, *Update on Misuse of Temporary Employment Contracts in Cambodia* (2014)

<https://www.workersrights.org/communications-to-affiliates/update-on-misuse-of-temporary-employment-contracts-in-cambodia/>.

41 Cambodia, Ministry of Labour and Vocational Training, *Instruction on Determination of Types of Employment Contracts* (2019)

42 WRC, *WRC Factory Investigation, Trax Apparel* (2023) <https://www.workersrights.org/factory-investigation/trax-apparel/>.

43 WRC, *WRC Factory Investigation, B.D Cambodia* (2022) <https://www.workersrights.org/factory-investigation/b-d-cambodia/>.

**T**here are important roles that trade unions can play when an enterprise faces **economic uncertainty** and decides to suspend work. The mandate of trade unions is not impacted, meaning that, despite the suspension of employment contracts, this will not affect the role of the union as the workers' representative. When it comes to mass layoffs due to a reduction of economic activities or an internal restructuring, the employer needs to inform and consult with the trade union or workers' representatives. As shown during the COVID-19 pandemic and disruptions of orders from international brands to their suppliers in Cambodia, an important question is how to protect trade union leaders and other representatives, such as shop stewards, who are responsible for workers' rights, for example when their employment contract is affected due to work suspension, non-renewal or termination.

There could also be further discussion on the **legality of the collective bargaining agreement**. This is an important aspect of CBA, as its provisions should be more favourable than the minimum granted by the law, such as Cambodia Labour Law, Law on Trade Union and other ministerial regulations. The benefits to workers provided by the CBA should be no less than those granted by law. For example, if an employer offers benefits worth USD 5 more than the legal minimum wage, but then the annual minimum wage increases, the employer is not obliged to continue paying these extra USD 5. The Cambodian Labour Law does not obstruct the granting of benefits or rights that go beyond those benefits and rights defined in the Labour Law, including those provisions covered by a unilateral decision of an employer or a collective bargaining agreement.<sup>44</sup>

Lastly, when addressing responsible business conduct, it is vital to include **international brands** in this conversation, as their business has direct impacts on the well-being of workers and the degree to which factories respect workers' rights. In times of distress and where grievances are to be addressed, workers and their unions often prefer direct communication with brands through their affiliates or IndustriALL, because they otherwise fear retaliation and other punishments when directly talking to their employers. At the same time, brands prefer to stay out of such workplace conflicts and, rather, only act as a mediating element when there is no visible solution found between employer and employees. Thus, the effective communication of grievances and functioning grievance mechanisms with the involvement of all relevant stakeholders needs to be part of future conversations with regards to responsible business conduct and unions in Cambodia's GFT industry.

## 5. Conclusions

**T**rade unions play a very important role in promoting responsible business conduct in Cambodia through carrying out regular social dialogue and connecting with the employers when representing their members' interests, and protecting their members from any possible violations of law by employers. At the same time, trade unions need to be protected from anti-union discriminatory practices, and to work with affiliated federations to strengthen their voice.

Trade unions and their members witness day-to-day operations at the workplace; thereby, they have unique opportunities to contribute to a better and more productive workplace. Businesses committed to RBC value unions as partners in social dialogue, and mature industrial relations. That brings stability and predictability for businesses operating in a volatile global market environment. The protection of freedom of association and collective bargaining as part of RBC offers businesses additional benefits, such as earning a good reputation for labour compliance, creating enabling and safer workplaces for their workforce, saving costs associated with workplace related accidents, and timely mitigation of risks and adverse human rights impact.

44 Cambodia, Labour Law (1997), art. 13.

Freedom of association of workers is according to the ILO and 'enabling right' helps realize many other labour rights. FoA, therefore, should be incorporated and respected in corporate policies, human rights due diligence systems and remediation mechanisms, as indicated in the UNGPs. Based on these considerations, three points are worth emphasizing:

- The importance of adopting responsible business policy in consultation with trade unions and workers' representatives for their workplace and encourage social actors to promote the respect for labour rights, freedom of association and human rights.
- As the main social actor to the workers, a responsible business should respect the right of workers to collective bargaining by not refusing any genuine opportunity to bargain collectively.
- All relevant industry stakeholders including the government, employers' association and trade union should promote social dialogue and industrial relations requiring trade unions and collective bargaining to be important roles in both due diligence and in remediating the adverse human rights impacts. Ideally, brands should also be included in these dialogues.

## 6. Further readings

1. Danish Trade Union Council for International Development Cooperation, *Labour Market Profile: Cambodia* (2015) [https://www.ulandssekretariatet.dk/wp-content/uploads/2020/03/Cambodia\\_Imp\\_2015.pdf](https://www.ulandssekretariatet.dk/wp-content/uploads/2020/03/Cambodia_Imp_2015.pdf)
2. Koy Neam and Ann Vireak, *Guidebook to Cambodia Employment and Labour Relations Laws, The Arbitration Council Foundation* (2020) <https://www.arbitrationcouncil.org/download/guidebook-to-cambodian-employment-and-labour-relations-laws/?wpdmdl=12750&refresh=64f5b81a4efec1693825050>
3. ILO, *Right to Organize and Collective Bargaining Convention, 1949 (No.98), Observation (CEACR) -adopted 2020, published 109th ILC session (2021)* [https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101\\_COMMENT\\_ID:4057896](https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4057896).
4. Alexander Ski, *Trade Unions' Freedom of Association in Cambodia, A Study on Trade Union Law and its Possible Implications on Trade Unions in the Cambodian Garment Industry* (2017) <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=8912909&fileId=8912916>.
5. ILO, *Collective Bargaining Agreement between International Airport Independence Employees Union Siem Reap Airport Cambodia Tourism Industry Worker Trade Union and Cambodia Airport Management Services* (2011) <https://www.ilo.org/static/english/inwork/cb-policy-guide/cambodiacompanyagreementairtransport.pdf>.

# **CHAPTER 9**

## **Human Rights Defenders and RBC**



**Sokphea Young & Sovanlongdy Uy**

**T**he human rights situation in Cambodia is of concern to global human rights organisations, particularly with respect to: rights to freedom of expression, assembly and association; rights to livelihoods, environment and land; and labour rights. Human Rights Defenders (HRDs) are individuals or groups who promote and protect human rights for themselves or others. They play critical roles in promoting and safeguarding human rights values in a country. The recent **shrinking civic space** puts HRDs in Cambodia at risk due to intimidation, sexual harassment, and physical violence, by both state and non-state actors, along with judicial harassment.

According to a report by the Business & Human Rights Resource Centre,<sup>1</sup> from 2015 until March 2023, at least 4,700 attacks were recorded against human rights defenders (HRDs) in various business sectors **across the world**. Most of these attacks, around 75%, were targeted at human rights defenders working on climate change, land, and the environment, and 23% were indigenous HRDs. In spite of the foregoing impediments, HRDs remain committed to promoting the respect and protection of human rights. The United Nations Guiding Principles on Business and Human Rights<sup>2</sup> (UNGPs) acknowledge the significant contribution of HRDs to advancing responsible business conduct (RBC) and human rights. They highlight HRDs' involvement in human rights due diligence, consulting or helping businesses to consider the impacted stakeholders' concerns, and supporting access to justice and remedies.<sup>3</sup> HRDs serve as key figures in promoting an equitable shift towards green economies and business accountability, indicating the risks and negative impacts of irresponsible corporate activities, and advocating for sustainable alternatives.

This **chapter** seeks to not only define HRDs in the context of business and human rights, but also provide a contextual understanding of the HRDs and BHR in Cambodia. The chapter will begin by defining key terms before discussing the international frameworks and their application in the context of Cambodia's HRDs and businesses. The chapter will then highlight some key issues for future discussion and challenges.

## 2. Frameworks

**T**his section defines and discusses key concepts of **human rights defenders (HRDs)**. What is meant by the term, 'human rights defenders'? The 1998 UN Declaration on the Rights and Responsibility of Individuals, Groups, and Organs of Society<sup>4</sup>, commonly known as the Human Rights Defenders (HRDs) Declaration, stipulates that 'everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels'.<sup>5</sup> Based on the Declaration, the UN defines human rights defenders 'as individuals or groups who act to promote, protect or strive for the protection and realisation of human rights and fundamental freedoms through peaceful means'.<sup>6</sup> This chapter adopts this definition as a guiding concept and defines how these aspects link to other notions of HRDs.

Within the context of the HRDs Declaration, those who work to prevent and remediate human rights violations, promoting and advocating for the respect of human rights in all contexts encompass human

1 Business & Human Rights Resource Centre, *Human Rights Defenders & Business in 2022: People Challenging Corporate Power to Protect Our Planet* (2022) <https://www.business-humanrights.org/en/from-us/briefings/hrds-2022/>.

2 United Nations Office of the High Commissioner for Human Rights (UNOHCHR), *Guiding Principles on Business and Human Rights* (2011) [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

3 Business & Human Rights Resource Centre, *Human Rights Defenders & Business in 2021: Protecting the Rights of People Driving a Just Transition* (2021) <https://www.business-humanrights.org/en/from-us/briefings/hrds-2021/human-rights-defenders-business-in-2021-protecting-the-rights-of-people-driving-a-just-transition/>.

4 UN General Assembly Resolution 53/144, (9 December 1998) A/RES/53/144. <https://digitallibrary.un.org/record/265855?ln=en>.

5 *Id.*, Article 1.

6 OHCHR, Special Rapporteur on human rights defenders, *Declaration on human rights defenders*, (website) [www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders#:~:text=Identifies%20human%20rights%20defenders%20as,fundamental%20freedoms%20through%20peaceful%20means.](https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders#:~:text=Identifies%20human%20rights%20defenders%20as,fundamental%20freedoms%20through%20peaceful%20means.)



rights activists, human rights workers, human rights defenders, as well as human rights defenders' organisations and groups. These terms are commonly used interchangeably. To clarify the identity of HRDs, support their work and enhance their safeguard, in 2004, the OHCHR suggested three **criteria that define HRDs**: those who accept the Universal Declaration of Human Rights (UDHR), those whose arguments are in the human rights scope, and those who engage in peaceful means to promote human rights values.<sup>7</sup>

Individuals and groups/organisations can be categorised as HRDs. Due to the broad definition of the term, almost anyone can be considered a HRD if they contribute to human rights promotion in either a **professional or non-professional capacity**. In a professional setting, HRDs can be special rapporteurs, members of human rights organisations, lawyers, and journalists, while in a non-professional context, they can be a group of youths, students or members of a community who voluntarily join in campaigns or any advocacy contributing to human rights promotion. The level of recognition of HRDs for their human rights contributions varies depending on their activities. The role of HRDs in the RBC field has gained international attention and recognition through the UNGPs.<sup>8</sup>

Human rights defenders are also considered 'human rights defender **organisations**'. These organisations, including non-governmental organisations, unions and federations, operate based on a specific organisational structure with funding mechanisms, purposes, missions and visions. As defined in the HRDs guideline, individual staff of organisations working to promote and protect human rights are also classified as HRDs whose work contributes to their organisations' mission and agendas.<sup>9</sup> Refer to Chapter 7 on the explanation of and discussion about civil society organisations as a group. There are circumstances that HRDs are considered an 'unstructured group of human rights defenders' but with a common objective on human rights issues. These groups have played important roles in ensuring individuals, states, and businesses respect human rights. These groups of HRDs may work independently of any organisations, but may affiliate with a **network** of human rights organisations or HRDs.

There are many sectors that HRDs can work in and they sometimes have a specific area of concern. Some HRDs focus on specific issues, such as rights to the environment or natural resources, women and gender issues, indigenous people, labour, technology, and marginalised communities. According to different sources<sup>10</sup>, '**women human rights defenders**' (WHRDs) or 'girl defenders' or 'feminist defenders' implies the same definition, firstly referring to all women and girls who work in promoting human rights, and secondly to all people regardless of their gender acting to promote women's rights, sexual rights, and rights contributing to gender equality. Even though, generally, many HRDs face a growing number of restrictions, the work of WHRDs is perceived to be more challenging for several reasons, such as their interests, identity (women, girls, or LGBTIQ), and other gender-based issues (see also Chapter 19).

Defined as rights holders (in the UNGP), HRDs are citizens that promote respect for the human rights of others. At the same time, they have **human rights and special protection** due to the risks they encounter and inappropriate treatment by others. They can exercise their law-defined rights, and are under international protection when their rights are being violated by other individuals, groups, organisations, states or businesses.

7 UNOHCHR, Fact Sheet No. 29: *Human Rights Defenders: Protecting the Right to Defend Human Rights* (2004)

<https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-29-human-rights-defenders-protecting-right-defend-human>.

8 UNOHCHR, The UN Guiding Principles on Business and Human Rights: *Guidance on Ensuring Respect for Human Rights Defenders* (2021) [https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN\\_0.pdf](https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN_0.pdf).

9 Bennett, K., Ingleton, D., Nah, A. M., & Savage, J., *Critical perspectives on the security and protection of human rights defenders*. *The International Journal of Human Rights*, (2015) 19(7), 883-895 <https://www.tandfonline.com/doi/full/10.1080/13642987.2015.1075301>.

10 UNOHCHR, *Women Human Rights Defenders* <https://www.ohchr.org/en/women/women-human-rights-defenders>. Alice M. Nah, Karen Bennett, Danna Ingleton, James Savage, A Research Agenda for the Protection of Human Rights Defenders, *Journal of Human Rights Practice*, Volume 5, Issue 3, (November 2013), Pages 401-420, <https://doi.org/10.1093/jhuman/hut026>.



HRDs face different risks and abuses in their work to promote and protect human rights, as they are always suppressed by both state and businesses. The severity of suppression or restriction placed upon HRDs is hard to categorise, but includes from a verbal warning (or non-lethal attacks) to physical attacks.<sup>11</sup> Non-lethal attacks include defamation, threats, intimidation, judicial harassment, criminalisation, violence or other attacks, while a lethal attack is the dire act of killing HRDs. CIVICUS claims that at least 11 percent of attacks on HRDs are death threats.<sup>12</sup> The most adverse consequence of HRDs is lethal attack on HRDs, at least 401 of whom were killed in 2022.<sup>13</sup>

Using laws and the judicial system is a tactic to intimidate and silence HRDs and can be seen as judicial harassment. It involves lawsuits against HRDs, arbitrary arrest or detention, or criminal charges to deter HRDs' activities, lengthy judicial proceedings and complicated administrative requirements. A notorious form of judicial harassment drawing attention worldwide is the 'strategic lawsuits against public participation' (SLAPPs). To avoid public scrutiny and public interest, wealthy individuals or businesses file lawsuits against HRDs alleging defamation, that is, to claim that HRDs, through their criticisms, affect the former's personal or business reputation. Currently, business actors increasingly employ SLAPPs against defenders who legitimately voice their concerns on business-related human rights violations.<sup>14</sup> Such SLAPPs are a growing phenomenon in both developing and industrialised countries.<sup>15</sup>

In recent years, the protection of HRDs has become part of the **RBC agenda**. Some multinational enterprises increasingly pay attention and take other initiatives or actions to safeguard HRDs. In 2016, Adidas, in the sportswear industry, was the first business to adopt a policy on HRDs.<sup>16</sup> The attention of the private sector on HRDs became noticeable when major businesses in footwear, apparel, mining, jewellery, and banking sectors jointly issued a statement to support HRDs and civic freedom in 2018.<sup>17</sup> These businesses and investors acknowledged the critical roles of HRDs in implementing RBC, and committed to protecting the civic freedoms of HRDs. In August 2020, at least 30 businesses integrated references to HRDs into their policies, some of which adopted a zero-tolerance policy on those who take reprisals against HRDs.<sup>18</sup> For instance, the International Finance Corporation (IFC) has shown a firm stance on retaliation against HRDs by not tolerating IFC clients whose acts are considered as reprisals; these include threats, harassment or violence against civil society members who voice their concerns on IFC activities or its clients. This international momentum on HRDs in RBC is gaining more traction considering the EU's impending Corporate Sustainability Due Diligence Directive (CSDDD), which mandates businesses to conduct human rights and environment due diligence in their global value chains. This law will pave a way for increasing the protection of HRDs.

In **Cambodia**, international human rights, ratified by the government, are protected by the Constitution 1993<sup>19</sup> particularly as stipulated in Article 31. Despite the lack of specific terms on HRDs in the Cambodian

11 CIVICUS (2023): monitor tracking civic space <https://monitor.civicus.org/globalfindings/TacticsOfRepression/>.

12 International Land Coalition (ILC), *Uncovering the Hidden Iceberg* (2022) [https://d303cb4w253x5q.cloudfront.net/media/documents/2022\\_4\\_the\\_hidden\\_iceberg.pdf](https://d303cb4w253x5q.cloudfront.net/media/documents/2022_4_the_hidden_iceberg.pdf).

13 Frontline Defenders, *Human rights defenders show remarkable courage in the face of attacks and killings – new report* (2023) <https://www.frontlinedefenders.org/en/statement-report/human-rights-defenders-show-remarkable-courage-face-attacks-and-killings>.

14 UNOHCHR, *Critical part of the UNGPs 10+ Roadmap: Increasing the protection of human rights defenders in the face of strategic lawsuits against public participation* (2022) <https://srdefenders.org/information/critical-part-of-the-ungps-10-roadmap-increasing-the-protection-of-human-rights-defenders-in-the-face-of-strategic-lawsuits-against-public-participation/>.

15 EU Parliament, *Strategic lawsuits against public participation (SLAPPs)* (2023) [www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS\\_BRI\(2022\)733668\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf).

16 Business & Human Rights Centre, *In-depth interview with William Anderson of adidas: 'It is important for brands to have clarity over when and how they will act with respect to HRDs'* (2017) <https://www.business-humanrights.org/en/blog/in-depth-interview-with-william-anderson-of-adidas-it-is-important-for-brands-to-have-clarity-over-when-and-how-they-will-act-with-respect-to-hrds/>.

17 Supporting Civic Freedoms, Human Rights Defenders and the Rule of Law, [https://media.business-humanrights.org/media/documents/files/Statement\\_Public\\_v2.pdf](https://media.business-humanrights.org/media/documents/files/Statement_Public_v2.pdf).

18 Business & Human Rights Resource Centre, *Company & investor support for HRDs* (2023) <https://www.business-humanrights.org/en/big-issues/human-rights-defenders-civic-freedoms/how-companies-investors-can-support-hrds/>.

19 Amended: 1994, 1999, 2001, 2005, 2006, 2008, 2014, 2018, and 2023.

legal framework, the Constitution has enshrined rights for everyone, including HRDs (see Chapter 4). However, national laws have subsequently been adopted that disempower HRDs. These laws and regulations that have been proposed or already enacted have caused much controversy among civil society groups, including individual HRDs. They include: the Law on Peaceful Assembly<sup>20</sup> (known as the Demonstration Law); the Law on Associations and Non-Governmental Organisations (LANGO);<sup>21</sup> the Telecommunication Law;<sup>22</sup> the Sub-Decree on National Internet Gateway (NIG);<sup>23</sup> Trade Union Law (see Chapter 8); Taxation and Audit Laws; Emergency Law;<sup>24</sup> the Pandemic Law;<sup>25</sup> the proposed Cybercrime<sup>26</sup> and Cybersecurity Laws; Environmental Laws (see Chapter 19; and other similar regulations. These laws were arguably meant or could be used to suppress HRDs and their organisations' activities, as is discussed below.

### 3. Applications

#### 3.1 Human rights defenders and their challenges in Cambodia

**T**his section explains the situation of HRDs in Cambodia in relation to the overarching framework and definitions of HRDs and also the key challenges that HRDs are facing in the country. Based on our experience in the country, **HRDs in Cambodia** include but are not limited to: labour and trade unions, human rights and advocacy NGOs, individual activists, representatives of farmers, environmental activists, indigenous people representative activists, student activists, and gender and women rights activists.

Activities of HRDs tend to be associated with **economic activities** in the country. For instance, after the first election of the modern era, Cambodia experienced, in 1993, favourable trade conditions to facilitate its rehabilitation and development. The Generalised System of Preferences (GSP), mainly from the U.S. and EU, which allowed Cambodia to export its products to GSP countries with free quotas and tariffs, substantially boosted the Cambodian economy, particularly in the garment industry (see Chapter 12). Despite the economic growth and increase in exports, labour rights, including working conditions and wages, were still in a precarious situation in the early 2000s. This was the catalyst for further protests, demanding that the government and businesses, especially factory owners, respect human rights and improve labour conditions. Trade unions and workers staged protests to demand the state and businesses address low labour wages, inappropriate working conditions of workers and violation of workers' rights (namely, right to collective bargaining, right to unions, and right to freedom of speech and opinions).

As for the **environmental movement**, some environmental organisations and individual environmental groups, such as the Prey Lang Community Network (PLCN),<sup>27</sup> were established in 2000 to advocate with the government over the timber and economic land concessions (ELCs) issued in the mid-1990s. PLCN has advocated for their rights to protect natural resources and thus maintain their livelihoods. PLCN can be categorised as a group of community members or informal groups that seek to stop illegal logging and even detain illegal loggers. With a hybrid structure, these community-led networks are affiliated with

20 OHCHR, *Implementation Guide to the Law on Peaceful Demonstration* (2010)

[https://cambodia.ohchr.org/sites/default/files/Implementation\\_Guide-Rev\\_Eng.pdf](https://cambodia.ohchr.org/sites/default/files/Implementation_Guide-Rev_Eng.pdf).

21 Cambodia, *Law on Associations and Non-Governmental Organization* (2015)

<https://www.coj.gov.kh/wp-content/uploads/2017/03/NGO-laws.pdf>.

22 Cambodia, *Telecommunication Law* (2015) <https://trc.gov.kh/wp-content/uploads/law/law-on-telecommunications.pdf>.

23 Cambodia, *Sub-Decree on National Internet Gateway* (2021) <https://www.mpwt.gov.kh/kh/documents/sub-decree/387>.

24 Cambodia, *The law on Nation Management in the State of Emergency* (2020)

<https://www.interior.gov.kh/request/doc/url?path=1588269961.pdf>.

25 Cambodia, *Law on Measures to Prevent the Spread of COVID-19 and other Serious, Dangerous and Contagious Diseases* (2021)

<https://www.interior.gov.kh/document/detail/1033>.

26 Open Development Cambodia (ODC), *Draft Cybercrime Law* (2015)

[https://cambodia.ohchr.org/sites/default/files/Implementation\\_Guide-Rev\\_Eng.pdf](https://cambodia.ohchr.org/sites/default/files/Implementation_Guide-Rev_Eng.pdf).

27 Equator Initiative, *Prey Lang Community Network (PLCN) Cambodia* (2018)

<https://preylang.net/wp-content/uploads/2021/03/PLCN-Cambodia.pdf>.

other organisations to advance environmental goals (see Chapter 19). PLCN reflects a hybrid form of HRDs, as they operate informally, but with networks across different provinces where the Prey Long forest exists.

In 2012, the **environmental defender**, Mr Chhut Vuthy, who was also known to the affected communities as the defender of the right to natural resources, was shot dead in the forest while attempting to stop illegal logging.<sup>28</sup> As a director of an NGO, Mr. Vuthy was also considered an 'individual human rights defender' for his activities in exercising his citizen's right to protect natural resources and the environment, in line with his organisation's mission.

In 2004, the issuance of ELCs to **agro-industry** businesses caused widespread deforestation and land disputes throughout the country (businesses granted ELCs often become involved in forced evictions, encroachment on lands, and other violations against local inhabitants). In response, local communities began to advocate for their rights and protest against the businesses. From 2007 to 2013,<sup>29</sup> 227 incidents of protests were documented because of land and natural resources issues linked to ELCs. Despite the government's temporary ban on new ELCs in 2012, land disputes between local people and businesses persisted, gaining national and international attention. These included sugar corporations in Oddar Meanchey, Preah Vihear, Kampong Speu and Koh Kong.<sup>30</sup>

The '**Clean Sugar**' campaign was initiated by a coalition of rights advocacy NGOs, targeting Thai sugar companies such as MitrPhol and Khon Kaen Sugar Industry, buyers such as Coca-Cola, the multinational sugar company Tate and Lyle, and the tycoon Ly Yong Phat's Phnom Penh Sugar. This transnational advocacy campaign resulted in greater pressure on the shareholders, leading to some corrective actions and compensation.

The ELC-affected-communities (or victims of ELCs) created a formal **network** across the country to petition or advocate for the respect of their rights to land and properties, and remediation of their losses. As their voices were not heard widely, individual defenders also sought support from human rights defender groups, such as **NGOs**. The latter advised these victims how to advocate and protest peacefully to achieve their objectives. In the beginning, individual victims tend to argue that they are weak in terms of capacity since they do not have a wider knowledge of their rights under different regulations or laws. NGOs, as human rights defender groups, trained and guided victims on their rights when encountering the malpractice of the corporate activities or states. This is a common pattern in many cases.

The movement of individual victims or human rights defenders can be turned into a large movement on the streets and thus can bring political pressure. From 2013 to 2016, the movement of victims of human rights violations became increasingly influential, particularly among the youth in the labour movement. This was evidenced by the mass mobilisation and advocacy of trade unions, media, land rights and environmental activists, advocacy NGOs, and human rights victims.<sup>31</sup> As the collective action assumed a political guise, their activities were gradually subjected to crack down from the authorities.

**Advocacy organisations** in Cambodia, which are dedicated to the promotion and protection of human rights and democracy, have faced greater challenges than those organisations focused on service

28 UN OHCHR, *UN Human Rights Office Concerned over Murder of Cambodian Environmental Activist* (2012) <https://news.un.org/en/story/2012/05/409842>, and Global Witness, *Death of a Comrade* (2012) <https://www.globalwitness.org/en/campaigns/environmental-activists/death-comrade/>.

29 Young, S., *Protests, Regulations, and Environmental Accountability in Cambodia*, *Journal of Current Southeast Asian Affairs*, 38(1), 33–54, 2019, p. 42 <https://doi.org/10.1177/1868103419845515>.

30 Phnom Penh Post, *Kingdom's Sugar Exports to EU Plummet* (2016) <https://phnompenhpost.com/national/kingdoms-sugar-exports-eu-plummet>.

31 Young Sokphea, *The Political Economy of Contestation over Land Resources in Cambodia*. PhD thesis, The University of Melbourne, Melbourne, (2016) [https://www.researchgate.net/publication/318280169\\_The\\_Political\\_Economy\\_of\\_Contestation\\_over\\_Land\\_Resources\\_in\\_Cambodia](https://www.researchgate.net/publication/318280169_The_Political_Economy_of_Contestation_over_Land_Resources_in_Cambodia).

delivery.<sup>32</sup> Advocacy groups are frequently oppressed by both businesses and state actors such as local authorities, military groups, police, and other state agencies, as reported by various human rights organisations.<sup>33</sup> The noticeable repression includes: imposing legal and administrative burdens, harassment, criminalisation, threats, stigmatisation, intimidations, arbitrary arrest or detention, or other physical attacks. Such tactics restrict freedom of speech, association, and assembly, stifle criticism, discourage HRD activism and public participation, and prevent HRDs from engaging in advocacy.

Despite the additional risks, many women activists (WHRDs) in Cambodia play key roles as frontline defenders, particularly in land, labour, and environment issues. WHRDs, sometimes as a wife or a mother, dramatically suffer from threats, violence, harassment and abuses caused by businesses and the state.<sup>34</sup> Among many WHRDs, **Tep Vanny**, the women leader of women protesting against land grabbing in Boeung Kak was a recipient of the Vital Voices Global Leadership Award in a ceremony chaired by the former US Secretary of State Hillary Clinton.<sup>35</sup> Along with other human right defenders, Tep Vanny was arrested by Cambodian authorities and was convicted on several grounds, including incitement of participating in the colour revolution.<sup>36</sup>

Similarly, Ms. **Chhim Sithar** was given a human rights defender award by the U.S State Department. Ms. Sithar leads the 'Labor Rights Supported Union of Khmer Employees' at the NagaWorld Resort and Casino. Since late 2021, Ms. Sithar has led employees in a peaceful strike calling for higher wages and the reinstatement of hundreds of union members who believe they were unjustly fired. A study analysed why women like Tep Vanny and others, rather than men, from the affected Boeung Kak lake communities were at the forefront of the protest. It argued that women were the peacemakers, and private guards from the businesses and policemen would not harm women.<sup>37</sup> In fact, these women were confronted with violent suppression by the Phnom Penh police and guards.

Economic land concessions are one of the most controversial issues between businesses and local residents, as they lead to environmental deterioration, land encroachments, evictions, or other types of human rights abuses. Many victims are indigenous people, farmers, grassroots people, and environmental activists.<sup>38</sup> From April 2019 to March 2020, the NGO CCHR found that 55% of the public assemblies were caused by land disputes. For victims of land rights abuse, raising their voices through social media, joining petitions, and staging peaceful assemblies in front of relevant ministries are powerful approaches to pressure the government to address their concerns. The grassroots communities and other HRDs realised that they were being **monitored and harassed** by the local police.<sup>39</sup> The surveillance by Cambodian authorities has alarmed indigenous human right activists, who intensively rely on the forest for their livelihoods and cultural practices. For instance, large-scale projects through land concessions and illegal logging have caused huge destruction of forests and have thus infringed the indigenous communities'

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32 Jeremy Springman, Edmund Malesky, Lucy Right, Erik Wibbels, The Effect of Government Repression on Civil Society: Evidence from Cambodia, *International Studies Quarterly*, Volume 66, Issue 3, (September 2022) <https://doi.org/10.1093/isq/sqac028>.

33 Cambodian League for the Promotion and Defense of Human Rights (LICADHO), *The Fight for Freedom: Attacks on Human Rights Defenders 2018-2020* (2020) [https://www.licadho-cambodia.org/reports/files/23320201218\\_Human%20Rights%20Defenders%20Report%202018\\_2020\\_EN.pdf](https://www.licadho-cambodia.org/reports/files/23320201218_Human%20Rights%20Defenders%20Report%202018_2020_EN.pdf).

34 UNOHCHR, *Cambodia failed to protect rural woman human rights defender and violated her rights, UN Committee finds* (2023) <https://www.ohchr.org/en/press-releases/2023/06/cambodia-failed-protect-rural-woman-human-rights-defender-and-violated-her> and UN Cambodia, *Gender Equality Deep-Dive for Cambodia: Common Country Analysis* (2022) [https://cambodia.un.org/sites/default/files/2022-03/Gender%20Deep%20Dive%20-%20CCA%20Cambodia\\_V6\\_010322\\_LQ.pdf](https://cambodia.un.org/sites/default/files/2022-03/Gender%20Deep%20Dive%20-%20CCA%20Cambodia_V6_010322_LQ.pdf).

35 Phnom Penh Post, *Activist Abroad: Tep Vanny Wins Human Rights Award* (2013) <https://www.phnompenhpost.com/national/activist-abroad-tep-vanny-wins-human-rights-award>.

36 See UNOHCHR, *Cambodia: UN experts call for the immediate release of five human rights defenders* (2017) <https://www.ohchr.org/en/press-releases/2017/01/cambodia-un-experts-call-immediate-release-five-human-rights-defenders>.

37 Brickell, K., *Home SOS: Gender, violence, and survival in crisis ordinary Cambodia*, John Wiley & Sons, p 21.

38 Cambodian Center for Human Rights (CCHR), *Briefing Note on Business and Human Rights Corporate Accountability in Land Rights Violations* (2013), p.4 [https://cchrcambodia.org/admin/media/analysis/analysis/english/20201223%20-%20CCHR%202020%20BHR%20Briefing%20Note%20%20\(ENG\).pdf](https://cchrcambodia.org/admin/media/analysis/analysis/english/20201223%20-%20CCHR%202020%20BHR%20Briefing%20Note%20%20(ENG).pdf).

39 LICADHO, *The Fight for Freedom: Attacks on Human Rights Defenders 2018-2020* (2020) [https://www.licadho-cambodia.org/reports/files/23320201218\\_Human%20Rights%20Defenders%20Report%202018\\_2020\\_EN.pdf](https://www.licadho-cambodia.org/reports/files/23320201218_Human%20Rights%20Defenders%20Report%202018_2020_EN.pdf).



rights to adequate livelihoods and to own their natural resources. Indigenous activists have been subjected to death threats from the local authorities, physical attacks, and other judicial harassment.<sup>40</sup>

The **shrinking space** for civil society also challenges the HRDs to fully engage in their activism, express their opinions or organise peaceful protests and other advocacy to respond to business-related human rights abuses. Since 2017, many environmental activists, land rights activists, union members, journalists, community leaders and other HRDs have been arrested and detained.<sup>41</sup> Furthermore, activities of HRDs and NGOs to defend the rights of marginalised communities are politicised or mislabelled by the ruling government as oppositional political activities (see Chapter 7).<sup>42</sup>

Space for HRDs has shrunk as cases of physical violence against their activities and threats against their lives increased in the last decade. For instance, the **assassination** in 2004 of Mr Chea Vichea, the former President of Cambodia's Free Trade Union of Workers,<sup>43</sup> was a form of threat to restrain HRDs' critical activities. His death is suspected to be politically motivated, given his strong mobilisation of workers and his previous political affiliations.

These kinds of movements are induced by corporate practices, especially regarding wages and working conditions. Similarly, Dr Kem Ley, a famous political commentator and HRD, was shot dead in 2016. His critical comments on government affairs, including businesses, were related to governance, illegal logging, land concessions, and other critical social and political issues. Playing a role as a political analyst, Dr Kem Ley also exerted his rights as a citizen to express his opinions and safeguard other people rights. However, the public has criticised the Cambodian government for its failure to protect citizens such as Dr Kem Ley, who act as human rights defenders,<sup>44</sup> and it is believed that the government has yet to provide justice for his death. As evidenced, although a perpetrator was convicted, CSOs continue to seek justice, arguing for an effective investigation into his death, due to their suspicions of political motivation.<sup>45</sup>

### 3.2 Judicial Harassments of HRDs

The judicial harassment of Human Rights Defenders (HRDs) is one of the most common methods to target them.<sup>46</sup> In 2015, the **Law on Associations and Non-Governmental Organisations** (LANGO – see Chapter 7) has been widely criticised for its restrictions on freedom of expression and association and its impact on the work of NGOs and other associations.<sup>47</sup> These restrictions include strict registration requirements for formal and informal CSO groups, limiting the capacity of HRDs to work smoothly and effectively for their community. This law is particularly targeted at grassroots HRDs, such as informal CSOs groups or community-based associations, which are legally required to register with the Ministry of Interior.<sup>48</sup> Its implementation in 2020 has resulted in procedures against prominent local environmental

40 International Federation for Human Rights, *Cambodia: Unchecked economic development over the economic, social and cultural rights* (2023) <https://www.fidh.org/en/international-advocacy/cambodia-unchecked-economic-development-over-the-economic-social-and-cultural-rights>.

41 Civicus, *Cambodia: New brief highlights lack of tangible improvements around civic space* (2022) <https://www.civicus.org/index.php/media-resources/reports-publications/6038-cambodia-new-brief-highlights-lack-of-tangible-improvements-around-civic-space>.

42 UNOHCHR, *When Activists are Misunderstood: Meet the Cambodian Human Rights Defenders Mislabeled as Politicians* (2022) <https://cambodia.ohchr.org/en/news/when-activists-are-misunderstood-meet-cambodian-human-rights-defenders-mislabeled-politicians>.

43 Amnesty International, *Kingdom of Cambodia The killing of trade unionist Chea Vichea* (2004) <https://www.amnesty.org/es/wp-content/uploads/2021/08/asa230012005en.pdf>.

44 UNOHCHR, *Cambodia Regression of UN Freedom of Expression Commitment: Universal Periodic Review Mid-Term Report* (December 2021) <https://www.ohchr.org/sites/default/files/2022-01/Cambodia-UPR-Mid-term-report.pdf>.

45 Amnesty International, *Cambodia: Joint Statement: No Justice At 5-Year Anniversary of Kem Ley's Death* (2021) <https://www.amnesty.org/en/documents/asa23/4445/2021/en/>.

46 Vitit Muntarbhorn, *Situation of Human Rights in Cambodia: Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, (18 August 2022), A/HRC/51/66 <https://digitallibrary.un.org/record/3987484?ln=en#record-files-collapse-header>.

47 UNOHCHR, *A Human Rights Analysis of the Law on Association and Non-Governmental Organizations* (2015) <https://cambodia.ohchr.org/sites/default/files/Final%20OHCHR%20analysis%20of%20the%20LANGO%2C%20En%2C%20August%202015.pdf>.

48 LICADHO, *The Fight for Freedom: Attacks on Human Rights Defenders 2018-2020* (2020) p.3 [https://www.licadho-cambodia.org/reports/files/23320201218\\_Human%20Rights%20Defenders%20Report%202018\\_2020\\_EN.pdf](https://www.licadho-cambodia.org/reports/files/23320201218_Human%20Rights%20Defenders%20Report%202018_2020_EN.pdf).



groups such as the Prey Lang Community Network, Mother Nature, and Khmer Thavrak youth. These groups, who have raised awareness of environmental degradation caused by businesses and challenged the government's weak law enforcement, were accused of being involved in illegality due to their lack of registration documentation from the Ministry of Interior. In this way, LANGO has created a path for local authorities to justify restricting HRD activities on the ground, increasing surveillance, restrictions, or other criminalisation.

Many peaceful protests and other organising activities have been impeded by anti-pandemic laws, citing reasons such as maintaining public order, national security, and public health safety. During the **Covid-19 pandemic**, many HRD activities were restricted due to public health and safety concerns, and HRDs have been criminalised for breaking COVID-19 laws or charged with incitement. The pandemic was cited as a justification for union-busting and labour rights violations.<sup>49</sup> A recent example of this is the case of Naga World. In late 2021, striking workers and union members demanded higher wages and the reinstatement of dismissed workers after mass layoffs by NagaWorld Casino in Phnom Penh. There were reported incidents of isolation of the strikers under improper conditions, physical assaults, arbitrary arrest and detention of union members, and the conviction of several union leaders for incitement and causing social unrest.<sup>50</sup> The notorious Article 495 on incitement of the criminal code is commonly used to persecute HRDs and initiate lawsuits against them.

Furthermore, freedom of expression has been stifled by a series of new **digital regulations**, including Law on Telecommunications, NIG (National Internet Gateway) sub-decree, and the draft laws on Cybercrime and Cybersecurity.<sup>51</sup> These laws are strongly criticised by national and international organisations, the UN, and other CSO groups for endangering human rights, digital rights and internet freedom.<sup>52</sup> Despite the criticism, the government took some positive steps, including postponing the implementation of NIG and continuously gathering inputs from CSOs groups for the draft laws. The NGO Freedom House criticised the laws as a way to silence and crack down on the critics of the Cambodian government.<sup>53</sup> The regulations legitimately allow the government to control the flow of information including, individual's private data or conversation, conduct online surveillance on the critics, and undertake some measures such as blocking websites, delicensing media outlets, or arresting netizens. Given that, many journalists, media users, social and political activists are threatened or arrested due to their online contents or legitimate reports.<sup>54</sup> The legal charges against them include spreading fake news, defamations, incitement, or insult of public officials.<sup>55</sup>

The crackdown on digital rights has been rampant for years but the shutdown of independent media outlet **Voice of Democracy (VOD)**, in early 2023, provoked great criticism and condemnation.<sup>56</sup> VOD,

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49 Human Rights Watch (HRW), *Cambodia: Covid-19 Pandemic Used for Union Busting* (2022)

[https://www.hrw.org/news/2022/11/21/cambodia-covid-19-pandemic-used-union-busting#:~:text=\(New%20York\)%20%E2%80%93%20The%20Cambodian,in%20a%20report%20released%20today](https://www.hrw.org/news/2022/11/21/cambodia-covid-19-pandemic-used-union-busting#:~:text=(New%20York)%20%E2%80%93%20The%20Cambodian,in%20a%20report%20released%20today)

50 Business and Human Rights Resource Centre, *Cambodia: Phnom Penh Court sentence Naga World Union's leader to 2 years in prison on incitement charges along with her fellow unionists* (2023) <https://www.business-humanrights.org/en/latest-news/cambodia-phnom-penh-court-sentence-naga-world-unions-leader-to-2-years-in-prison-on-incitement-charges-along-with-her-fellow-unionists/>.

51 EngageMedia, *Digital Rights in Cambodia: Current Issues and What Can Be Done* (2023) <https://engagemedia.org/2023/digital-rights-cambodia/>.

52 UNOHCHR, *Cambodia: Data Surveillance Legislation is 'repressive', Must not Be Implemented - UN experts* (2022) <https://www.ohchr.org/en/press-releases/2022/02/cambodia-data-surveillance-legislation-repressive-must-not-be-implemented-un>.

53 Freedom House, *Freedom on the Net 2022 Cambodia* (2022) <https://freedomhouse.org/country/cambodia/freedom-net/2022>.

54 Id.

55 See Defamation and Public Insult (Article 305, 306); Incitement to Commit Offences (Article 495); Offence against State Authorities (Article 502) in Criminal Code of Cambodia (2009) [https://ngocedaw.org/wp-content/uploads/2015/05/Criminal\\_Code\\_EN-KH\\_Jan\\_2014.pdf](https://ngocedaw.org/wp-content/uploads/2015/05/Criminal_Code_EN-KH_Jan_2014.pdf).

56 ASEAN Parliament for Human Rights (APHR), *Southeast Asian MPs Condemn Shutting Down of Independent Media Outlet in Cambodia ahead of General Elections* (2023) <https://aseanmp.org/2023/02/14/southeast-asian-mps-condemn-shutting-down-of-independent-media-outlet-in-cambodia-ahead-of-general-elections/>.



representing HRDs' and CSOs' voices, was renowned for its influential and critical coverage of government affairs, business-related human rights abuses, and other sensitive issues. The licence revocation invoked a breach of journalistic ethics<sup>57</sup> but has also been criticised as disproportionate and an attack on the independent press in Cambodia. The move was widely seen as a repressive tactic against the independent media in the lead up to the 2023 national election, echoing the shutdown of other media outlets such as Cambodia Daily in 2017.<sup>58</sup>

### 3.3 Cases of corporate support for HRDs

There are very few examples of good business practices and successful resolution of HRDs cases in Cambodia. Most cases attacking HRDs involve businesses well-connected with the ruling party. Based on different sources, how the cases are resolved successfully depends on the patron-client relations between businesses and Cambodian powerful elites, political contexts, HRDs movements locally and internationally, and the salience of the issues.<sup>59</sup>

There are some encouraging stories in which businesses have sought to protect HRDs or provide remediation. Noticeably, large **international brands** such as H&M, Levi, Adidas, Puma, sourcing from Cambodia, issued several joint letters to the Prime Minister and organised meetings to express their concerns on the violence and deaths of workers in the 2014 protest on Veng Sreng Boulevard.<sup>60</sup> They demanded an investigation and the release of the detained activists and strikers. Under pressure, the HRDs and workers were released after a credible threat of those brands to withdraw from Cambodia. Behind this brand advocacy, the human rights NGOs and the ILO have worked to connect and coordinate these brands and their joint statement.<sup>61</sup>

Another example is the support provided by two NGOs – Inclusive Development International and Equitable Cambodia – to victims of land-grabbing. They assisted HRDs to file a lawsuit against the Australia New Zealand Banking Group (**ANZ**), which financed the Phnom Penh Sugar Company in Cambodia. This company forcibly evicted about 1500 families from their farmland (see Chapter 6). ANZ was alleged to have breached the OECD guidelines on human rights responsibilities as the loans offered to a company caused adverse human rights impacts. In response to the HRDs, ANZ consented to financially compensate the communities. The success of the case outcome was due to the collaboration among local and international HRD networks, and the sense of responsibility of the businesses as well.<sup>62</sup>

## 4. Further discussion

**W**hile HRDs are well defined by the United Nations, there are instances in which the definitions of an individual's or organisation's roles in protecting and promoting human rights are still debated and require further discussion. Firstly, the terms '**HRDs**' and '**political activists**' are often used interchangeably, especially in the context of the increased authoritarianism seen in Cambodia. The activities

57 KhmerTimes, *Ministry: VOD Licence Revoked Due to 'serious act of violation'* (2023) <https://www.khmertimeskh.com/501237972/vod-mistake-is-a-grave-matter/>.

58 CIVICUS, *Cambodia: Media and Civil Society Groups Disturbed by Revocation of Media Outlet's License* (2023) <https://www.civicus.org/index.php/media-resources/news/6264-cambodia-media-and-civil-society-groups-disturbed-by-revocation-of-media-outlet-s-license>.

59 Chikako Oka, Brands as labour rights advocates? Potential and limits of brand advocacy in global supply chains, *Business Ethics: A European Review*, 27(2), 95–107, (2017) <https://doi.org/10.1111/beer.12172>. and Young Sokphea, *Strategies of Authoritarian Survival and Dissensus in Southeast Asia*. Palgrave Macmillan (2021) [https://www.academia.edu/50584851/Strategies\\_of\\_Authoritarian\\_Survival\\_and\\_Dissensus\\_in\\_Southeast\\_Asia](https://www.academia.edu/50584851/Strategies_of_Authoritarian_Survival_and_Dissensus_in_Southeast_Asia).

60 See United Nations' Report on worker's strike in Veng Sreng street turned to violence, (2014) <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=19825>.

61 Bugalski, N., & Pred, D. Lessons from the ANZ-Phnom Penh Sugar Case for the OECD National Contact Point System of Corporate Accountability. *Business and Human Rights Journal*, 1-6, (2023) doi:10.1017/bhj.2023.24.

62 Compliance Advisor Ombudsman, *Cambodia: Financial Intermediaries-04* (2023) <https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-04>.



of those working to defend human rights are politicised by the ruling government, which alleges that HRDs are foreign agents or opposition parties, while HRDs claim that they are exercising their civic rights and not taking political sides. Hence, there is a blurred line between being a human rights defender and being political. More often than not, human rights are considered political in an authoritarian regime. In this instance, there are political activists or politicians who identify themselves as HRDs since their activities protect and promote human rights.

Secondly, due to serious human rights concerns, including labour issues, in Cambodia, the European Union (EU) partially withdrew Cambodia's trade preferences under the **EBA** (see Chapter 12) while, to date, the U.S has not reinstated its GSP agreement with Cambodia since 2021.<sup>63</sup> The international pressure is building for the Cambodian government to account for human rights issues and to restore democratic participation.<sup>64</sup> Meanwhile, the Cambodian government has rejected the international arguments<sup>65</sup> on its human rights implementation and reiterated that international actions interfere with Cambodia's sovereignty and reflect bias.<sup>66</sup> The question remains as to whether such international pressure on the Cambodian economy is able to contribute to improving the human rights situation and safeguarding the freedom of HRDs.

Thirdly and finally, there are instances where businesses, such as the international brands, ADIDAS and H&M, implement their RBC commitments and condemn the repression of HRDs. The commitment to RBC and human rights, if genuine and fully implemented, and the call on the state and business partners to respect the rights of HRDs, raises the question as to whether these businesses meet the criteria to be considered HRDs.

## 5. Conclusions

**T**his chapter explained the situation of HRDs and their role in protecting human rights vis-à-vis domestic and multinational business operations. The Human Rights Defenders' Declaration considers individuals, working alone or in association with others, as HRDs and worthy of special international protection if they work to protect human rights and fundamental freedoms. As such, there is not a close list of who is a HRD or not.

In Cambodia, as in many other countries, the activities of HRDs are critical of the government and some powerful businesses linked with local elites, and, as a result, they are often harassed by the government and corporate agents. HRDs take great personal risks in criticising the authorities and advocating for the public good and the human rights of others. In their activities, HRDs exercise the rights that belong to everyone, such as freedom of expression, of assembly and of association. As HRDs expose and hold answerable centres of power and wealth – governments and businesses – they do it in political environments that often seek to discourage scrutiny from civil society. This is often referred as the 'shrinking space' for dissent and civil society. An ever-increasing number of techniques is used to intimidate HRDs, from physical attacks to restrictive legislation and lawsuits claiming defamation.

In Cambodia, the classification of HRDs is still contested and the understanding of which is related to the context of civil and political space and the political structure in the country. Depending on one's perspective,

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63 Phnom Penh Post, *Cambodia Urges US Congress to Return GSP Status* (2023)

<https://www.phnompenhpost.com/business/cambodia-urges-us-congress-return-gsp-status>.

64 Freedom House, *Freedom in the World 2023 Cambodia* (2023) <https://freedomhouse.org/country/cambodia/freedom-world/2023>.

65 European Commission, *Trade/Human Rights: Commission Decides to Partially Withdraw Cambodia's Preferential Access to the EU market* (2020) [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_229](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_229).

66 Ministry of Foreign Affairs & International Cooperation, *Statement of the Royal Government of Cambodia in Response to the European Commission's Decision to Launch the Formal Procedure for the Temporary Withdrawal of the Everything But Arms (EBA) Preferences for Cambodia* (2019) <https://mfaic.gov.kh/posts/post-26876>.

HRDs are either rightholders worthy of special protection or political actors pursuing partisan agendas under the label of human rights. The ruling government tends to regard all human rights activities as 'political' as they not only open space for freedom of speech or individual liberties, but also invoke collective action targeting the government. It is not only the UN system and Cambodia's international partners that monitor the situation of HRDs, but more recently even international businesses consider the situation of HRDs as part of RBC.

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# **CHAPTER 10**

## **Investors and RBC**



**Vanseka Sok and Sophia Aspesi Areias**

**A**s businesses themselves, investors are expected to implement principles of responsible business conduct, including the responsibility to respect human rights. Despite this, uptake among investors of the UN Guiding Principles on Business and Human Rights (**UNGPs**) has been slower than in other types of businesses, where the adverse human rights impact of their operations and activities can sometimes be more apparent.

Research over the past decade has documented the correlation between human rights risks, corporate financial performance, and risks to investment, which has helped to enhance investor engagement on human rights.<sup>1</sup> Increasingly, investors have been committing to implementing responsible business conduct in their investments and driving respect for people and the planet, as evidenced by the rise of **Environmental, Social, and Governance (ESG)** investing and impact investing.

The Royal Government of Cambodia (RGC) has the legal and policy framework for advancing development and protecting human rights and has ratified most international human rights treaties (see Chapters 3 and 4). However, developing a legal framework that promotes responsible investment is just beginning in Cambodia. This **chapter** will explore the different international and national frameworks that are relevant to investors and lenders in terms of responsible business conduct, as well as specific considerations for different types of financial actors.

## 2. Frameworks

### 2.1 Concepts and terminology

**T**o understand the role that investors can play in promoting responsible business conduct, it is important to understand the different **types of investors**. In general, investment can be divided into: 1) 'equity' investment, where an investor purchases shares in a company and expects to receive 'dividends' in return; and 2) 'debt' investment where a bank provides a loan to a company and expects to receive 'interest' in return. In equity investment, the investor may monitor and control the company's respect for human rights through shareholders' meetings or by maintaining a position as director on the board of directors. As regards debt investment, the lender may control a company's respect for human rights through obligations and requirements under the loan agreement requiring the company to report and maintain legal compliance. In terms of ownership, there is private investment and public or concessional investment, with subsidized rates for lower financial returns, but with an expectation that the investment will yield social impacts.

**Equity investment** can be further divided into private investment and securities investment. Private investment may be made by purchasing shares in a company. Depending on the number of shares in a company an investor purchases, they can maintain either a majority or controlling interest in the company, or a minority interest. Securities investment is usually made by purchasing securities in the securities exchange market (CSX). Securities are issued by listed entities, which are subject to legal due diligence<sup>2</sup> for initial public offering (IPO) and regular public disclosure.<sup>3</sup>

In terms of **debt financing**, loans are usually issued by banks. These loans can be either secured or unsecured debt. A secured debt is typically secured by offering an asset to the bank as collateral in

1 UNWG, *Taking Stock of investor implementation of the UN Guiding principles on Business and Human Rights*, A/HRC/47/39/Add.2 (June 2021).

2 For example, Cambodia requires all applicants for initial public offering to submit legal due diligence report in accordance with Prakas No. 005/15 SECC/PRK on Public Offering of Equity Securities dated 10 September 2015.

3 For example, Cambodia requires all listed entities to publicly disclose significant information in accordance with Prakas No. 007/18 K.M.K/BB.K. on Corporate Disclosure dated 30 October 2018.

exchange for the loan. This asset can be a piece of property, such as land, or another physical or non-physical asset that is owned by the person or entity receiving the loan. In the situation where a person or entity is unable to pay the loan, they risk losing the collateral. Under international standards, the provisions of loans from banks should respect consumers' rights and consider the affordability of loans by assessing repayment capacity and purpose of the loan.<sup>4</sup>

As for **project finance**, the funds provided by the loan may cover the whole cost of the project. In this case, the exclusive lender can take all assets of the company operating the project as collateral. Therefore, project finance usually has significant influence over the project and provides a unique opportunity to demand and promote responsible business conduct.

Investors can be further divided into **qualified investors or retail investors**.<sup>5</sup> Qualified investors are institutional investors or high net worth individual investors that have special access to complex and higher risk investments, such as venture capture funds or hedge funds. Generally, national laws grant these investors an accredited status to access this particular class of investments. In contrast, a retail investor is typically an individual who may invest in the market through a brokerage firm. These investors tend to invest smaller amounts and to make less risky investments.

Institutional investors are largely comprised of **asset owners and asset managers** within the investor framework. Asset owners, such as pension funds, insurance funds, sovereign wealth funds, churches, charities, foundations and family officers have legal ownership of assets. Asset managers are investment agents who invest on behalf of asset owner clients. Asset managers include BlackRock, Deutsche Bank, and Credit Agricole. Because of the size and the long-term nature of investments, and the diversity of their portfolios, asset managers are often viewed as having more of an impact in terms of responsible business conduct. For example, asset managers have provided many unsecured loans to microfinance in Cambodia in order to lend to small and medium enterprises (SMEs) as well as individuals.

Another type of institutional investors are **development finance institutions** (or international financial institutions) such as World Bank, which provide capital for economic development projects normally on a non-commercial basis. Examples include the International Finance Corporation (IFC) and the Asian Development Bank, which have developed RBC standards for their clients. Even though not directly financing individuals or SMEs, development finance institutions provide loans or guarantees to all kinds of larger businesses, including private financial institutions for on-lending under their supervision as way to support the financial sector in less developed countries.<sup>6</sup>

Beyond the above general distinction, investors can be divided into **local investors and foreign investors**. Thus, investment can be divided into local finance or cross-border finance. As for foreign investors or cross-border finance, these investors or finance arrangements should comply with the laws and regulations of their home countries and international standards, as below.

Even without legal obligations, recent global trends have encouraged '**impact investing**', which is an approach that aims to contribute to the achievement of measured positive social and environmental impacts. The concept of impact investing has a focus on mobilising capital into investments that target measurable, positive, social, economic or environmental impact alongside financial returns.<sup>7</sup>

4 Basel Committee on Banking Supervision, *The Basel Framework*, [www.bis.org/basel\\_framework/index.htm](http://www.bis.org/basel_framework/index.htm).

5 Please see Prakas No. 005/16 SECC/PRK on Qualified Investors in Securities Sector dated 17 August 2016 as for the example in Cambodia.

6 IFC, *Interpretation Note on Financial Intermediaries* (2018) <https://www.ifc.org/content/dam/ifc/doc/mgrt/fi-interpretation-note.pdf>.

7 Please see: <https://www.ifc.org/en/our-impact/impact-investing-at-if-c#:~:text=Impact%20investing%20is%20an%20approach,environmental%20impact%20alongside%20financial%20returns.>



**Environmental, Social and Governance (ESG)** investing has its roots in the 1960s, with investors excluding stocks or entities from their portfolios due to ethical risks. Currently, ESG investing is focused on investing in stocks and entities that perform well on environmental, social, and governance indicators. On the environmental side, businesses are evaluated on their environmental and climate targets, as well as their environmental management systems. On the governance side, entities are required to maintain strong corporate governance systems, including having in place ethics and anti-corruption policies and practices. Lastly, on the social side, entities are often required to demonstrate labour, health, safety, and human rights policies and their implementation. Globally, ESG portfolios are expanding exponentially. In 2021, 10% of global fund assets were invested in ESG labelled funds, with the expectation that assets will exceed 50 trillion USD by 2025.<sup>8</sup> Although the 'S' in the acronym ESG can often be under-prioritised by investors compared to the 'E,' investors are increasingly including human rights criteria and approaches in screening processes, adopting human rights commitments, and communicating their expectations that portfolio companies and clients conduct human rights due diligence.<sup>9</sup> However, in recent years, ESG investments have faced controversy for instances of 'greenwashing,' which refers to false or misleading statements claiming sustainability.

In order for investors to select investments for ESG portfolios, they implement positive and negative **screening processes**. Positive screening is the process of identifying companies that score highly on ESG factors relative to their peers; meanwhile, negative screening is the process of weeding out companies with low ESG scores. Typically, these screenings occur prior to investor engagement with the companies. Companies can also be excluded from consideration for investors. These companies are typically producers of controversial products, manufacturers of harmful products, such as firearms and tobacco, and companies who have engaged in human rights abuses, such as child labour.<sup>10</sup>

## 2.2 International Frameworks on RBC for Financial Institutions

Pillar II of the **UNGPs** lays out the framework for businesses to respect human rights by making a policy commitment, conducting human rights due diligence, and facilitating access to remediation. Pillar II applies to all businesses regardless of their size and industry, including investors. In 2018, the UN Working Group on Business and Human Rights called on investors to more systematically implement 'human rights due diligence as part of their own responsibility under the UNGPs, by conducting effective human rights due diligence of the businesses they invest in and coordinating with other organisations and platforms to ensure alignment and meaningful engagement with companies.'<sup>11</sup>

In the **UN Working Group on Business and Human Rights** stocktaking report ten years after the adoption of the UNGPs, the Working Group explicitly recognised the need for development finance institutions (DFIs) to implement the UNGPs by adopting human rights policies, implementing human rights due diligence, and developing grievance mechanisms.<sup>12</sup> Development finance institutions provide loans, equity, and guarantees to the private sector, and mobilize finance for projects that work towards the sustainable development goals in low and middle-income countries.

Many **development finance institutions** commit to human rights; however, development finance institutions often engage with human rights and sustainable development goals separately. Development

8 Bloomberg, *ESG by the numbers: Sustainable Investing set records in 2021* (2021) <https://www.bloomberg.com/news/articles/2022-02-03/esg-by-the-numbers-sustainable-investing-set-records-in-2021#xj4y7vzkg>.

9 Paloma Munoz Quick and Christen Dobson, *Bridging the Human Rights Gap in ESG, Business and Human Rights Resource Centre* (21 Mar 2022) <https://www.business-humanrights.org/de/blog/bridging-the-human-rights-gap-in-esg/>.

10 Robeco, *Glossary of Sustainability Investing*, (n.d.), <https://www.robeco.com/en-int/glossary/sustainable-investing/positive-screening>.

11 UNWG, Report A/73/163, para 95 (2018). <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2F73%2F163&Language=E&DeviceType=Desktop&LangRequested=False>

12 UN Working Group on Business and Human Rights, *UNGPs+10: A Roadmap for the Next Decade of Business and Human Rights* (2021). <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>

finance institutions are meant to address the reluctance of private finance to invest in riskier markets and to create development impacts through their investments.

DFIs also make non-financial contributions by supporting clients to meet higher social and environmental standards through contractual requirements, and technical assistance through capacity building.<sup>13</sup> However, the UN Working Group recognised in their report the need for DFIs to conduct meaningful stakeholder engagement and support rights holders, trade unions, human rights and environmental defenders and civil society organizations.<sup>14</sup>

In addition to international frameworks, national regulations related to responsible business conduct are impacting financial markets across the world. The **European Union** has also set a strong focus on sustainable finance in response to financial crises and the severe impacts of the climate crisis. To reorient its financial system towards sustainable finance, the EU has developed several tools and regulations, including the sustainable Finance Disclosure Regulation (2019), the Corporate Sustainability Reporting Directive (2022) and the EU Taxonomy (2020), which create new obligations for both businesses and financial actors to disclose RBC data (see Chapter 12).

For sustainable and fair development, the IFC has adopted the **IFC Sustainability Framework** for setting eight performance standards on environmental and social sustainability, which are: 1) assessment and management of environmental and social risks and impacts; 2) labour and working conditions; 3) resource efficiency and pollution prevention; 4) community health, safety and security; 5) land acquisition and involuntary resettlement; 6) biodiversity conservation and sustainable management of living natural resources; 7) indigenous peoples; and 8: cultural heritage.<sup>15</sup> These IFC standards have been adopted and followed by many institutional investors as the gateway to reputable investment and access to finance.

The **Equator Principles (EP)** for financial institutions serve as a baseline and risk management framework for financial institutions to identify, assess and manage environmental and social risks when financing large infrastructure and industrial projects. The EP draw on the IFC Sustainability Framework and apply globally and to five financial products: 1) project finance advisory services; 2) project finance; 3) project-related corporate loans; 4) bridge loans; and 5) project-related refinance. The EP have attracted 140 financial institutions from 39 countries as members. These financial institutions have agreed to fulfil their responsibility to respect human rights in line with the UNGPs by carrying out human rights due diligence.<sup>16</sup> There are 10 Principles, visualised below:<sup>17</sup>



13 The Danish Institute for Human Rights, *Human Rights at Development Finance Institutions* (2021). <https://www.humanrights.dk/publications/human-rights-development-finance-institutions>

14 UN Working Group on Business and Human Rights, *UNGPs+10: A Roadmap for the Next Decade of Business and Human Rights* (2021). <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>

15 IFC, *IFC Sustainability Framework: Policy and Performance Standards on Environmental and Social Sustainability Access to Information Policy* (01 January 2012)

16 Equator Principles, *EP4* (July 2020) [https://equator-principles.com/app/uploads/The-Equator-Principles\\_EP4\\_July2020.pdf](https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf).

17 The Equator Principles Association, *The Equator Principles* (2023) <https://equator-principles.com/about-the-equator-principles/>.

The **Principles for Responsible Banking** were developed by the UN Environment Programme in consultation with banks, civil society, and other stakeholders. The Principles are a framework for ensuring that banks and financial institutions align their practices with the Sustainable Development Goals and the Paris Climate Agreement. The six Principles include: 1) alignment of the business strategy to the SDGs and the Paris Agreement; 2) impact and target setting designed for the most significant impacts; 3) engage clients and customers to encourage sustainable practices and enable economic activities that create shared prosperity; 4) proactively and responsibly consult, engage, and partner with stakeholders; 5) implement the Principles through effective governance and a culture of responsible banking; and 6) transparency and accountability to review individual and collective implementation of the Principles and to be transparent about positive and negative impacts. Currently, 324 banks have signed on to the principles.

The **Principles for Responsible Investment (PRI)** is a set of voluntary and aspirational principles for institutional investors to incorporate ESG issues into investment practices. They were designed by an international group of institutional investors convened by the UN Secretary-General. Signatories to the PRI recognise that they have a duty to act in the best long-term interests of their beneficiaries, and that ESG issues can impact the value of investments. Under the 6 Principles, investors will: 1) incorporate ESG issues into investment analysis and decision-making; 2) be active owners and incorporate ESG issues into ownership policies and practices; 3) seek appropriate disclosure on ESG issues from their investments; 4) promote acceptance and implementation of the Principles within the investment industry; 5) work together to enhance effectiveness in implementing the Principles; and 6) report on their activities and progress towards implementing the Principles. As of 2021, the PRI had more than 4000 signatories from over 60 countries, representing \$120 trillion USD of assets.<sup>18</sup>

### 2.3 National Framework of Cambodia

The Cambodian government has enacted laws and regulations to secure the rights in doing business in a free market as below:

- **Ownership:** The right to private ownership is provided under Article 44 of the Constitution.<sup>19</sup> Therefore, investors and business operators are well-secured in their private ownership of the businesses, assets in the businesses and shares in the company. To implement Article 44, the RGC enacted the Law on Expropriation in order to ensure prior, fair and just compensation, to serve the national and public interest, and to develop public physical infrastructures.<sup>20</sup> Specifically for foreign investors, the RGC has also signed numerous bilateral investment treaties, as well as regional free trade treaties such as Regional Comprehensive Economic Partnership (RCEP). Beyond facilitating trade via free market access and fair treatment, those treaties also provide a clause for protecting properties of investors and all expropriation shall be subject to prompt, fair and effective compensation.
- **Market Competition:** Article 56 of the Constitution stipulated that ‘the Kingdom of Cambodia shall adopt the market economy system.’ Therefore, the RGC also adopted the Law on Competition encouraging fair and honest business relations, increasing economic efficiency, encouraging new business, and helping consumers to access high-quality, low price, diverse and versatile products and services.<sup>21</sup>

Under Pillar I of the UNGPs, **human rights protection** is the obligation of the government, which is in line with the international treaties that the country has ratified. Cambodia acknowledged such human rights protection obligations in the Constitution of the Kingdom of Cambodia.<sup>22</sup> Even though business owners have rights to perform businesses for maximisation of profit, the exercise of such rights shall not affect

18 UNPRI, Principles for Responsible Investment, *Brochure* (2021) <https://www.unpri.org/download?ac=10948>.

19 Constitution of the Kingdom of Cambodia, Article 44.

20 Law on Expropriation, Article 2, (26 February 2010).

21 Law on Competition, Article 1, (05 October 2021).

22 Constitution of the Kingdom of Cambodia, Article 31.

the public interest and comply with all applicable laws as discussed in Chapter 4. The breach of laws and regulations would cause contingent liabilities to the company via charges of fines, suspension or withdrawal of license or company deregistration. Therefore, any investment, especially private equity investment and unsecured debt financing would urge the investors to conduct due diligence on the target company and thus identify potential liabilities and risks of non-compliance with relevant laws.

On the other hand, debt financing is usually provided by financial institutions, which are subject to supervision and regulation of the competent regulator such as **National Bank of Cambodia (NBC)** for banking and financial institutions.<sup>23</sup> The advantage of debt financing is to promote access to finance for businesses as well as to serve the needs of the individuals. The disadvantage is this type of loan may, due to the high cost of finance, impoverish borrowers who misuse the funds. Therefore, the troubling side of debt financing is loan enforcement that would ultimately affect human rights, including the right to housing when people use their residences as collateral for the loans.

### Framework for microfinance and fair finance

The microfinance sector in Cambodia shows that it is necessary to balance access to finance with safeguards and thus achieve fair finance. Initially, certain unsecured credits provided to the financial institutions in Cambodia, especially **microfinance institutions (MFIs)**, were made for the purpose of enhancing access to finance for underprivileged and small enterprises. Repayments with interest rates were required for covering the operating costs. Therefore, the enforcement of loan agreements for claims ended up adversely impacting human rights for many communities in Cambodia.<sup>24</sup>

However, the NBC has identified the issues and developed prudential regulations over sustainable credits and fair finance to ensure that all provisions of loans factor in both the consideration of repayment capacity and the purpose of loans carefully in order to avoid a loan default. Moreover, the RGC has adopted the Law on Trust to register and govern all funds provided to MFIs with the specific purposes of helping, rather than profiting from, the underprivileged and small enterprises as beneficiaries.<sup>25</sup> The regulations noticeably improved the debt situation for individuals and SMEs.

In order to mitigate these negative effects, the NBC has issued supervisory regulations on:

- **consumer protection**, as all loans provided to borrowers should be clearly explained and summarized by loan officers<sup>26</sup>. The **Association of Banks in Cambodia (ABC)** recently adopted, for small amount loans, the standard contract form, which also contains clauses on ESG and consumer protection;
- **credit risks**, as all loans shall be appropriately assessed for repayment capacity and purpose of use to avoid any over-indebtedness;<sup>27</sup>
- **credit reporting**, to ensure that banking and financial institutions conduct the proper check on loan history of each borrower prior to granting any loan to prevent over-indebtedness;<sup>28</sup> and
- **complaint handling**, as all financial consumer complaints shall be appropriately addressed by the responsible banking and financial institutions as well as the NBC.<sup>29</sup>

23 Law on the Organization and Conduct of the National Bank of Cambodia, Article 33, (26 January 1996)

24 Chea Sokny, Three human rights groups file suit against microfinancer, *The Phnom Penh Post* (14 December 2022) <https://www.phnompenhpost.com/national/three-human-rights-groups-file-suit-against-microfinancer>

25 Law on Trust (02 January 2019).

26 Cambodia, *Prakas on Transparency in Granting Credit Facilities of Banks and Financial Institutions*, No. B7-011-243 (2011) [https://www.nbc.gov.kh/download\\_files/legislation/prakas\\_eng/6683B7-011-243.pdf](https://www.nbc.gov.kh/download_files/legislation/prakas_eng/6683B7-011-243.pdf)

27 Cambodia, *Prakas Prokor on Loan Policies, Procedures and Lending Authority*, No. B7-05-054 (10 March 2005).

28 Cambodia, *Prakas Proka on Credit Reporting*, No. B7-020-352 (26 June 2020)

29 Cambodia, *Prakas Proka on Resolution of Consumer Complaints*, No. B7-017-299 (27 September 2017).



However, problems in debt financing still exist due to unofficial finances provided by unlicensed lenders, for example, under-regulated pawn shops. Additionally, the supervising authority is still immature.

### National framework for sustainable finance

Companies that are listed on the financial markets in Cambodia have special obligations. Upon being listed in the stock market, listed entities are subject to 1) corporate governance containing independent directors for ensuring the public interest, especially the investors;<sup>30</sup> and 2) disclosure requirements for ongoing compliance and to keep investors being updated of the new development in the company.<sup>31</sup> Recently, the Securities and Exchange Regulator of Cambodia issued detailed guidance for issuing green bonds in Cambodia for attracting investors interested in ESG.

In 2019, the ABC launched the Sustainable Finance Initiative with 46 member banks supporting the development of **Sustainable Finance Principles (CSFP)**.<sup>32</sup> The initiative was supported by the IFC and the Principles were endorsed by the NBC and the Ministry of Environment. The Sustainable Finance Principles laid out an approach for banks in Cambodia in terms of sustainable finance. The Principles were underpinned by the UNGPs and the OECD Guidelines, and included references to international frameworks on environmental protection, human rights, and anti-corruption.<sup>33</sup>

The CSFP aims to create a level playing field and raise standards across the banking sector. Therefore, the members of the ABC, which are all licensed banks and MFIs in Cambodia, should assess and manage:<sup>34</sup>

- environmental risks relating to climate change, pollution and waste management, and the protection of critical natural resources;
- risks that could potentially negatively impact people, in particular local communities, workers and indigenous/minority populations; and
- risks that could potentially negatively impact aspects of our cultural heritage, including language, culture, traditions and monuments.

Beyond the above three Principles, the CSFP has six other Principles, including the management of environment and social footprints.

## 3. Applications

**T**he UN noted in 2021 that, despite some progress, human rights were rarely addressed by institutional investors in a systematic or principled way, and the majority of investors had yet to meaningfully engage with their human rights responsibilities.<sup>35</sup> It is important to note that investors and lenders are not expected to carry out due diligence on behalf of the companies they invest in, which remains the responsibility of those companies, but they are expected to undertake due diligence so as not to become involved in human rights abuses through their investment decisions. According to the UNGPs, business involvement can take the form of causing, contributing, or being linked to adverse impacts on human rights (Principle 13, see Chapter 6).

30 Cambodia, *Prakas on Corporate Governance for the Listed Company*, No. 011/18 SECC/BB.K (19 December 2018).

31 Cambodia, *Prakas on Corporate Disclosure*, No. 007/18 K.M.K/BB.K (30 October 2018).

32 The Association of Banks of Cambodia, *Sustainable Finance Initiative* (3 January 2019) <https://www.abc.org.kh/cambodian-sustainable-finance-initiative-csfi/>.

33 The Association of Banks of Cambodia, *Cambodian Sustainable Finance Principles Implementation Guidelines*, (1 February 2019) <https://www.greenfinanceplatform.org/policies-and-regulations/sustainable-finance-principles>.

34 Please see: <https://www.abc.org.kh/cambodian-sustainable-finance-principles/>.

35 UNWG, *Taking Stock of investor implementation of the UN Guiding principles on Business and Human Rights, A/HRC/47/39/Add.2*, (June 2021). <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation.pdf>.



Most often, investors and lenders are directly linked to an adverse human rights impact by investing in or financially supporting irresponsible businesses. Even though they do not cause adverse human rights solely through their investments, investors and lenders may contribute to adverse human rights impacts through their own actions and failure to act in their portfolios; thus they may incentivise another entity that infringes human rights. Even though banks have argued that they can only be 'linked' to abuses, the OECD clarifies that banks and investors can 'contribute' and appear complicit in human rights abuses if some factors are present. Such factors can be, for example, in the case of an investor: whether it encouraged adverse impact by another entity; whether it knew about the adverse impact ('foreseeability' of risks and abuses); and whether it made efforts to mitigate the adverse impact.<sup>36</sup> Investors can cause an adverse human rights impacts through their own operations with their employees and customers and, if investors maintain a controlling interest over an investment, they can potentially cause harm in their investing activities.<sup>37</sup> An example of investors causing adverse human rights impacts in their own operations would be if investors violate labour rights of staff or contractors, including requiring overtime without compensation.

Ultimately, businesses cannot shift their responsibility to the investor; however, the investor or lender should use leverage to mitigate the adverse impacts and if they cannot, they should consider divestment. In addition to the UNGPs, the OECD further elaborated on this responsibility in its guidance to investors in 2017, and thus investors are expected to conduct due diligence on corruption and environmental issues, in addition to human rights.<sup>38</sup>

#### **Foreign investment and RBC (ANZ Bank)**

Based on the national framework, any investment in the company would require either the investors or lenders to conduct legal due diligence over the target company in order to check legal compliance. In this way, investors reassure themselves about the sustainability of the companies to generate profit, distribute dividends to shareholders and repay the loans with interest. Moreover, sources of funding in Cambodia are usually foreign borrowings. Such foreign funding increasingly places an expectation to respect some international standards of RBC.

In 2014, the **Australian National Contact Point (NCP)** received a specific instance complaint from Equitable Cambodia and Inclusive Development International against the Australian and New Zealand Banking Group Limited (ANZ Group) and its subsidiary the ANZ Royal Bank (Cambodia) Limited on behalf of 681 Cambodian families. The complaint alleged that ANZ failed to observe human rights, as outlined in the OECD Guidelines for Multinational Enterprises in relation to ANZ's debt investment in Phnom Penh Sugar. The latter company was the developer of a refinery and sugar plantation project that caused the forcible displacement and dispossession of land and productive resources for the 681 families involved in the complaint.

In its final statement, the NCP determined that the risks in taking Phnom Penh Sugar as a client were readily apparent. The NCP recommended that ANZ: 1) work to achieve internal compliance with its own state corporate standards and the OECD Guidelines; 2) further strengthen application of its due diligence to manage the risks associated with its lending activities; and 3) establish a grievance resolution mechanism.<sup>39</sup>

In response, ANZ Group committed to 'zero tolerance' of improper land acquisition, made it clear to customers the necessity of establishing effective grievance mechanisms, and committed to consider

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<sup>36</sup> OECD, *Due Diligence Guidance For Responsible Business Conduct* (2018) p. 70,

<https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

<sup>37</sup> PRI, *Why and How Investors Should Act on Human Rights* (2020)

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<sup>38</sup> OECD, *Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises* (2017). <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

<sup>39</sup> Australian National Contact Point for Multinational Enterprises, *Final Statement* (27 June 2018).

[https://ausncp.gov.au/sites/default/files/inline-files/11\\_AusNCP\\_Final\\_Statement.pdf](https://ausncp.gov.au/sites/default/files/inline-files/11_AusNCP_Final_Statement.pdf)



remediation processes if they cause, contribute or are directly linked to adverse human rights impacts.<sup>40</sup> Additionally, in 2021, ANZ set a precedent for the commercial banking sector by providing financial compensation for the families and victims who have been displaced by returning the profit from the loan to Phnom Penh Sugar and by setting up a grievance mechanism to address human rights-related complaints.<sup>41</sup>

### Development Finance (World Bank Group)

As a member of the World Bank Group, the IFC provides financing for private sector investments in developing countries. In 2012, the IFC developed performance standards on environmental and social sustainability. The performance standards require clients to manage environmental and social risks and impacts so that development can be enhanced. The eight standards are meant to be met by clients throughout the lifecycle of an investment. Importantly, Performance Standard 1 establishes the importance of an integrated assessment to identify environmental and social impacts, risks and opportunities of projects, effective community engagement, and the client's management of environmental and social performance throughout the life of the project.<sup>42</sup> The **Compliance Advisor Ombudsman (CAO)** accepts complaints from people who may be affected by IFC projects.

In 2022, Equitable Cambodia and the Cambodian League for the Promotion and Defense of Human Rights filed a complaint to the CAO on behalf of affected borrowers against six microfinance banks in Cambodia. The complaint alleged that the IFC failed to conduct due diligence and ensure compliance with performance standards, and that the microfinance institutions were involved with **predatory lending** and abusive collection practices. Specifically, the complainants alleged that the microfinance institutions violated the IFC's performance standards by creating situations of increased debt that drove child labour, food insecurity, and forced displacement of vulnerable communities, including Indigenous communities in Cambodia.<sup>43</sup> As of September 2023, the complaint was under compliance investigation.

## 4. Further discussion

**A**s noted above, uptake of the corporate respect for human rights has been slow for investors. This can partly be due to the fact that investors can seem somewhat removed from adverse human rights impacts. In 2017, the Thun Group of Banks, an informal group of banks committed to implementing the UNGPs, published a discussion paper that limited the **involvement of banks** in adverse human rights impacts. They argued that a lender can only be 'directly linked' to harms in client operations and never 'contribute' to such harm.<sup>44</sup> Professor John Ruggie, the UN Working Group, OHCHR and civil society have since clarified that investors could contribute to adverse human rights impacts and not merely be linked to adverse impacts.<sup>45</sup> The difference is that in the case of contribution, as opposed to merely being linked to abuse, the victims can ask for remediation directly from the investor or lender (UNGP, Principle 22).

40 ANZ, *Letter to Business and Human Rights Resource Center* (31 January 2019)

[https://media.business-humanrights.org/media/documents/files/documents/ANZ\\_response\\_31012019.pdf](https://media.business-humanrights.org/media/documents/files/documents/ANZ_response_31012019.pdf)

41 Press Release, *ANZ payment to displaced Cambodian families brings landmark human rights case to a close* (3 November 2021)

[https://media.business-humanrights.org/media/documents/ANZ\\_Settlement\\_Final\\_Distribution\\_Press\\_Release\\_\\_11-2-21\\_.pdf](https://media.business-humanrights.org/media/documents/ANZ_Settlement_Final_Distribution_Press_Release__11-2-21_.pdf)

42 IFC, *Performance Standards on Environmental and Social Sustainability*, (1 January 2012)

<https://www.ifc.org/content/dam/ifc/doc/mgrt/ifc-performance-standards.pdf>

43 Office of the Compliance Advisor Ombudsman, *Complaint concerning IFC project investments in ACLEDA, AMRET, PRASAC, LOLC,*

*Sathapana Bank, and Harrha Bank*, (10 February 2022) <https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-04>.

44 Thun Group of Banks, *Paper on the Implications of UN Guiding Principles 13 b & 17 in a corporate and investment banking context*

(December 2017) [https://media.business-humanrights.org/media/documents/files/-documents/2017\\_12\\_Thun\\_Group\\_of\\_Banks\\_Paper\\_UNGPs\\_13b\\_and\\_17.pdf](https://media.business-humanrights.org/media/documents/files/-documents/2017_12_Thun_Group_of_Banks_Paper_UNGPs_13b_and_17.pdf)

45 UN Working Group on Business and Human Rights, *Statement by the United Nations Working Group on Business and Human*

*Rights*, (12 July 2023) [https://media.business-humanrights.org/media/documents/files/-documents/2017\\_12\\_Thun\\_Group\\_of\\_Banks\\_Paper\\_UNGPs\\_13b\\_and\\_17.pdf](https://media.business-humanrights.org/media/documents/files/-documents/2017_12_Thun_Group_of_Banks_Paper_UNGPs_13b_and_17.pdf)

Investors must **balance** the principal purpose of their business, which is achieving returns, with responsible business conduct. Most recently, this discussion has been around ESG funds and the expectation for investors to move away from investments in oil and gas; however, 2022 saw large increases in the price of oil and gas and subsequently large returns on investments, leading to some investors to reconsider ESG commitments in favour of achieving large returns.

## 5. Conclusions

**W**hile there is still room for improvement, investors and lenders are increasingly interested in sustainable finance and thus also committing to respecting human rights. In practice this means that investors are including human rights questions in their screening processes and recognising the risks in investing in assets or portfolios that do not respect the planet or people.

The drivers for this shift include increased expectations for business created by the UNGPs, regulations that seek to drive sustainability, and the rise of ESG and impact investing. The increased push for investors to promote ESG in their investments has created situations where businesses are falsifying reporting on impacts to the environment or people in order to gain access to ESG funds. Additionally, businesses may look at a smaller set of criteria to report on from an ESG perspective without considering the broader environmental and human rights considerations.

In Cambodia, there are no legal frameworks that explicitly require businesses, including investors, to engage in responsible business conduct, or to conduct human rights due diligence. However, guidelines and standards are appearing that promote good corporate governance and ESGs. In the next few years, as global regulations continue to shift towards more rights-respecting approaches and the interest in ESG investments continues, there will likely be a stronger drive for uptake of responsible business practices in the investor community.

## 6. Further readings

1. Investors Alliance for Human Rights, *Investor Toolkit on Human Rights* (2020) <https://investorsforhumanrights.org/sites/default/files/attachments/2020-05/Full%20Report-%20Investor%20Toolkit%20on%20Human%20Rights%20May%202020c.pdf>.
2. PRI, UNEP, UN Global Compact, *Managing Human Rights Risks: What data do investors need?* (2022) <https://shiftproject.org/wp-content/uploads/2023/01/What-data-to-investors-need-to-manage-human-rights-risks.pdf>.
3. BankTrack, *The BankTrack Global Human Rights Benchmark* (2022) [https://www.banktrack.org/download/global\\_human\\_rights\\_benchmark\\_2022/global\\_human\\_rights\\_benchmark\\_2022\\_2.pdf](https://www.banktrack.org/download/global_human_rights_benchmark_2022/global_human_rights_benchmark_2022_2.pdf).
4. Fair Finance Guide International, *Stories of Change from the Fair Finance Guide International* (2019) <https://www.fairfinanceinternational.org/>.
5. Sam Vichet, *Access to Formal Credit and Gender Income Gap: the Case of Farmers in Cambodia*, National Bank of Cambodia, [https://www.nbc.gov.kh/download\\_files/research\\_papers/english/AccessToFormalCreditandGenderIncomeGap.pdf](https://www.nbc.gov.kh/download_files/research_papers/english/AccessToFormalCreditandGenderIncomeGap.pdf).

# **CHAPTER 11**

## **Consumers and RBC in Cambodia**



**Sreang Chheat**

**T**he concept of ‘consumer protection’ is new in Cambodia. The country’s sustained economic growth has induced conditions for serious consideration of consumer protection and rights in the context of regional and global economic integrations. The chapter analyses the state of consumer protection in Cambodia by examining the role of the state, as duty bearer, and consumers, as rights holders and as market participants. An analysis of **consumers’ rights and interests** acknowledges the important role of the state in protecting consumers, the role of consumers in promoting responsible business conduct (RBC), and the responsibility of the private sector in respecting consumer rights.

The analysis of consumer protection is imperative and critical for the country’s economy. This is precisely because **consumers’ trust** is essential for economic growth and development in a country. Failure to set strong requirements to achieve responsible business conduct is costly for consumers, businesses and the economy. A business can go bankrupt if the consumers take legal action or mass actions, such as boycotts and protests, against their dishonest and unfair business activities.

The **chapter** is structured as follows: The next section discusses conceptual frameworks, relevant local and international legal frameworks on consumer protection, and RBC in Cambodia. These discussions are followed by case analyses and the structural challenges the country faces in the protection of consumers and their role in RBC.

## 2. Frameworks

### 2.1 Concepts of consumer protection, rights and interests

**C**onsumer protection is about protecting consumers from threats against his/her rights and interests. Consumer protection is understood as safeguarding “the well-being and interests of consumers through education, mobilization and representation.”<sup>1</sup> Through well-informed decisions about their choices and access to effective redress mechanisms, businesses are incentivised to guarantee the quality of products and services. A functional consumer protection system requires close collaboration between the government, businesses, and consumers, whereby the government puts in place adequate policies, laws and regulations to protect consumers from harmful business practices and ensures the effective coordination between relevant institutions. In the context of ASEAN, for instance, six elements of an effective consumer protection mechanism are: adequate consumer law, effective law implementation and enforcement, consumer awareness, access to redress mechanisms, effective consumer organisations, and responsible business conduct.<sup>2</sup>

Consumer protection encompasses the **rights of consumers**, who must be protected as rightsholders within a political boundary and in the marketplace. The mechanisms to be put in place are designed to protect their rights through legal frameworks, implementation, redress, and representation.<sup>3</sup> This perspective recognises the complex relationship between consumers and producers or service providers; it also acknowledges their weaknesses in terms of: information asymmetry regarding technical aspects of products; lack of understanding of their rights and relevant legal frameworks; their grasp of the variety of producers and service providers and their powers; and market globalisation<sup>4</sup>. Consequently, protecting the rights and interests of consumers is also about protecting the market and economic progress.

1 Slawomir Smyczek, Introduction, In *Consumer Protection Standards in Europe* edited by Slawomir Smyczek (2019) Placet, pp. 9-12.

2 Consumer Protection, <https://www.aseanconsumer.org/cterms-consumer-protection#:~:text=Consumer%20protection%20safeguards%20the%20well,access%20to%20effective%20redress%20mechanisms.>

3 *Id.*

4 Slawomir Smyczek, Introduction, In *Consumer Protection Standards in Europe* edited by Slawomir Smyczek (2019) Placet

In addition, the analysis of consumer protection should also consider consumers as **market participants** who can have power to influence business behaviour. In other words, consumers have a role and special potential to demand RBC. The concept of ‘voting with the wallet’ is relevant here. It refers to a situation whereby consumers hold businesses responsible for their social and environmental impacts by withholding their support. For instance, consumers of garments and footwear in Europe and the US have the power to encourage businesses that operate their factories’ workshops in developing countries to adopt an ethical business approach.<sup>5</sup> Indeed, historically, an important driver for RBC and CSR internationally has been student mobilization and related consumer protests against multinational enterprises that have exploited workers in poor countries.<sup>6</sup>

In short, this chapter approaches the topic by highlighting the role of the state as a duty bearer and consumers as both rightsholders and market participants. The state fulfils its role as duty bearer by developing and effectively implementing policies, laws and regulations, whereas the consumers are rightsholders and market participants, the former exercising their rights under national and international instruments, and the latter incentivising the private sector to abide by the rules and regulations to offer quality services and products, including observing RBC standards.

The next section provides an analysis of relevant local and international frameworks relevant to consumer protection.

## 2.2 International frameworks

The rationale of consumer protection is reflected in various international and regional consumer protection frameworks. Some of these are discussed in this section.

The United Nations Guiding Principles for Business and Human Rights (UNGPs) emphasise the obligations of the state to respect, protect and fulfil human rights and fundamental freedoms and the role of business enterprises to comply with all applicable laws and to respect human rights.<sup>7</sup> Also relevant are the **OECD Guidelines for Multinational Enterprises on Responsible Business Conduct**<sup>8</sup>, introduced in 1976 and subject to continuous updates to remain fit for purpose, with the last one carried out in 2023. These Guidelines provide a detailed framework for multinational companies (MNCs) and point to eight aspects businesses should consider when dealing with consumers, namely:

- Acting in accordance with fair business, marketing and advertising practices and taking all reasonable steps to ensure the quality and reliability of the goods and services;
- Providing accurate, verifiable and clear information to consumers;
- Offering consumers access to fair, user-friendly, timely and effective non-judicial dispute resolution and redress mechanisms;
- Avoiding deceptive, misleading, fraudulent, or unfair representation or omissions in their practices;
- Supporting efforts to enhance consumer education so that consumers are able to make informed decisions;
- Respecting consumer privacy, such as taking reasonable measures to protect their personal data;

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5 The Fair Trade Movement <https://fairtrade-advocacy.org/the-fair-trade-movement-2/>.

6 Center for Communication & Civic Engagement, *Nike Anti-Sweatshop campaign* <https://depts.washington.edu/ccce/polcommcampaigns/Nike.htm>.

7 United Nations, *Guiding Principles on Business and Human Rights* (2011) New York: United Nations. [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

8 OECD, *Guidelines for Multinational Enterprises on Responsible Business Conduct*, (2023) OECD Publishing. <https://www.oecd.org/-publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct-81f92357-en.htm>

- Offering full cooperation with state authorities to prevent and fight against deceptive marketing practices; and,
- Applying the above principles, the special needs of marginalised consumers and unique challenges consumers face in the era of e-commerce.

Other frameworks include the United Nations **Sustainable Development Goals** for the period 2015-2030 (SDGs). The SDGs were adopted in 2015 and businesses are considered important actors in achieving these goals. Out of the total 17 Goals, Goal 12 is directly linked to consumers. This Goal is worded in ways that ensure sustainable consumption and production patterns, namely by: reiterating the important role of consumers in achieving sustainable development through forming links; and understanding the way that their consumption choices, use and disposal of products and services can contribute to the reduction of their overall impact on the environment.<sup>9</sup>

These frameworks owe their principles to the United Nations Conference on Trade and Development (UNCTAD), which produced **Guidelines for Consumer Protection**<sup>10</sup>. It is otherwise known as the UNGCP. First adopted in 1985 and last revised in 2015, the UNGCP provides a broad framework for member states to maintain: adequate protection for their population as consumers; ethical conduct for businesses engaged in the production and distribution of goods and services; international cooperation in the field of consumer production; and, development of market conditions which provide consumers with greater choice at lower prices. The UNGCP recognises consumers often face imbalances in economic and educational terms and bargaining power; they also acknowledge consumers' right to access to non-hazardous products and the right to promote just, equitable and sustainable economic and social development and environmental protection. The UNGCP seek to meet the following legitimate needs of consumers:

- 1 consumers' access to essential goods and services,
- 2 protection of vulnerable and disadvantaged consumers from hazards to their health and safety,
- 3 promotion and protection of the economic interests of consumers,
- 4 effective consumer dispute resolution and redress,
- 5 freedom to form consumer and other relevant groups or organisations, and
- 6 promotion of sustainable consumption patterns.

The UNGCP also provides principles for good business practices, including fair and equitable treatment of consumers, ethical commercial behaviour (without deception and abuse of consumers), disclosure and transparency, education and awareness-raising, protection of privacy and effective consumer complaints and dispute mechanisms.

Taken together, the international frameworks shape consumer protection regimes in ASEAN. The ASEAN also strives to meet the needs of consumers as outlined in the UNGCP, particularly the characteristics for effective consumer protection legislation, enforcement institutions, and redress mechanisms. They recognise eight basic rights and responsibilities as the region is developing, and promote an effective framework to protect consumers. Recently, ASEAN adopted the ASEAN Economic Community Blueprint 2025 and the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP, 2016-2025). In this spirit, consumer protection is regarded as key to achieving the post-2015 agenda of the ASEAN Economic Community (AEC), and the ten-year ASAPCP will play a part in enhancing consumer protection in ASEAN.

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9 UNCTAD, *Achieving the Sustainable Development Goals through Consumer Protection*, (2018)

<https://unctad.org/publication/achieving-sustainable-development-goals-through-consumer-protection>

10 United Nations, *Guidelines for Consumer Protection* (2016) New York: United Nations.

[https://unctad.org/system/files/official-document/ditccplpmisc2016d1\\_en.pdf](https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf)



In 2018, ASEAN took stock of and published for the first time a **Handbook on consumer protection regimes in ASEAN**.<sup>11</sup> The eight rights of consumers the Handbook takes from the UNGCP are:

- The right to the satisfaction of basic needs such as adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.
- The right to safety, meaning they are protected against products, production processes and services that are harmful to their health or life.
- The right to be informed so that they can make informed decisions and protected against dishonest or misleading advertising and labelling.
- The right to choose from a pool of products and services offered at competitive prices, as well as insurance of good quality.
- The right to be heard in the policy-making process and implementation, and in the development of products and services.
- The right to redress in the event of dissatisfaction with the products or services they purchase in a fair resolution mechanism.
- The right to consumer education so that consumers can make informed, confident decisions about goods and services, and
- The right to a healthy environment for their well-being and future generations.

These international and regional frameworks provide broad guidance and support for states to adopt and implement their legal framework.

### 2.3 National legal frameworks

The Cambodian government passed the **Law on Consumer Protection (LCP)** in 2019. This law remains the all-encompassing legal framework that aims to protect consumer rights and set the standard of responsible business conduct for all sectors of the economy. Prior to the adoption of the LCP, sectoral laws offered protection for consumers, including the 2000 Law on Management of Quality and Safety of Products, the 2015 Law on Telecommunications, the 2019 Law on Electronic Commerce and the 2019 Law on Standards of Cambodia.<sup>12</sup>

LPC defines a **consumer** as:

a person receiving/obtaining goods or services, for personal, domestic, or household use and for the purpose of not resupplying in conducting a business or not consuming/using in the process of a production line or production; or not utilizing goods for any commercial activity such as repairing a building or to be used as an item attached to immovable property for commercial purposes (Article 4, point 5).

**Consumer rights** stipulated in the LPC are as follows:

- Right to receive information and education for balancing the difference between the goods or services, and to be protected against fraud and misrepresentation by advertisements;
- Right to choose goods or services with fair and competitive prices and quality;

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11 Handbook on ASEAN Consumer Protection Laws and Regulations, (2018). [https://aseanconsumer.org/file/post\\_image/Handbook%20on%20ASEAN%20Consumer%20Protection%20Laws%20and%20Regulations%20\(1\)-ilovepdf-compressed.pdf](https://aseanconsumer.org/file/post_image/Handbook%20on%20ASEAN%20Consumer%20Protection%20Laws%20and%20Regulations%20(1)-ilovepdf-compressed.pdf)

12 Royal Government of Cambodia. *National Consumer Protection Program*. (2022) Phnom Penh: RGC; Soun, Ponleu. Consumers' perceptions of consumer rights in Cambodia. (2021) In Kong Phallack and Long Chanbormey (eds). *Law in the Digital Age: Protection of Consumer Rights*. The Law Talks. Phnom Penh: Konrad. Pp. 17-38.

- Right to be heard about concerns and to receive settlements from the competent regulator and the royal government; and,
- Right to demand compensation under this law or by other laws.<sup>13</sup>

It is also understood that consumers, as rightsholders, also have a role to play in creating conditions for RBC. The LCP provides conditions for consumers to hold the government responsible in terms of policy-making. This participation is through representation, such as by establishing **consumer associations**. Article 6 of the Law on Consumer Protection stipulates that ‘Consumers in each sector shall have the right to establish their associations by registering at the Ministry of Interior by the Law on Associations and Non-governmental Organisations.’

Article 8 defines the **roles and duties of a consumer association** including: to provide independent counselling to consumers; act as a representative before the National Committee for Consumer Protection (NCCP), the national body in charge of implementation the law, or before the court on behalf of any consumer or consumer group whose rights and interests have been violated; establish a working group for consumer protection in each sector; and, to implement other duties delegated by the NCCP.<sup>14</sup>

In Cambodia, the LCP does not set a fixed framework for businesses to follow in order to be characterised as ‘responsible businesses.’ However, the LCP offers a list of **prohibited behaviours**. Thus, the law indicates that ‘Any sale which misleads consumers when buying the goods or services shall be prohibited’ (Article 13). Other prohibited dishonest business practices in the law are to: promise to give gifts and prizes (article 14), bait advertising (article 15), persuasive sale (article 16); demand or accept payment with no intention of supplying goods or services as purchase ordered (Article 17); provide false or misleading representation about certain business activities (Article 18); coerce by force and mental threat (Article 19); engage in a pyramid selling scheme (Article 20); sell goods with an attached false trade description; and, engage in other dishonest practices (Article 22).

In line with the UNGCP and the guidelines of ASEAN, Cambodia seeks to uphold consumers' rights through **education and informed decisions**. Thus, in addition to prohibiting dishonest conduct, the law also requires businesses to provide information about their products and/or services for consumers to be able to make informed decisions in their purchase (Article 27).

LCP intends to provide not just a legal framework to promote and protect the rights and interests of consumers, but also a toolset to assess whether the business is responsible or not by listing prohibited practices and requirements for business to meet so that consumers are protected and fair competition is promoted. The section below offers an analysis of the law's implementation so far.

### 3. Applications

**T**he application of the LCP should be examined from a **rights-based perspective**, whereby: the state as duty bearer adopts appropriate legal frameworks and effective implementation; consumers as rightsholders enjoy the state services; and consumers as market participants can affect the behaviour of businesses by their power. As discussed in this section, the state has adopted legal and regulatory mechanisms to protect consumers. However, implementation needs to be examined as well. Moreover, consumers may or may not realise that they have the power to affect change in business behaviour. Different sectors of the economy in Cambodia might have different experiences since the adoption of the LCP.

<sup>13</sup> Article 4, point 6

<sup>14</sup> More information on the process of establishing consumer association, see the Law on Consumer Protection, Guidelines regarding the establishment of sectoral consumer associations (2021).

**Institutional enforcement of consumer rights regulations** It is too early to assess the impact of this newly adopted LCP. However, it is important to take stock of the **implementation and the challenges** so far. At least since the adoption of the LCP in 2019, the government has been actively promoting awareness-raising with stakeholders, especially the government, businesses and consumers. It remains to be observed as to how the government will engage civil society organisations, given the lack of associations and organisations emerging to represent consumers (an example of such a tactic would be an event such as Consumer Protection Day, etc.).

**Institutional capacity** has gradually developed. The National Committee for Consumer Protection (NCCP) was established and is led by the Minister of Commerce, who is assisted by relevant ministries and institutions. The general department in charge of consumer protection of the Ministry of Commerce serves as NCCP’s implementing body in order to perform consumer protection duties. The Ministry of Commerce’s Directorate-General of Consumer Protection, Competition and Fraud Repression (CCF) has the mission to: ensure the quality and safety of products and services; ensure the protection of consumers’ economic interests; ensure fair competition; and, ensure compliance with the regulatory requirements related to the quality and safety of products and services. While the Ministry of Commerce and the CCF are based in Phnom Penh, the provincial departments of Commerce serve as ‘branches of CCF’ and also have staff responsible for consumer protection.

Still lacking are **consumer associations** that can represent the interests of consumers. The government and relevant private actors have been working on creating the first association. Mr. Phan On, government delegate in charge of the CCF, was quoted as saying, “a consumer association can serve as intermediary, in a particular sector...so their (consumers’) concerns can provide feedback to the sector, and protect their consumers in court”.<sup>15</sup>

At the implementation level, the government has made some specific interventions to promote RBC in the context of consumer protection. On 24 March 2023, the Ministry of Commerce and the National Bank of Cambodia jointly announced the enforcement of the Law on Consumer Protection concerning **unfair contracts in the banking and finance sector**. The announcement appeared to respond to the persistent use of standard contracts with articles that do not allow consumers to request modification to protect their legal interests. These newly prohibited articles were the ones that: exempted or exonerated traders of their responsibility regarding their services or products; gave traders rights to modify or change important information about type, quantity, price, and quality of products or services or change important articles or standards of contract without informing or requiring consumers’ consent; or gave rights to traders to interpret the contract unilaterally or dissolve the contract.<sup>16</sup> These regulatory interventions aim to protect the interests and rights of consumers, even though implementation remains to be seen.

In addition, the government has also responded to concerns about **consumers’ health**. In his interview with Radio France International (RFI) on 11 November 2021, Mr. Phan On, the government delegate in charge of CCF, stated that CCF has intervened in cases related to cheating at gas stations.<sup>17</sup> Other interventions include the confiscation of Methanol used as alcohol and sold on the market as a cleaning solution to protect people from the spread of COVID-19<sup>18</sup> and the use of Ethyl alcohol to make white

15 RFI, លោក ជាន អ៊ុន៖ សមាគមអ្នកប្រើប្រាស់ដើរតួនាទីសំខាន់ក្នុងការចូលរួមជាមួយគណៈកម្មការ និងជាសម្លេងការពារអ្នកប្រើប្រាស់ផងដែរ, ចុះផ្សាយនៅថ្ងៃ៖ 11/11/2021 - 12:45 [Mr Phan On: Consumer Protection Association has an important role in the Commission and Represent the Voice of Consumers]

16 Ministry of Commerce, *Prakas No. 0067 P.N.A KBB. PRK on Unfair Contract Clause* (1 March 2022).

17 RFI, លោក ជាន អ៊ុន៖ សមាគមអ្នកប្រើប្រាស់ដើរតួនាទីសំខាន់ក្នុងការចូលរួមជាមួយគណៈកម្មការ និងជាសម្លេងការពារអ្នកប្រើប្រាស់ផងដែរ [Mr. Phan On: Consumer Association has an important role in joining the Council and representing consumers] (11/11/2021- 12:45).

18 ស៊ុល រីវី អាចកុលក្លែងក្លាយជិតពាន់លីត្រនៅរាជធានីភ្នំពេញត្រូវបានអាជ្ញាធររឹបអូស [more than 30.000 litres of fake alcohol has been confiscated by the authorities] (31 August 2021) <https://thmeythmey25.com/detail/90812>.

wine that is dangerous to human health.<sup>19</sup> This list of interventions of this nature is not exhaustive, even though it should be noted that the government adopted a reconciliatory approach by not imposing criminal punishment, but rather, imposed fines on traders and gas station owners.<sup>20</sup>

However, there are challenges that the government has faced in enforcing the LCP. Cambodia has a prevalence of **informality in businesses**. The National Programme on Consumer Protection is cognisant of this challenge. Cambodia has sustained growth and prevalence of small and medium enterprises (SMEs). Ninety percent of the 510,000 registered firms in 2019, and 95% of the SMEs are not properly registered; consequently, there is a lack of corporate responsibility and accountability in the realm of corporate governance.<sup>21</sup> Not only does informality induce a lack of governance within the business, but it also induces unethical and irresponsible informal business practices.

Further challenges to the enforcement of the law come from the current **redress mechanisms** available in Cambodia. The Cambodian government recognises this challenge.<sup>22</sup> According to the World Bank's Doing Business Report in 2020, Cambodia was ranked 182 out of 190 economies for enforcing contracts. Due to the unpredictability and deadlock of cases, consumers would not seek remedies at the court for a small claim (an amount of USD250 or less), which is provided through the Civil Procedure Code. Similarly, the existing mediation mechanism through the local justice centres is not effective in resolving disputes.<sup>23</sup>

Further to the institutional challenges in enforcing the regulation, the implementation of relevant consumer protection frameworks must be analysed in some sectors of high relevance to Cambodia today.

### Clothing industry

Regarding the role of the consumers in promoting RBC, some good examples can be presented here.

In the clothing industry, as well as agricultural commodities,<sup>24</sup> the concept of **fair trade** emerged to protect workers and producers such as small farmers. This concept seeks to rectify the imbalance of power in the marketplace by mobilizing consumer power. Fair trade is one modality by which to address serious harms caused to factory workers and other links in the supply chain as the industry experiences competition within the global market system. Fair trade certification of certain products provides trustworthy and easily recognisable information to consumers, and enables them to purchase according to their ethical preferences.<sup>25</sup> The main principles of this concept relate to: concerns about environmental sustainability in manufacturing; the promotion of sustainable materials like organic cotton; the improvement of workers' welfare; fair payment; and, zero tolerance for child labour and forced labour.

Fair trade is significant for Cambodia as a country where the apparel sector employs more than 700,000 people and rights are often abused.<sup>26</sup> Consumers get informed and educated about the kind of products they purchase, where they are produced, what they are made of, and whether they were made under abusive conditions involving human rights abuses.<sup>27</sup>

19 វីដេអូ រកឃើញអាកុលក្លែងក្លាយជាង២០០លីត្រនិង១៦៤គីឡូក្រាមនៅផ្សារប្រសូត្រីស្រុកស្វាយទាប [More than 200 litres of fake alcohol and 64 kilograms of expired products found in Prosot Market in Svay Teap district] (05 August 2021) <https://www.rasmeinews.com/archives/520990>.

20 Ibid.

21 Royal Government of Cambodia, *National Consumer Protection Program* (2022) Phnom Penh: RGC.

22 Id..

23 Id.

24 Fairtrade International, *Fairtrade standards*, <https://www.fairtrade.net/standard>.

25 Sewport Support Team, *What is Fair Trade Clothing & How is it Regulated* (10 Essential Principles), (29 July 2023), <https://sewport.com/learn/fair-trade-clothing>.

26 Clean Clothes Campaign, *Leading rights groups call on Nike to push its supplier Ramatex to remediate supply* (20 July 2023) <https://cleanclothes.org/news/2023/leading-rights-groups-call-on-nike-to-push-its-supplier-ramatex-to-remediate-supply-chain-abuses-in-cambodia>.

27 Sewport Support Team, *What is Fair Trade Clothing & How is it Regulated* (10 Essential Principles), (29 July 2023) <https://sewport.com/learn/fair-trade-clothing>.

## Real estate and properties

The above cases may be considered as best practice for consumers to have a role to play in consumer protection. However, the case of Cambodia's real estate and property sector, discussed below, suggests a **weak implementation** of the LCP.

In Cambodia, the property sector has suffered from **fraudulent business practices** in increasing intensity in recent years. The booming business that created an economic bubble in the years prior to the global financial crisis in 2008 re-emerged again, though slowly, until the COVID-19 pandemic, where it saw its low point due to unethical practices. These practices ranged from fraudulent schemes such as full ownership of plots and lending with interests higher than the banking system, such as the one allegedly offered by Piphup Deimeas Investment<sup>28</sup> to Chea Saron Realty, which was accused of cheating approximately 2,461 families, with a combined investment worth almost USD40 million, into buying their land plots for speculation purposes. The allegations refer to deceitful acts by the business and may include fabricating documents to borrow money from microfinance institutions,<sup>29</sup> in addition to promises of high financial return<sup>30</sup>.

Other practices and issues the government sought to address as well include selling land on paper or Luk Dei Khchorl in Khmer (literally means air sell), land plot sale by unregistered businesses,<sup>31</sup> or delay in handing over the property due to the slow construction process.

In all cases, consumers' interests are at stake, and their trust in the sector has diminished drastically. The existence of consumer associations in this sector might help avoid or alleviate this kind of problem, given they can be heard in the policy-making process and their interests are incorporated into the design of the business-dealing procedures. This case reveals the lack of implementation of the LCP and other relevant frameworks to protect consumer interest, including state capacity and consumer powerlessness.

## E-commerce

Another concern for consumer protection is the exponential growth of e-commerce and the consumers' limited understanding of fraud.

E-commerce is growing in the Kingdom without much control. The **law on e-commerce**, passed in 2019, was meant to ensure sustainable growth of business activities online. The law was passed in response to growing business activities on the Internet, which has increasingly become an efficient medium of marketing and trading. Product and service quality remains no different from those on sale offline. There is no denying that Cambodia's e-commerce market is marching ahead firmly, with a forecast revenue topping \$1.78 billion by 2025.<sup>32</sup> Registration of online businesses is limited among online sellers due to a lack of understanding of the incentives, as well as the government's lax enforcement.<sup>33</sup>

28 CPC News, ក្រុមហ៊ុនពិភពដីមានចេញសេចក្តីដូនដំណឹងល្អពីការញុះញង់ជំរុញអោយមានការផ្សាយនូវព័ត៌មានមូលបង្កាច់បង្អួច កេរ្តិ៍ឈ្មោះក្រុមហ៊ុន [Golden Land World issued a press release on incitement of spreading news hurting its reputation] (16 November 2020) <https://www.cpc-news.com/archives/116692>.

29 RFI, ឧកញ៉ា ជា សារ៉ន និងមនុស្សមួយចំនួនទៀតត្រូវបានឃាត់ខ្លួនពាក់ព័ន្ធការរកស៊ីវិនិយោគដីឡូតី [Okhna Chea Saron and his accomplices are detained in link to realty business] (23 April 2023)

30 Buth Reaksmeay Kongkea, Tycoon Saron and associates charged and detained for \$40 million fraud, Khmer Times, (27 April 2023) <https://www.khmertimeskh.com/501279969/tycoon-saron-and-associates-charged-and-detained-for-fraud/>.

31 RFI, ក្រសួងដែនដី ព្រមានចាត់វិធានការអ្នកលក់ដីឡូតីខ្យល់ខណៈវិស័យនេះ កំពុងមានសន្តិសុខនៅកម្ពុជា [Ministry of Land, Urban Management and Construction warned to take action on growing fraudulent realty businesses] (25 September 2018).

32 Prakash Jha, Cambodia's e-commerce market eyes \$1.78B by 2025, Khmer Times, (5 January) <https://www.khmertimeskh.com/501214272/cambodias-e-commerce-market-eyes-1-78b-by-2025/>.

33 Raksmeay Chan, An analysis of Cambodia's e-commerce and way forward. *Journal of Management, Economics, and Industrial Organization*, (2022) 6(3), 88-100 [https://jomeino.com/sites/default/files/paper\\_attachment/An%20analysis%20of%20Cambodia%E2%80%99s%20e-commerce%20and%20way%20forward.pdf](https://jomeino.com/sites/default/files/paper_attachment/An%20analysis%20of%20Cambodia%E2%80%99s%20e-commerce%20and%20way%20forward.pdf); Try Thaney, *Cambodians report scams in online shopping experience, Camboja* ( 11 May 2022) <https://cambojanews.com/cambodians-report-scams-in-online-shopping-experiences/>.

With **limited digital and financial literacy**, consumers are vulnerable to being cheated, not to mention the risks to their privacy. Buyers have experienced being cut off from communication with the social media platform after they transferred the money. In these cases, they do not file complaints to the government authorities either because they no longer know the identity of the scammers or they do not know who to complain to. Between 2019 and 2022 (May), CCF received 28 complaints (for both online and offline shopping).<sup>34</sup> The extent of online fraud is not well understood, and limited data is available. However, the consumer protection authorities received complaints and need to adopt necessary policies and take appropriate actions to protect consumers in the electronic marketplace.

As seen in this section, state institutional development and capacity remain the concern for consumer protection in Cambodia. The effective implementation of the law lags behind.

While it is acknowledged that consumers also have the power to ensure that the state delivers and traders adhere to the principles of RBC, such power has never been realised. The customers, to a certain degree, are not aware of their rights as prescribed by the LCP. Consumers remain highly susceptible to fraudulent business practices in almost all sectors of the economy.

## 4. Further discussion

**T**he foregoing sections analyse key challenges in enforcing relevant laws, especially LCP, to protect consumers and to promote consumer rights in Cambodia. To better understand consumer protection and their rights in Cambodia, one should examine Cambodia's prevailing societal structural issues: i.e. the close ties between state and business, and state capacity.

The close **relationships between state and business** presents unique challenges for law enforcement. It is found that businesses are incorporated into party politics, creating an ever-growing politics of patronage in Cambodia. Verver and Heidi<sup>35</sup> argue that businesses make donations to the ruling party, which consequently forges a cosy link between the party and business. In exchange, businesses are protected by the patron who received donation from them. Moreover, the entrepreneurs, some assuming the title of Okhna bestowed by the King in return for their contribution to society, receive protection and privileges in their business ventures. The power these business tycoons possess overrides consumer rights, even though the law protects such rights explicitly.

The close tie between business and politicians has also undermined the **institutional and technical capacity** of the state to protect consumers and their rights. For example, hazardous agricultural products are imported into Cambodia without proper quality control and inspection. The products (and import activities) shared about 22.84% of Cambodia's GDP in 2020, and food imports accounted for 7% of all imported merchandise in 2019<sup>36</sup>. Together with weak capacity and the influence of the wealthy business owners, responsible authorities at the border and the ministries in charge neglected their responsibility in enforcing regulations, including LCP, to protect consumers who do not know about the hazardous products and the effects on their health.

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<sup>34</sup> Try Thaney, *Cambodians report scams in online shopping experience, Cambodia* (11 May 2022) <https://cambojanews.com/cambodians-report-scams-in-online-shopping-experiences/>.

<sup>35</sup> Michiel Verver & Heidi Dahles, *The Institutionalisation of Okhna: Cambodia Entrepreneurship at the Interface of Business and Politics*, *Journal of Contemporary Asia*, 45:1, 48-70 (2015).

<sup>36</sup> *Id.*



**T**his chapter has three important takeaways, as follows. First, as a duty bearer, the Cambodian state has gradually developed a consumer protection legal framework and mechanism to protect consumers as rightsholders. To achieve the objectives of the LCP, the state needs to further improve and effectively implement the legal framework and policies, in line with international standards of consumer protection. Second, consumers, as rightsholders, are entitled to a better understanding of their rights and the way in which they can influence business conduct. Consumers, therefore, have a key role, if supported by the state and other relevant actors, to demand accountability from businesses and to promote RBC. Empowered by information and facilitated by awareness-raising campaigns, consumers could increasingly express their preferences for ethically produced goods and services and effectively ‘vote with their wallets’. This creates important market incentives for businesses to take RBC more seriously.

Third and last, there is a public interest dimension for both the state and consumers. Consumer awareness and action would encourage the growth of the private sector within the international framework of RBC, and facilitate the country’s sustainable economic development.

## 6. Further readings

1. Kong Phallack and Long Chanbormey (eds), *Law in the Digital Age: Protection of Consumer Rights*, The Law Talks (2021) Phnom Penh: Konrad <https://www.kas.de/documents/264850/8652111/Law+in+the+Digital+Age+-+Digital+Version+-+Pages.pdf/32fdaa15-aa13-d047-a924-c36dfa6a88f5?version=1.0&t=1638865244758#:~:text=The%20Law%20Talks%20Publication%20%E2%80%9CLaw,the%20legal%20framework%20for%20consumer.>
2. International Financial Cooperation--IFC, *Promoting Financial Consumer Protection in Cambodia* (2015) Phnom Penh: IFC <https://financialconsumerprotection.ca/wp-content/uploads/2021/10/WB-Cambodia-Financial-Consumer-Protection-Report.pdf>.
3. United Nations, *Guiding Principles on Business and Human Rights*. (2011) New York: United Nations [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf).
4. United Nations Conference on Trade and Development (UNCTD), *The United Nations Guideline on Consumer Protection* (2016) New York: United Nations [https://unctad.org/system/files/official-document/ditccplpmisc2016d1\\_en.pdf](https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf).
5. RICARDO ERNST, JERRY HAAR, ‘Fair Trade as an Illustration’, in *From Me to We - How Shared Value Can Turn Companies Into Engines of Change* (2022) [https://link.springer.com/chapter/10.1007/978-3-030-87424-7\\_7](https://link.springer.com/chapter/10.1007/978-3-030-87424-7_7).

# **CHAPTER 12**

## **Home States and RBC**



**Radu Mares**

**T**his chapter explains the necessity for home states to act on RBC, and discusses the latest developments in extraterritorial regulations. ‘Home states’ of multinational enterprises (MNEs) have a unique role to play, given that parent companies are headquartered within their jurisdiction. Conversely, it is difficult for ‘host states’ – where subsidiaries and contractors of the parent companies are located – to gain jurisdiction over managers and foreign businesses in their home countries. Thus, there is a **jurisdictional gap** that can create impunity for parent companies. As parent companies and home states are often reminded, outsourcing production does not mean outsourcing responsibility. Parent companies should not be able to hide behind the ‘corporate veil’ and deny responsibility for abuses in their subsidiaries, supply chains and distribution networks. They should practice RBC according to due diligence principles outlined in the UNGPs; in turn, home states should develop policy and regulatory measures to ensure RBC, not only for residents in their jurisdictions, but also across international value chains. Such extraterritorial action in RBC must comply with principles of international law such as state sovereignty.

Action by home states is a necessity, given that decisions taken at **corporate headquarters** impact on subsidiaries, suppliers and distributors across the world. Concrete examples can be businesses that transfer hazardous technology to foreign subsidiaries, despite knowing the risks. Such behaviour has sometimes led to massive accidents and loss of life, notorious examples of which include the explosion of a chemical plant in Bhopal, India, where over five thousand died and half a million were injured,<sup>1</sup> and asbestos mining in South Africa that killed thousands.<sup>2</sup> Since the 1990s in the garment industry, brands have outsourced production to low wage countries, and brands associated with ‘fast fashion’ often insist on low prices and fast delivery times, thus increasing the risk of exploitative conditions for workers. Businesses still export hazardous chemicals such as pesticides used in agriculture; however, while some of these dangerous products are banned in the exporting countries due to their health risks, they are still tolerated in less developed countries that allow their importation.<sup>3</sup> Businesses provide advanced technology to foreign governments that use it for surveillance and on-going repression, leading to violations of civil and political rights.<sup>4</sup> Foreign businesses have also engaged in bribery of foreign officials in attempts to secure lucrative contracts in other countries, and this has led to one of the earliest instances of extraterritorial regulation.<sup>5</sup>

The **chapter** explains the place of extraterritorial laws under international human rights law. Then it identifies and exemplifies various laws that home states have adopted in the last 10-15 years, including the Everything but Arms (EBA) scheme of the European Union. The chapter also provides court cases with examples of transnational litigation. Finally, it points to the difficulties raised by extraterritoriality and conditionalities as tools that can be used – and abused – by powerful states.

## 2. Frameworks

**H**ome states of MNEs have historically been industrialized states, with the resources and institutions capable of holding parent companies accountable. Such home states failed to pass the necessary legislation and confined themselves to issuing **CSR** guidance and encouraging corporate voluntarism. In an era of international production and distribution, the UNGPs have clarified that both states and businesses

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- 1 Amnesty International, *Clouds of injustice: Bhopal disaster 20 years on* (2004) <https://www.legal-tools.org/doc/e24480/pdf>.
  - 2 Jock McCulloch, *Beating the Odds: The Quest for Justice by South African Asbestos Mining Communities*, *Review of African Political Economy*, 32:103 (2005) <https://www.jstor.org/stable/4006910>.
  - 3 OECD Watch, *Downstream due diligence Setting the record straight* (2022) <https://www.somo.nl/wp-content/uploads/2022/12/Downstream-due-diligence.pdf>.
  - 4 UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Surveillance and human rights*, A/HRC/41/35 (2019) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/148/76/PDF/G1914876.pdf?OpenElement>.
  - 5 US, *Foreign Corrupt Practices Act* (FCPA) (1977) [www.sec.gov/enforcement/foreign-corrupt-practices-act](http://www.sec.gov/enforcement/foreign-corrupt-practices-act).

have responsibilities for business contributions and direct linkages to third parties whose operations infringe human rights. This section starts by introducing the concept of extraterritoriality and its status under international law and the UNGPs; it continues with examples of laws and court cases in home states relevant to MNEs, and concludes with the EBA scheme of the EU and its human rights ‘conditionalities’.

## 2.1 Extraterritorial laws of home states under international law

Under **international human rights law**, states have an obligation to respect and ensure human rights, sometime referred as the obligations to respect, protect and fulfil human rights. Regulating businesses falls under the obligation to secure/protect human rights as explained in Chapter 3. That means legal and other measures are necessary to prevent infringement of human rights, as well as the obligation to monitor, investigate and punish when abuses take place. There is no debate about how this obligation applies to host states, but disagreements persist regarding home states. Does their obligation to protect human rights apply extraterritorially or not? Are home states legally obliged under human rights treaties to protect victims of corporate abuse in other countries?

Experts in the UN system and some academics interpret treaties in the affirmative and ask home states to communicate what measures they take regarding ‘their’ MNEs. Home states, even those that promoted and have begun regulating RBC, reject this interpretation.<sup>6</sup> The UNGPs took note of the debate and concluded that home states are allowed but not obliged under international treaties to regulate extraterritoriality, with due regard to international law principles of sovereignty. **Extraterritoriality** is also a complex concept including prescriptive, adjudicative and enforcement jurisdiction.<sup>7</sup> There are different types of laws with extraterritorial effect, some less demanding (light-touch) and some more stringent in terms of obligations and enforcement. None of these assume direct jurisdiction in another country, but rather, require the parent company to take actions regarding its value chains; thus, legal effects occur in other countries.

Pillar 1 in **the UNGPs** clarifies, through 10 principles, how states should act in different settings. Thus, home states are asked to act as regulators. Furthermore, they can also act as economic actors, given that states are market actors through state-owned enterprises, government procurement and investment of public funds. Moreover, home states are members of international economic institutions, whose influence and decisions strongly affect national budgets and the policy space of poorer and indebted countries (e.g. austerity measures, policies to prioritize economic and market policies pitted against social protection). Similarly, home states negotiate trade and investment agreements, sometimes bilaterally or regionally, and set the terms for the liberalized flows of good, services and capital without due consideration of impacts on human rights and other negative externalities. Finally, the UNGPs single out the context of conflict zones and civil wars when the host state is inherently unable to protect human rights, and therefore home states are asked to step in to regulate ‘their’ MNEs operating in such conflict areas.<sup>8</sup>

Through Pillar 1, the UNGPs specified what a **state’s duty to protect** entails in the BHR context. It is a restatement of international law and, as a soft law instrument, it does not – and can not – create new legal obligations for home states. It allows states to regulate or take other measures and thus allows discretion to states on how to adjust their legal systems and create the necessary legal and market incentives for RBC. As noted, some in the human rights community have criticized the UNGPs for falling short on the issue of extraterritoriality and, even worse, for undermining the way in which the UN system interprets state obligations.<sup>9</sup>

6 Claire Methven O’Brien, ‘The Home State Duty to Regulate the Human Rights Impacts of TNCs Abroad: A Case of Extraterritorial Overreach?’ *Business and Human Rights Journal* 3:1 (2018) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2854275](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2854275).

7 Daniel Augenstein and Nicola Jägers, ‘Judicial Remedies - The Issue of Jurisdiction’, in Juan José Álvarez Rubio and Katerina Yiannibas (eds.), *Human Rights in Business: Removal of Barriers to Access to Justice in the European Union* (2017) [www.taylorfrancis.com/books/e/9781351979153](http://www.taylorfrancis.com/books/e/9781351979153).

8 UNGPs, Principles 1-10.

9 Daniel Augenstein, ‘Towards a new legal consensus on business and human rights’, *Netherlands Quarterly of Human Rights* (2022) <https://journals.sagepub.com/doi/10.1177/09240519221076337>.

Pillar 1 is complemented by Pillar 3 in the UNGPs dedicated to **access to justice**. Pillar 3 recognizes the numerous and diverse obstacles that victims face when seeking to obtain remedies from businesses and states. Like Pillar 1, Pillar 3 maps various complaint mechanisms and indicates that courts, while important, are just one, mechanism that victims could use. That means home states are encouraged to review their judicial systems to reduce the obstacles (procedural, substantive, and practical obstacles) for foreign plaintiffs. In addition to access to courts, home states can support alternative dispute resolution systems such as arbitration and mediation (with OECD NCPs and NHRIs being the prime examples). Finally, states can encourage or require businesses and industry initiatives to self-regulate in a way that creates complaint mechanisms and delivers effective remedies to victims.<sup>10</sup>

## 2.2 Types of extraterritorial laws in RBC

**Transparency laws** cover social and environmental impacts of corporate activities, both at home and abroad. Among the first were transparency laws on modern slavery in global value chains, first adopted in California in 2010 and then in the UK and Australia. A more comprehensive law covering all social and environmental impacts of businesses was the 2014 EU Directive on non-financial reporting (NFRD). Such laws typically require businesses to state their RBC policy, processes and impacts, but do not require changes in strategy and decisions to prioritize RBC. Transparency laws are considered a light-touch regulation. Such laws are meant to start a dialogue inside the company and outside with its stakeholders, prompt corporate learning through self-assessments inherent in preparing a public report, and facilitate ‘name and shame’ advocacy and societal mobilization. Thus, pressure to comply with RBC will come primarily from societal and market actors, not from courts or regulatory agencies.

Human rights **due diligence laws** go a step further than transparency laws. Not only do they require sustainability reporting, but they require changes in how businesses address their adverse impacts. Such laws follow the due diligence ideas developed in the UNGPs and mandate preventive and corrective actions. Importantly, there are administrative and civil law sanctions, meaning businesses can be fined for failing to do their due diligence and be obliged to compensate victims for the harm they have caused.<sup>11</sup>

Many of these legal developments are recent but, since the late 1990s, victims of corporate abuses have sought remedies in the courts of home states. The area of **transnational litigation** against MNEs is evolving, with a constant stream of cases being filed for severe human rights abuses and environmental devastation. Civil liability laws (tort law and negligence laws) exist in all countries and contain general principles of responsibility that can be easily applied to businesses infringing human rights. Territoriality is not an insurmountable obstacle and cannot automatically block plaintiffs, but it still hinders their attempts regarding procedural aspects (e.g. jurisdictional issues) as well determinations of liability (substantive law aspects). Negligence laws result in liability if the plaintiff shows the culpable conduct of the parent company, demonstrates the harm to person or property or other legally protected interests, and establishes a relation of causality between the corporate conduct and the harm suffered by plaintiffs. The parent company needs to be culpable (either intention to harm or negligence). Conduct can be by commission or by failure to act (omission) to prevent harm from happening. The burden of proof lies on the plaintiff. To better understand how all these legal requirements apply to a transnational business, see a Canadian court case that presents pedagogically how a Canadian mining company operating in Guatemala could be found liable for human rights abuses under the law of negligence.<sup>12</sup>

Plaintiffs seek to prove that the parent company has a duty of care towards the plaintiffs and that the company’s conduct has caused them harm. The negligent parent company is then obligated to compensate

<sup>10</sup> UNGPs, Principles 25-31 (see also chapter 5).

<sup>11</sup> European Commission, *Proposal for a Directive on Corporate Sustainability Due Diligence*, COM(2022) 71 final (23.2.2022) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>.

<sup>12</sup> *Choc v. Hudbay Minerals Inc.*, 2013 ONSC 1414 (Ontario Superior Court) [www.chocversushudbay.com/wp-content/uploads/2010/10/Judgment-July-22-2013-Hudbays-motion-to-strike.pdf](http://www.chocversushudbay.com/wp-content/uploads/2010/10/Judgment-July-22-2013-Hudbays-motion-to-strike.pdf).

for the damage, which can be tens or hundreds of millions of dollars. Some major obstacles to liability are the corporate veil principle in corporate law and the tort law principle of non-liability for third-party misconduct. In the eyes of the law, the parent company is a separate entity from its subsidiaries and not liable for their conduct. This is a lasting tension in MNEs: an MNE is a group of companies that are **legally separated but economically integrated**. Plaintiffs and courts seeking to hold parent companies liable must pinpoint the conduct of the parent that was blameworthy, meaning it has negligently caused or contributed to harm and is guilty by association; simply being part of an MNE group is insufficient to exonerate them.<sup>13</sup>

**Everything But Arms (EBA)** is a trade and development scheme that provides least developed countries (LDCs) with duty-free and quota-free access to the large EU market.<sup>14</sup> In 2019, Cambodia was one of the 47 countries benefiting from EBA. The EBA is part of the broader EU General System of Preference (GSP) system, which entered into force in 2001 and is currently under revision with an update expected in 2024. The GSP covers developing countries, and thus excludes high-income and upper-middle income countries – a status that is determined by the World Bank. While the GSP gives preferential treatment to all developing countries, there is also the GSP+ option for those countries that agree to implement 27 international treaties on sustainable development and good governance. Thus, preferential treatment is ‘conditional’. The EBA gives even more favorable treatment and is reserved for LDCs; it also requires compliance with international treaties (15 instead of 27 treaties as for the GSP+). In this way, the GSP+ and EBA ‘conditionality’ make economic benefits dependent on ratifying and complying with human rights, as contained in UN and ILO treaties (listed in Annex VIII).<sup>15</sup>

In case of non-compliance, these trade preferences can be withdrawn according to a **procedure** laid down in the EU Regulation 978/2012. This Regulation lays down the procedure for initiating, discussing and ultimately withdrawing the trade preferences. The procedure is identical for GSP+ and EBA and is explained in Articles 19-20. The principle is that preferential arrangements may be withdrawn temporarily, in respect of all or certain products, for ‘serious and systematic violation of principles’ laid down in the UN and ILO treaties (Article 19.1). The process begins with a notification to the beneficiary country that the Commission will monitor and evaluate the situation in the country for six months. During this period, the Commission gathers information from the UN monitoring bodies, and the country is given ‘every opportunity to cooperate’ in the monitoring and evaluation. After this, the report with findings of non-compliance with the applicable UN treaties and intention to withdraw the benefits is sent to the country, which has the right to submit comments on the report. If the decision to withdraw the trade preferences is made, it will take effect after a further six months. The sanction is temporary, and preferences can be reinstated if the country starts to comply with the UN human rights treaties (Article 20). In 2019, for the first time in EBA’s history, the Commission started the procedure for Cambodia and withdrew preferences effectively in August 2020 (see section 3 below).

### 3. Applications

**T**his subsection provides more specifics on the operation of laws and caselaw from home states of MNEs. In addition to examples, it also gives information about the making of these new laws and their impacts in practice, with their limitations and controversies.

13 R. Mares, ‘Liability within corporate groups: Parent companies accountability for subsidiary human rights abuses’, in S. Deva (ed.) *Research Handbook on Human Rights and Business* (Edward Elgar, 2020) [www.researchgate.net/publication/337022663\\_Liability\\_within\\_corporate\\_groups\\_Parent\\_company's\\_accountability\\_for\\_subsidary\\_human\\_rights\\_abuses](http://www.researchgate.net/publication/337022663_Liability_within_corporate_groups_Parent_company's_accountability_for_subsidary_human_rights_abuses).

14 Regulation 978/2012 applying a scheme of generalised tariff preferences (25 October 2012) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012R0978&from=EN>.

15 *Id.*



### 3.1 Laws in home states and their impacts

Despite the high expectations placed on such laws, in practice, transparency laws have worked unsatisfactorily in the RBC area. The EU recognized as much when it reviewed compliance and impacts of its NFRD and decided that stronger measures are needed, such as due diligence laws.<sup>16</sup> There are multiple reasons why **transparency laws failed to deliver**, including: overly general obligations; no standardisation of data to be disclosed; no independent audit of reports; poor administrative monitoring; weak enforcement; and easy compliance by only disclosing general and partial information. Neither watchdog NGOs nor investors could use the data as this was tracking wrong metrics in corporate activities, was unreliable and did not enable comparisons among businesses. They failed to empower NGOs to do name-and -shame, to activate consumer pressure to ‘vote with the wallet’, or to shift financial markets, even though the interest in sustainable investment and ESGs had grown dramatically. Recognizing these failures, the EU recently made its transparency laws more stringent,<sup>17</sup> expanded sustainability-reporting obligations to the financial sector, and supplemented them with new laws such as the mandatory due diligence Directive.<sup>18</sup>

The first **due diligence laws** appeared in France in 2017 and due diligence laws are still a European phenomenon. Following the French example, Germany, the Netherlands and Norway adopted their own due diligence laws that cover global value chains.<sup>19</sup> Thus, these laws have extraterritorial effects as parent companies and brands have to obtain information and solicit improvements from their subsidiaries and suppliers across the value chains. Because these national laws had important differences and new laws were in the making as other European states indicated their intention to adopt their own due diligence laws, the EU decided in 2021 to harmonize this area of law and adopt an EU-wide instrument called the Corporate Sustainability Due Diligence Directive (CSDDD).

One notable aspect regarding the CSDDD was the surprising level of **business support** this law received from some large businesses and industry associations. This is counterintuitive at first sight, given that businesses historically have opposed mandatory RBC and argued that self-regulation and guidance from the government are sufficient to deliver RBC. The EU’s own assessments and the support from businesses and civil society groups demonstrate that more stringent laws, such as mandatory due diligence, are indispensable in RBC.<sup>20</sup> Such laws fulfil several useful functions such as: harmonizing divergent laws that increase the compliance costs for MNEs; provide clarity and legal certainty to businesses in the RBC area where societal expectations are still in flux; and level the playing field for businesses so those doing RBC are not placed at a competitive disadvantage from socially irresponsible businesses. Most importantly from a human rights perspective, mandatory due diligence means rightholders could count on preventive measures from businesses to reduce the risk of harm, and on remedial measures when harm occurs. However, there are details in the EU Directive that might allow easy compliance for some businesses (risk of ‘symbolic compliance’ rather than genuine RBC) and victims still face significant hurdles as they sue companies in the home states (for example, the burden of proof is not changed). All these aspects have been thoroughly debated during the public consultation period, as hundreds of organizations submitted their concerns and suggestions, which are publicly available.<sup>21</sup>

16 de Groen et al., *Study on the Non-Financial Reporting Directive - Final report*, European Commission (2020)

<https://op.europa.eu/en/publication-detail/-/publication/1ef8fe0e-98e1-11eb-b85c-01aa75ed71a1/language-en>.

17 CSRD (2022) that replaced the NFRD (2014). Directive (EU) 2022/2464 as regards corporate sustainability reporting

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464>.

18 CSDDD to be adopted in late 2023 or early 2024.

19 For a comparison, see DIHR, *How Do The Pieces Fit In The Puzzle? Making sense of EU regulatory initiatives related to business and human rights* (May 2023) <https://www.humanrights.dk/publications/how-do-pieces-fit-puzzle-making-sense-eu-regulatory-initiatives-related-business-human>.

20 L. Smith et al., *Study on due diligence requirements through the supply chain - Final report* (2020)

<https://op.europa.eu/sv/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

21 Consultations from 2021 and 2022 available on the EU website: Corporate sustainability due diligence - Fostering sustainability in corporate governance and management systems [https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en#documents](https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en#documents).

States are also **buyers** in public procurement, and **financial actors** in investments, credits, and guarantees for companies operating abroad. Through such commercial contracts, states are in the position to apply leverage over some supply chains by requiring large contractors to demonstrate that they undertook human rights due diligence. Public procurement, also known as government procurement or public purchasing, refers to all the goods and services that public entities need in order to function. The area of governmental procurement is an instance where home states could – and failed to – lead by example and use due diligence tools and metrics in their own purchasing decisions.<sup>22</sup> Actually, the EU has a 2014 law (the Directive of public procurement) that enhanced the discretion of procurement agencies to take sustainability into account and push for RBC, but fell short of obliging them to do that.<sup>23</sup> That law failed to shift markets or advance RBC, despite the enormous resources involved (around 15% of GDP in OECD countries) because procurement agencies rarely took advantage of their newly acquired discretion.

### 3.2 Transnational litigation and access to remedies

Most **transnational litigation** has so far happened in common law countries, initially in the USA, but since 2013, primarily in the UK and Canada, though increasingly also in the Netherlands and France. In France, plaintiffs use the recent 2017 due diligence law that facilitates civil liability claims. In all the other countries, plaintiffs use the general provisions of tort law.

One of the most difficult issues is to hold parent companies liable when they fail to act; that is, when they fail to monitor and ensure RBC in their subsidiaries and suppliers. The first time a court affirmed the parent company's duty of care was in the **Chandler case** in the UK, in 2012,<sup>24</sup> and this final judgement is an important precedent in RBC, even though it was not a transnational litigation case (both parent and subsidiary were in the UK). The case revolved around a dangerous product and technology (asbestos) that injured the employees of the subsidiary. The court found a creative way to assign liability to the parent company for its failure to act on RBC. The court constructed the 'assumption of responsibility' test, which combined a parent company's superior knowledge with a subsidiary's reliance on such expertise and advice. As a result, the plaintiffs could obtain compensation from the parent company. Despite this remarkable precedent, judges are careful not to stretch the principles of civil liability law too much, and always consider the specific circumstances of each case. Therefore, several other cases building on the Chandler precedent did not succeed in UK courts.

A notable case occurred in the Netherlands and involved **Shell** and oil pollution in Nigeria.<sup>25</sup> The Dutch court acquired jurisdiction over both the parent company and its Nigerian subsidiary. It held that the parent company owed a duty of care to villagers in Nigeria harmed by oil leaks. To fulfil its duty, the parent company should have installed a leak detection system to promptly mitigate the extent of harm, and was obliged to contribute to the clean-up operation. In 2023, Shell settled with plaintiffs and agreed to pay 15 million dollars for the clean-up. The subsidiary was also held liable for the damage, as the court applied Nigerian environmental laws.

Such final judgements are very few and this is due to multiple reasons. One is **inequality of parties** ('inequality of arms'), as it remains very difficult for poor plaintiffs to sue in home countries; they lack the finances and assistance of specialised law firms capable of running such complex cases against well-resourced MNEs. Another reason is the jurisdictional barrier, as MNEs regularly try to persuade the home country court it should not accept jurisdiction, and argue instead that the case should be tried in the host country (where laws and courts are typically weaker and liability is less likely).

22 Daniel Morris, *Driving change through public procurement - A toolkit on human rights for procurement policy makers and practitioners*, DIHR (2020) [https://www.humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_webaccessible.pdf](https://www.humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_webaccessible.pdf).

23 Directive 2014/95/EU (2014).

24 Chandler v Cape (2012) [www.bailii.org/ew/cases/EWCA/Civ/2012/525.html](http://www.bailii.org/ew/cases/EWCA/Civ/2012/525.html).

25 Friend of the Earth v Shell (2021) [www.houthoff.com/insights/News-Update/Class-Actions---February-2021](http://www.houthoff.com/insights/News-Update/Class-Actions---February-2021).

There are more and more cases where MNEs lose the jurisdictional argument and then they choose to settle the case. That explains the increasing number of settlements where MNEs typically agree to pay a modest sum (10-15 millions USD) and emphasize they do not recognize any wrongdoing. An example is the **Nevsun** case in Canada.<sup>26</sup> The Canadian MNE was accused of complicity in forced labour at its Eritrea mine. It fought the jurisdiction of Canadian courts, but lost right up to the Supreme Court (in 2020) and then settled for an undisclosed amount of money. In sum, plaintiffs considering transnational litigation against parent companies face a very long period of time litigating jurisdictional and procedural issues before the courts can examine the case on the merits and only at that stage might the MNE decide to settle.

### 3.3 Everything but Arms (EBA) in Cambodia

Cambodia as a least developed country is a beneficiary country of the **EBA** scheme and can export freely (all products except arms) to the EU. This has significantly contributed to the development of Cambodia's economy, but this special treatment is conditional on respecting the human rights specified in 15 UN and ILO treaties, including the two UN Covenants on civil, political, economic and social rights. In February 2019, the European Commission started the withdrawal procedure and identified three main problems in Cambodia: labour rights and the 'systematic harassment of independent trade unions and employees who exercise their right to strike'; land-grabbing especially because of an EBA-driven surge in sugar exports; and political repression with a turn to the worse in 2017.<sup>27</sup> The decision to withdraw EBA preferences for Cambodia became effective in August 2020 which meant that Cambodia's typical export products such as garments, footwear and travel goods became more expensive due to customs duties. This was a partial withdrawal and affected only 20% of Cambodia's exports to the EU.<sup>28</sup>

More specially, the EBA withdrawal had to do with '**serious and systematic violations**' by Cambodia of four core human and labour rights UN/ILO conventions (ICCPR, ICESCR, ILO 87, ILO 98). During the 6-month monitoring period, the Commission invited views from Cambodia and third parties and received written observations from 13 parties and from the government (12 August 2019). The resulting report was sent to the government which replied on 12 December 2019. The detailed findings of the report, together with the position of the government, are presented in the decision to withdraw preferences.<sup>29</sup> The Commission found 'serious and systematic violations' regarding political repression and the treatment of trade union leaders (i.e. pending civil and criminal cases and failure to conclude the independent investigations into murders). At the same time, the Commission noted that 'improvements have been made on labour rights issues', that 'tangible progress' has been made in resolving land disputes in the sugar sector, and 'the positive cooperation with Cambodia throughout the process'. In sum, the decision to withdraw preferences was explained: 'Given the facts..., the nature of the rights infringed, and the duration, scale and the impact of Cambodia's actions and omissions, the Commission finds serious and systematic violations by Cambodia of the principles laid down in Articles 19, 21, 22 and 25 of the ICCPR.'<sup>30</sup>

The Commission indicated its willingness to reinstate preferences 'should Cambodia fully address the issues raised in this delegated regulation'. It indicated it will monitor issues of civil and political rights, labour rights, and land and housing rights in Cambodia and continue its enhanced engagement with Cambodia. The Commission mentioned it was mindful of the Covid situation at the time, and that it 'takes

26 Araya v Nevsun (2020) [www.business-humanrights.org/en/latest-news/nevsun-lawsuit-re-bisha-mine-eritrea](http://www.business-humanrights.org/en/latest-news/nevsun-lawsuit-re-bisha-mine-eritrea).

27 European Parliament, 'Everything but Arms': The case of Cambodia (2019) [www.europarl.europa.eu/RegData/etudes/ATAG/2019/637931/EPRS\\_ATA\(2019\)637931\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/637931/EPRS_ATA(2019)637931_EN.pdf).

28 European Commission, Cambodia loses duty-free access to the EU market over human rights concerns, press release (12 August 2020) [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1469](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1469).

29 Commission Delegated Regulation 2020/550 as regards the temporary withdrawal in respect of certain products originating in the Kingdom of Cambodia (12 February 2020) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0550&from=EN>.

30 Id.

into account the economic development needs of Cambodia, including the need for Cambodia to diversify its export base, and ... the socioeconomic impact of the withdrawal, including the impact on workers and industries.<sup>31</sup> The withdrawal posed a **dilemma** that was acknowledged as the Commission pointed out this is 'a measure of last resort' and it 'should, to the extent possible, take the social and economic development objectives of the EBA arrangement into account, while maintaining the necessary pressure on the Cambodian authorities to address the violations of human rights.'<sup>32</sup>

In deciding the **scope of the tariff** preferences withdrawal, the Commission aimed for a solution that was 'proportionate and appropriate' and 'a balanced approach of preserving the social and economic development in Cambodia while safeguarding the respect for human rights.' It considered three factors: Cambodia's exports to the EU, cooperation and progress by Cambodia, and social and economic development. Related to the latter, it noted:

The garment industry is a major employer in Cambodia. It employs hundreds of thousands of workers. The Commission paid particular attention to preferences for products that require significant training and investment in skills, thus limiting the impact on Cambodia's overall industrial development. Bicycles and garment products with higher added value were therefore excluded.

That means the products affected by the withdrawal are in the following sectors: low added-value garment products, footwear, travel goods and sugar.<sup>33</sup>

The government's initial response at the start of the procedure in 2019 was to point to progress made on a range of issues and to charge interference in the political development of the country and its sovereignty.<sup>34</sup> After the final EU decision to withdraw preferences in 2020, **stakeholders** put forward opinions.<sup>35</sup> An international business association supported EU's commitment to high social and labour standards; it urged to government to make improvements and called on the Commission to establish a clear roadmap and timeline to track progress (European Branded Clothing Alliance (EBCA)). The Cambodian garment industry body condemned the withdrawal as leading to 'nothing more than job losses ... (which would) affect the workers livelihoods, especially women' and pointed to its support for ILO monitoring and the Arbitration Council (The Garment Manufacturers Association in Cambodia (GMAC)). A Cambodian labour union feared unemployment as international buyers would turn to other countries for sourcing (National Independent Federation Textile Union of Cambodia (NIFTUC)). An international labour union federation welcomed the EU's decision and considered it a test for Europe's trade policy and the basis for a fair globalisation (ETUC and ITUC). A Cambodian CSO considered EBA as important for Cambodia's national competitiveness and for an attractive investment destination (Centre for Alliance of Labor and Human Rights (CENTRAL)). A statement from 20 Chambers of Commerce and business associations in Cambodia regretted the EU decision, while noting that 80% of exports to the EU are not affected by the withdrawal; it called for continued dialogue between the government and the Commission and affirmed a commitment to promote human and labour rights in Cambodia 'in accordance with international best practices'; it also saw this as an opportunity to 'accelerate the diversification of Cambodia's economy, export markets and sources of investment.'<sup>36</sup>

31 Commission Delegated Regulation 2020/550.

32 European Commission, *Withdrawal of Cambodia's Preferential Access to the EU Market – Factsheet* (5 Aug 2022) <https://circabc.europa.eu/ui/group/f243659e-26f5-44d9-8213-81efa3d92dc7/library/02ab82d2-6152-46f4-9b00-a95c950d386d/details>.

33 European Commission, *Withdrawal of Cambodia's Preferential Access to the EU Market – Factsheet* (5 Aug 2022) <https://circabc.europa.eu/ui/group/f243659e-26f5-44d9-8213-81efa3d92dc7/library/02ab82d2-6152-46f4-9b00-a95c950d386d/details>.

34 Royal Government of Cambodia, *Statement in response to the European Commission's decision to launch the formal procedure for the temporary withdrawal of the Everything But Arms (EBA) preferences for Cambodia* (13.02.2019) <https://pressocm.gov.kh/en/archives/48151>.

35 Business & Human Rights Resource Centre, *Cambodia EBA suspension: Stakeholders respond*, Blog series (2020) [www.business-humanrights.org/en/blog/cambodia-eba-suspension-stakeholders-respond](http://www.business-humanrights.org/en/blog/cambodia-eba-suspension-stakeholders-respond).

36 Id.

**T**he controversy around **extraterritoriality** has already been noted above. In a notable development, industrialized states, especially the EU, have in the last decade begun adopting extraterritorial laws on human rights and sustainability aspects across value chains. This is the ‘**regulatory turn**’ in CSR, from voluntarism and guidance to legal obligations and sanctions. At the same time, extraterritoriality, even in the name of RBC and human rights, can become problematic and be criticized as, variously, an illegitimate intrusion in the policy space of sovereign countries, neo-colonialism, protectionism, and so on. Given the legal uncertainties and diplomatic sensitivities, home state legislation is sometimes seen as a ‘necessary evil’ and part of the solution to BHR challenges.<sup>37</sup>

In fact, RBC regulations that promote human rights internationally through global value chains are just the latest instance of ‘**conditionalities**’, in the name of human rights or economic progress. There have been controversies around conditions linked to development aid, development finance, in trade agreements and now in RBC. These economic instruments affect the terms under which countries and businesses export their goods and services, attract capital and gain a competitive advantage in the marketplace. Such conditionalities can however become controversial, either in design or application. They can be seen as protectionism, foreign imposition of misconceived policies or an attack on state sovereignty. For example, the EBA withdrawal for Cambodia reveals the same controversies. Despite a formalisation of standards and mechanisms in the EU Regulation, the entire process is often criticized for double standards and subjectivity.<sup>38</sup> Others dispute this accusation of double standards by pointing out differences among countries with problematic records, and the complexities involved in imposing trade sanctions.<sup>39</sup> Some emphasize the importance of continued dialogue.<sup>40</sup>

Before the EBA, since the 1990s, the conditionalities of lending institutions, such as the IMF and World Bank, included privatization, deregulation and austerity measures. These often restrict space for the government to implement human rights policies and have been heavily criticized by human rights specialists. More recently and rather similarly, corporate due diligence laws adopted by developed countries can also be criticized as they condition integration in global value chains to observance of certain international standards. The **dilemma** remains: should economics and human rights be kept separate or connected, and if so, how, through what process, and with what safeguards in order to reduce unintended consequences and to most effectively promote human rights in specific country contexts?

The UNGPs gave us the human rights due diligence concept backed by a ‘smart mix’ of policy measures. That reflected Ruggie’s views on the current system of treaties and the political willingness of states to adopt a new treaty on BHR. Thus, with regard to the UNGPs, Ruggie did not put his faith in law – especially at a UN treaty on BHR – and considered progress on RBC required a multitude of non-legal measures. That explains the reluctance to interpret ambitiously the extraterritorial obligations of home states under international law, while still considering extraterritoriality as permissible. It also explains why he included trade, investment and development assistance in Pillar 1 as methods to promote RBC and human rights without ruling out conditionalities. Ruggie’s was a pragmatic approach informed by failed previous attempts in the UN to regulate MNEs, and a conceptual reading of world order in terms of ‘**polycentric governance**’ or ‘**multilevel governance**’. Laws are needed, but the best starting point is not a UN treaty that trickles down to national laws and judicial mechanisms.

37 Chambers, R., An Evaluation of Two Key Extraterritorial Techniques to Bring Human Rights Standards to Bear on Corporate Misconduct Jurisdictional dilemma raised/created by the use of the extraterritorial techniques, *Utrecht Law Review*, 14(2) (2018). <http://doi.org/10.18352/ulr.435>.

38 SREU Rithiya, *EU’s EBA withdrawal serves as Adrenaline for Cambodia-China FTA*, AVI Commentary (30.10.2020) <https://drive.google.com/file/d/1ib8AiumuiqsEDNz1kDRBTqmaSQZ0Jk7z/view>.

39 Ben Rutledge, *A Diplomatic Tightrope on Trade* (19 February 2020) [www.business-humanrights.org/en/blog/a-diplomatic-tightrope-on-trade](http://www.business-humanrights.org/en/blog/a-diplomatic-tightrope-on-trade).

40 *Everything But Arms (EBA): The Cambodian Case - An interview with Dr. Chanborey and Dr. Schm ücking* (2020) [www.kas.de/documents/264850/8651571/Interview.pdf/4b7c7c58-d3d9-4a35-14a3-b3ded6694c65?version=1.0&t=1590139340611](http://www.kas.de/documents/264850/8651571/Interview.pdf/4b7c7c58-d3d9-4a35-14a3-b3ded6694c65?version=1.0&t=1590139340611).



Contrary to this, the views of human rights lawyers revealed deep scepticism about the intellectual foundations of the UNGPs. As Clapham wrote, human rights lawyers would rather ‘put faith in the current **state centred system** than in a new, unknown, and necessarily diffuse accountability arrangement’. It is preferable to preserve the current state focus of international human rights law and augment it with a state duty to protect citizen participation rather than ‘move to law as a multiplicity of communicative processes, or accept arguments about world law, or multilevel governance...’<sup>41</sup> Thus, the UNGPs were based on an intellectual foundation that was not without controversy. The hard law–soft law distinction clarifies different entry points to kick start an international law-making process and the importance of not discarding either hard or soft law prematurely because of their ‘weaknesses’ or shortcomings. Extraterritorial laws and ‘conditionalities’ in economic instruments are part of this broad mix of policies in RBC.

## 5. Conclusions

**T**his chapter covered the variety of ways in which home states can and should act. The role of home states in the governance of MNEs and global value chains is indispensable. While the parent companies continue to be legally separated from their subsidiaries and contractors, nothing prevents home states from adopting RBC regulations on parent companies. As the chapter shows, there can be many types of regulations, such as reporting laws and due diligence laws. Indeed, there is an entire spectrum of legal options, from light-touch to more coercive regulations. The European countries are leading among industrialized countries with newly adopted due diligence laws that have extraterritorial effects. Cambodian businesses, like other exporting countries, will feel the effects of new due diligence laws from the EU, such as the CSDDD and the Deforestation Regulation, as European importers will seek information and assurance about human rights and sustainability impacts.

This chapter highlighted the regulatory turn in RBC. This radically changes the picture of CSR, RBC and BHR and offers a wealth of data to challenge myths around CSR. The EU developments around legislation on RBC, and the support from parts of the business community for such laws, put to rest the long-held ideas that corporate voluntarism (self-regulation) or transparency laws (light-touch regulation) are sufficient. Mandatory due diligence is still a European phenomenon for the time being and other industrialized countries are yet to pass such laws. Still, the EU’s experience with CSR (from 1990s until 2014), with light-touch regulation (2014-2020), and now, with CSDDD and many other laws related to sustainable finance (2019-), carry insights and models for other countries that still think RBC is philanthropy or corporate voluntary only. Such views of CSR are outdated and of limited practical impact based on the lessons learned in the EU. At the same time, this regulatory turn in RBC is not without its difficulties. The extraterritorial application of laws by home states poses dilemmas as it can become controversial from both legal and diplomatic perspectives, as do other trade and development instruments that introduce human rights ‘conditionalities’.

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41 Andrew Clapham, *Human Rights Obligations of Non-State Actors*, OUP (2006), pp. 25-27.



1. Olivier De Schutter et al., *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, Human Rights Quarterly 34 (2012) [www.icj.org/wp-content/uploads/2012/12/HRQMaastricht-Maastricht-Principles-on-ETO.pdf](http://www.icj.org/wp-content/uploads/2012/12/HRQMaastricht-Maastricht-Principles-on-ETO.pdf).
2. UNCTAD, *The Generalized System of Preferences: How much does it matter for developing countries?* (2023) [https://unctad.org/system/files/official-document/ditctsce2023d1\\_en.pdf](https://unctad.org/system/files/official-document/ditctsce2023d1_en.pdf).
3. BKP Economic Advisors, *Study in support of an impact assessment to prepare the review of GSP Regulation No 978/2012*, European Commission (2021) <https://op.europa.eu/en/publication-detail/-/publication/706f539c-f0db-11eb-a71c-01aa75ed71a1/language-en/format-PDF/source-221478841>.
4. OECD, *Public Policy for Responsible Business Conduct* (website) <https://mneguidelines.oecd.org/public-policy-for-responsible-business-conduct.htm#:~:text=It%20aims%20to%20bolster%20the,publicly%20launched%20in%20February%202023>.
5. BHRRC, *Corporate Legal Accountability* (website) [www.bhrrc.org/en/big-issues/corporate-legal-accountability/](http://www.bhrrc.org/en/big-issues/corporate-legal-accountability/).
6. Shift, *FROM POLICING TO PARTNERSHIP - Designing an EU Due Diligence Duty that Delivers Better Outcomes* (2023) <https://shiftproject.org/wp-content/uploads/2023/05/Policing-to-Partnership-May-2023.pdf>.

# **CHAPTER 13**

## **Industry Application: Garments and Textiles**



**Sophal Chea and Joana Maria Cassinerio**

In recent years, the demand for responsible business conduct (RBC) in Cambodia's garment, footwear and textile (GFT) sector has become more visible. This is partly due to the European Union's partial withdrawal of its Everything But Arms (EBA)<sup>1</sup> trade preference scheme in 2020, and the United States' Cambodia Democracy Act in 2021. To those familiar with Cambodia, these **sanctions by trading partners** did not come as a surprise, given that Cambodia continues to refrain from fully committing itself to respect and protect workers' rights, even though Western countries are the main markets of Cambodia's apparel products. Since the early 2010s, Cambodia has resorted to a more restrictive human and labour rights environment.

RBC in Cambodia's GFT sector is not new to Cambodia, but there are complexities specific to this industrial sector. The challenging issue that has impeded the successful implementation of RBC is known as a '**fast fashion**' phenomenon. 'Fast fashion' is a business model whereby international brands outsource production to countries in which apparel is produced almost immediately and at a very low price. Unfortunately, 'fast fashion' characterises a large portion of today's fashion world, posing a challenge for RBC. With the advent of this 'fast fashion' movement, supply factories and their workers in Cambodia and other producing countries are faced with insufficient time to produce items, resulting in forced overtime, low order volumes and factories' inability to make any or no significant profit on the production of such items.

'Fast fashion' thus deprives workers of the opportunity to earn higher wages<sup>2</sup>. Not only does this cause **negative effects** on the overall well-being of workers and their families, but it also affects other rights, including those of unions, in Cambodia. Due to the fast-paced nature of 'fast fashion', suppliers often see themselves forced to eliminate any delays in production and potential disruptions, or even minimal increases in costs as a result of collective bargaining (see Chapter 8). Many supply factories, therefore, regard the important work of labour unions as a threat; thus, they severely limit and threaten any union activity on the factory floor and beyond.

This **chapter** explain the industry and the 'fast fashion' and 'slow fashion' models of production, presents the international and national policy frameworks for this industrial sector, and offers cases and examples with regard to implementing responsible business conduct (RBC) practices in the Cambodian GFT sector.

## 2. Frameworks

**T**his section presents the essential concepts for understanding RBC in the Cambodian GFT sector and provides relevant frameworks, including international and national laws and policies, framework agreements, as well as multi-stakeholder initiatives. Introducing key concepts will help this chapter's readers better understand existing RBC contexts that are relevant to Cambodia's GFT sector.

### 2.1 Concepts and terminological clarifications

RBC is an essential part of how businesses operate nowadays and how businesses are expected to do business according to the laws and directives of countries and trade blocs. While many concepts are related to RBC (see Chapter 1), this chapter presents four key concepts pertinent to RBC in Cambodia's GFT sector.

Firstly, the comparison 'fast fashion' versus 'slow fashion' portrays two contrasting **business models** and philosophies that fundamentally change how a company does business and sources its products. 'Slow

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1 Read more on the EBA in Chapter 12.

2 Cassinerio, Joana M., *Assessing human rights in Cambodia's garment sector: A study of existing laws, workers' needs, and the reality of rights inside factories*, Doctoral Thesis, Mahidol University (2019).

fashion' is an 'approach to fashion that carefully considers the processes and resources required to make clothing, and focuses on timeless, high-quality designs over trend-driven pieces destined for the landfill after a few wears'<sup>3</sup>. While, for example, the European Union has recently adopted a strategy for sustainable and circular textiles to promote 'slow fashion' and address environmental impacts (see section 2.3 below), other parts of the world are still focused on 'fast fashion'.

Secondly, brands' **purchasing practices** have far-reaching effects on suppliers that face demands that are difficult to reconcile, i.e. to produce fast and cheaply, but also observe labour rights and demonstrate RBC. Acknowledging these problematic practices of brands is at the heart of RBC conversations about rebalancing the unequal power structures between brands and factories.

Irresponsible purchasing practices and unfair contracts are a major impediment to RBC in the GFT industry. There are multistakeholder initiatives such as Action, Collaboration, Transformation (ACT), which focuses, among other things, on restructuring purchasing practices. ACT states that:

purchasing practices are the way that global retailers and brands interact and do business with the manufacturers that supply their products ... ACT member brands have committed themselves across all sourcing countries to changing purchasing practices that impede progress towards living wages and good working conditions.<sup>4</sup>

Thirdly, important **Global Framework Agreements** (GFAs) are binding contracts between various employers and labours unions involved in international value chains. This is an application at the international level, between multinational enterprises and international union federations, of principles of collective bargaining and social dialogue developed at national level. The GFA have a crucial role in strengthening trade unions and safeguarding freedom of association, and, as the foundation for respecting other labour rights, facilitating social dialogue and achieving stable industrial relations. For example, GFAs concluded between FGT brands and IndustriALL, the international union federation, are a testament to the effectiveness of GFAs and their positive impact on RBC elements such as trade union rights.<sup>5</sup>

Lastly, as a GFT producer, Cambodia faces **market competition** from neighbouring countries, including Bangladesh, Myanmar and Vietnam. In such a crowded marketplace, competition can be based on the lowest cost of production, but also on other elements such as RBC, that protect the reputation of brands and respond to the ethical concerns of their consumers. Thus, the market creates both threats to and opportunities for factories. Cambodia's GFT factories, as well as governmental institutions shaping industrial policy in the Cambodian GFT sector, are well advised to consider and observe human rights due diligence standards developed in the UNGPs and thus remain among the top sought-after sourcing destinations for brands. This is a timely discussion, given new laws on RBC in Europe and the trade preferences under the EBA scheme (currently suspended) (see Chapter 12).

An RBC framework generally seek to ensure that 'companies understand their positive and negative impacts on society and the environment' and 'therefore, prevent, manage and mitigate any negative impact that they may cause, including within their global supply chain'.<sup>6</sup> An RBC policy framework can consist of both legally binding and non-binding documents (see Chapter 3).

The **frameworks** can be initiated by governments, private businesses, and civil society organisations (CSOs), including trade unions. Depending on who formulates the RBC framework, the content can differ

3 For further explanations of 'slow fashion', please visit: <https://goodonyou.eco/what-is-slow-fashion/>.

4 ACT on Living Wages, 'Purchasing Practices' (2023) <https://actonlivingwages.com/what-we-do/#purchasing-practices>.

5 IndustriALL, *Making use of global agreements in the garment industry* (2019) <https://www.industriall-union.org/making-use-of-global-agreements-in-the-garment-industry>.

6 European Commission, *Corporate social responsibility & Responsible business conduct* (2023) [https://single-market-economy.ec.europa.eu/industry/sustainability/corporate-social-responsibility-responsible-business-conduct\\_en](https://single-market-economy.ec.europa.eu/industry/sustainability/corporate-social-responsibility-responsible-business-conduct_en).

widely, but may aim to achieve common goals. For example, Cambodia's trade unions focused sternly on rights at the workplace, including women's rights, whereas other Cambodian CSOs would focus on other important issues. The 2013/14 protests in which Cambodian GFT workers revolted against their government in the streets of Phnom Penh resulted in an increase in Cambodia-related and GFT-focused research on human rights and labour rights. Many initiatives and publicised debates of foreign governments, including the US Cambodia Democracy Act 2021, directly resulted from RBC deficiencies in Cambodia's GFT sector at that time. Also, it led the Cambodian government to amend existing laws, e.g. the Labour Law 2016, the Law on Minimum Wage 2018, and those laws focusing on income and taxation. CSOs, such as the Cooperation Committee for Cambodia, created projects to address what RBC should look like and provided training and awareness-raising on RBC.

**Demands made by brands**, buyers and customers alike are often shaped by mobilization, reporting and awareness-raising by local and international labour unions, CSOs and UN programmes, including, but not limited to the Solidarity Center and also the ILO's Better Factories Cambodia project. Moreover, assessments and reporting undertaken by local unions have assisted in the awareness-raising of brand conduct in Cambodia's GFT sector. In addition, brands and buyers have felt the pressures placed upon them by a more conscious generation of consumers. Lastly, the local employers' association, the Textile, Apparel, Footwear & Travel Goods Association in Cambodia (TAFTAC),<sup>7</sup> which represents over 700 exporting factories,<sup>8</sup> has acknowledged the competitiveness of Cambodian garment manufacturers and the strength of Cambodia as a sourcing country for global ; thus, it has rebranded itself from a mere garment association to one that includes footwear and travel goods.

## 2.2 International frameworks in the GFT sector

Throughout this book, the readers will have already learned about relevant international human rights frameworks that play a role in how RBC is implemented. Chapter 3 discussed in detail the various UN conventions and their implementation mechanisms. With specific regard to the Cambodian GFT sector, some of the most important international human rights instruments are **ILO conventions**, in chronological order<sup>9</sup>:

- Labour Inspection Convention, 1947 (No. 81)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Employment Policy Convention, 1964 (No. 122)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
- Occupational Safety and Health Convention, 1981 (No. 155)
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- Violence and Harassment Convention, 2019 (No. 190)

The insufficient ratification (Cambodia ratified only about half of the above conventions) and especially the enforcement of these ILO core conventions pose a major obstacle to the full realisation of RBC in Cambodia, particularly in its GFT sector.

Also, the EU has addressed the need to legislate RBC through its Corporate Sustainability Due Diligence Directive (see Chapter 12), which will also impact the GFT sector and all countries exporting to the EU market. Specifically on sustainable fashion, in 2022, the EU adopted a **Strategy for sustainable and**

7 Formerly Garment Manufacturers Association in Cambodia (GMAC)

8 TAFTAC, *Our Members* (2023) <https://www.taftac-cambodia.org/our-members>.

9 Those conventions that have not yet been ratified by Cambodia are marked in *italics*. For more information on conventions, please see: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103055](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103055).

**circular textiles**, aiming to ‘... create a greener, more competitive sector that is more resistant to global shocks.’ This strategy will affect how brands work, including their purchasing practices, how factories produce garments and how they pay their workers. The EU’s vision is that, among others, textile products entering the EU market are ‘durable, repairable and recyclable, to a great extent made of recycled fibres, free of hazardous substances, produced in respect of social rights and the environment’, thereby advocating for the re-using and recycling of textiles, and demanding responsibility from producers for their whole value chain.<sup>10</sup> In a synopsis report on consultations in its Strategy for Sustainable and Circular Textiles, the European Commission reported that

stakeholders called for reviewing and harmonising policy and regulatory frameworks to ensure more sustainable production and use of textiles. There was broad recognition amongst stakeholders of the need to ensure fair working conditions and environmental protection both in the global value chains of new products imported to the EU and the downstream value chains of exported used textile. Some of the policy instruments that stakeholders underlined as important in the development of the Strategy include [...] the upcoming initiative on corporate sustainability due diligence.<sup>11</sup>

### 2.3 Cambodia’s national laws relevant to RBC in the GFT sector

While no specific national laws in Cambodia address RBC per se, many laws – both new and amended versions of existing ones – address the proper treatment of workers, especially and specifically in the GFT sector.

Beginning with national laws in chronological order of their formulation, the **Labour Law** in 1997 (amended 2018) addresses various obligations of Cambodia’s employers to adhere to their obligation to respect certain rights and standards. Although ‘responsible business conduct’ or similar terms are not used in any of the national laws, the Labour Law clearly states a broad variety of prohibited business practices, for example, discriminatory hiring practices (Article 12), forced labour (Article 15), child labour (Article 177) and unionisation rights of workers (Article 266). While Cambodia has shown positive development in the protection and promotion of some of these rights – for example, child labour has significantly decreased in the past two decades – some obligations of employers have not been realised.

This includes union-related labour rights, which is visible through ever-declining social space, union registration and union practice in the country. The **Law on Trade Union**<sup>12</sup> 2016 manifests an anti-union atmosphere as it demands the restructuring of the union registration processes and restricts the rights of unions without the most representative status and those that are politically independent or connected to the opposition parties of that time. Union complaints – labelled ‘legal’ by the Cambodian government – have drastically decreased, and overall, Cambodian unions report a more hostile environment with less accessibility to workers’ rights.

The Cambodian GFT industry is the only one that has a defined minimum wage, and has made significant progress with regards to a rise in minimum wages over the years: IN 1994, workers would receive USD 40 while the Cambodian government recently announced a new minimum wage of USD 204 for the year 2024<sup>13</sup>. The **Law on Minimum Wage** (2018) regulates wages of GFT labourers and addresses the right to work in dignity; it is unfortunately overshadowed by other legal limitations (lack of implementation of worker protections, widespread corruption, traditional views on capitalism) on ethical business in the country. For this reason, the work of CSOs, including NGOs and trade unions, has increasingly focused on awareness-raising campaigns to address current (negative) business conduct in the country, as well as offering insights into what actual conduct should look like.

10 European Commission, *EU strategy for sustainable and circular textiles* (2022) [https://environment.ec.europa.eu/strategy/textiles-strategy\\_en](https://environment.ec.europa.eu/strategy/textiles-strategy_en).

11 European Commission, Synopsis report - Online Public Consultation on the EU Strategy for Sustainable and Circular Textiles, *Plan Miljø*, (March 2022) <https://environment.ec.europa.eu/system/files/2022-03/Synopsis%20report%20textiles%20strategy.pdf>

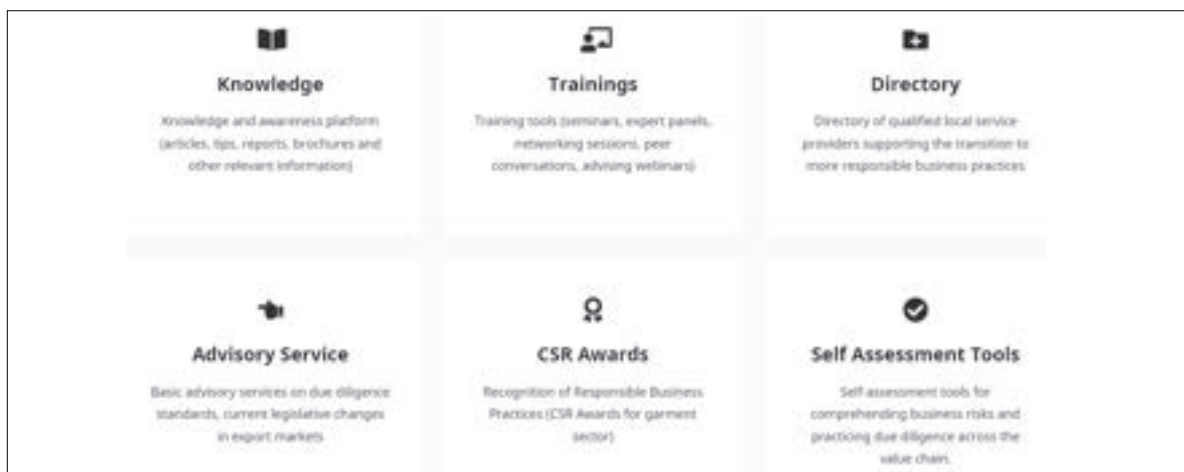
12 For further information on this law, read Chapters 4 and 8.

13 For further information on the new minimum wage 2024, read here: <https://www.dfdl.com/insights/legal-and-tax-updates/-cambodia-increase-in-minimum-wage-for-2024-for-the-garments-textiles-footwear-travel-products-and-bags-sectors/>.



The International Labour Organization (ILO) is an important RBC stakeholder in Cambodia. With its various labour conventions and laws, the ILO has been fundamental to the overall advancement of labour rights in Cambodia since the late 1990s. Furthermore, with its Decent Work Programme, the ILO works at factory level to safeguard various labour rights and standards, including industrial relations, fair employment, human resources, and more<sup>14</sup>. Actually, the Decent Work Programme was started in Cambodia in 2001, under the name **Better Factories Cambodia**, which is a programme that assesses, monitors and reports on workers' rights and the overall conditions of GFT workers on a regular basis.<sup>15</sup>

A recent initiative is the **Responsible Business Hub**, a project between Germany (the Deutsche Gesellschaft für Internationale Zusammenarbeit) and the European Chamber of Commerce, supported by the Textile, Apparel, Footwear and Travel Goods Association (TAFTAC) in Cambodia. The Responsible Business Hub was created in response to the recent mandatory supply chain due diligence requirements from Germany and the European Union.<sup>16</sup> In addition to offering services, such as training advisory services, the Hub is a knowledge platform that makes relevant information accessible. 'The RBH is a service help desk for local businesses. It provides tailor-made, free of charge information and advisory services around sustainability and due diligence risk management which will ultimately link the gap between the national and international level actors in the global supply chain of export sectors in Cambodia.' The Hub provides the following services:<sup>17</sup>



### 3. Applications

In the past three years, Cambodia's economy and labourers have suffered tremendously from the effects of the **COVID-19 pandemic**. Many brands and buyers cancelled orders or refused payments to protect their own businesses in times of declining demand. Many factories went bankrupt, and workers lost their jobs. Until today, millions of workers worldwide, including in Cambodia, are still waiting for wages. The Cambodian government, at that time, had grasped the severity of these effects and thus also the importance of RBC by stepping in to provide 40% of the monthly minimum income<sup>18</sup> to GFT workers. This taking-over of financial responsibility from the private sector into a public arena shows that such conduct not only involves businesses, but it also emphasises the need for government intervention and support.

14 International Labour Organization (ILO), *About the ILO in Cambodia* (2023)

[https://www.ilo.org/asia/countries/cambodia/WCMS\\_412167/lang--en/index.htm](https://www.ilo.org/asia/countries/cambodia/WCMS_412167/lang--en/index.htm).

15 Better Factories Cambodia, *Transparency Database* <https://betterfactories.org/transparency/en/>.

16 Responsible Business Hub, *Factsheet* <https://rbh-eurochamcambodia.com/wp-content/uploads/RBH-Flyer-18cmX24cm.pdf>.

17 Responsible Business Hub, *OUR SERVICES - What we are good at*, <https://rbh-eurochamcambodia.com/services/>.

18 Khy, Sovuthy, *Cambodia: Garment factories struggle to pay workers' wages due to lack of orders as Covid-19 pandemic causes more factory closures*, *Business & Human Rights Resource Centre* (07 April 2020) <https://www.business-humanrights.org/en/latest-news/cambodia-garment-factories-struggle-to-pay-workers-wages-due-to-lack-of-orders-as-covid-19-pandemic-causes-more-factory-closures/>.



When we look deeper into businesses and how they operate, one specific term has made its way to the business and human rights realm: (responsible) **purchasing practices**. Purchasing practices address the planning and cost calculation of brands, with the aim of maximising profit while decreasing any risks, given that many brands are produced in the least developed countries (often with theft, corruption, etc.). In recent years, civil society and academia have begun looking more closely into the effects of such purchasing practices on GFT factories and workers; a major component of brands' purchasing practices is the production cost paid to factories. Even before COVID-19, it seemed widely accepted that businesses – driven by capitalist structures and market competition – were in a strong position to dictate prices to their producing partners. The unequal power balance between brands and factories, and the growing awareness of irresponsible purchasing practices, provides an unprecedented opportunity to reconsider how brands do business with garment factories.

To illustrate the application of brands' approaches to due diligence and the Human Rights Due Diligence (HRDD) tools, it is helpful to look at the **Better Buying Purchasing Practices Index**.<sup>19</sup> It is an important platform that assesses businesses on various factors, including payment terms, sustainable partnerships, and cost negotiations; it is interested in how these factors suppress healthy supplier relationships and hinder the advancement of workers' rights. Its findings showcase how individual companies rank in the various categories and steps undertaken, if any, and responsibilities, claimed by global brands, to change how human, labour and environmental duties are fulfilled.<sup>20</sup>

Moreover, other tools, such as human rights benchmarks and scorecards created by the **World Benchmarking Alliance** (WBA), help us understand how brands implement HRDD, as defined in the UNGPs. For example, three apparel companies that scored the highest among all WBA-listed apparel companies in 2019 were Adidas (83.3 of 100 points), Marks & Spencer Group (72.6 of 100 points), and Inditex (65.6 of 100 points).<sup>21</sup> Updated data on the garment sector will be published in November 2023, after this textbook is sent to be printed.

Lastly, **Better Factories Cambodia** (BFC) is playing a vital role in the assessments of factories in Cambodia and the addressing of workplace relations and related challenges. The aim of BFC is 'supporting the competitiveness of the Cambodian garment industry and helping to build the reputation of Cambodia as an ethical sourcing destination.'<sup>22</sup> BFC visits factories, conducts regular interviews (so-called Impact Assessments), and provides training to factory staff and workers to decrease disputes at work. An important feature of this initiative is the high level of transparency as BFC discloses factory-specific compliance information. This is done due to the following objectives:

- 1 Build the Cambodian garment industry's reputation for decent working conditions and keep pace with competing industries where disclosure of ILO factory compliance data will soon be the norm;
- 2 Bolster enforcement efforts by the Royal Government of Cambodia;
- 3 Spur significant changes in chronically non-compliant factories; and
- 4 Accelerate improvements in working conditions on critical issues across the industry.<sup>23</sup>

Positive examples of RBC efforts in Cambodia come from businesses such as **H&M**, an international brand and multinational enterprise that purchases GFT products from Cambodia. In a direct response to

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19 Better Buying Institute, *Better Buying Purchasing Practices Index*  
<https://betterbuying.org/research-tools/better-buying-purchasing-practices-index/>.

20 Better Buying Institute, <https://betterbuying.org/>.

21 World Benchmarking Alliance, *CHRB scorecards from 2017-2019* (2019)  
<https://www.worldbenchmarkingalliance.org/chrb-scorecards-from-2017-2019/>.

22 For further information on the Better Factories Cambodia programmes, visit: <https://betterwork.org/cambodia/our-services/#section>.

23 Better Factories Cambodia, *Transparency Database* <https://betterfactories.org/transparency/en/>.

global criticism of the company concerning working conditions and underpaid workers in developing countries, H&M analysed and sought to transform its approach to worker pay. It started with a commitment and a Roadmap to a Fair Living Wage in 2013, and showed that the company took allegations of human and labour rights abuses seriously. It also implemented decent work programmes in Cambodia's supplying factories to ensure the upholding and respecting of workers' rights. The H&M approach and ambitions to achieve living wages in its factories attracted worldwide attention. It also revealed complexities and generated controversies. After 5 years since its launch, H&M's Roadmap to a Fair Living Wages was evaluated by the ETI,<sup>24</sup> and H&M shared its lessons learned.<sup>25</sup> H&M has started a meaningful RBC effort in the way it does business in Cambodia's GFT sector, as is also visible through its Code of Conduct<sup>26</sup> and their Transparency and Supply Chain Policies<sup>27</sup>. H&M's practice aims to align with the EU's Textiles Strategy, for which it joined the European Commission's Green Consumption Pledge Initiative for annual transparency reporting<sup>28</sup>. In the Corporate Human Rights Benchmark 2019 Company Score-sheet<sup>29</sup>, H&M scored 50.6 of 100 points (many points behind Adidas, Marks & Spencer Group, and Inditex). While the company was on track to reaching its goal on human rights practices (58.5%) and embedding respect and human rights due diligence (68%), it failed in remedies and grievance mechanisms (14%). It nonetheless can be said that H&M has started a meaningful transformation and is well on its way to embracing RBC in the way it does business in Cambodia's GFT sector, as also visible through its Code of Conduct<sup>30</sup> and their Transparency and Supply Chain Policies<sup>31</sup>. H&M's practice aims to align with the EU's Textiles Strategy, for which it joined the European Commission's Green Consumption Pledge Initiative for annual transparency reporting<sup>32</sup>.

When discussing RBC, it is also important to note the meaningful initiatives in other countries that have considerable implications for Cambodia's GFT. These include the **Bangladesh Accord** and the Pakistan Accord. The Bangladesh Accord came into being as a result of the devastating collapse of the Rana Plaza Building in Dhaka, Bangladesh, on 24 April 2013, killing 1,134 garment workers. One month later, mostly European brands and retailers signed a binding agreement with trade unions, called the Accord on Fire and Building Safety in Bangladesh (the Accord). The idea of the Accord was to run for five years and to train and inspect factories producing for brands which had signed the Accord. After a transition period, the RMG Sustainability Council succeeded the Bangladesh Accord and now continues as a national initiative that is subject to Bangladeshi laws and regulations.<sup>33</sup> By 2020, the Accord had successfully conducted more than 38,000 inspections in 1,638 factories in Bangladesh, resulting in improving the workplace safety of hundreds of thousands of garment workers<sup>34</sup>. What made the Accord so innovative was that it was a legally binding, multistakeholder initiative that empowered workers, and their representatives and unions, to address safety issues in the workplace. Moreover, a common understanding of the need to change the circumstances under which Bangladesh clothes are made for the rest of the world was commonly agreed upon.

24 H&M, *The Fair Living Wage Strategy: Key Impacts and Learnings* (2018)

<https://hmgroup.com/sustainability/fair-and-equal/wages/key-impacts-and-learnings/>

25 Ethical Trading Initiative, *Review of H&M group's Roadmap to Fair Living Wage* (2018)

[www.ethicaltrade.org/sites/default/files/shared\\_resources/ETI-HM%20FLWR%20Review\\_0.pdf](http://www.ethicaltrade.org/sites/default/files/shared_resources/ETI-HM%20FLWR%20Review_0.pdf)

26 To read the H&M Code of Conduct, please see here: [https://about.hm.com/content/dam/hm/about/documents/en/CSR/codeofconduct/Code%20of%20Conduct\\_en.pdf](https://about.hm.com/content/dam/hm/about/documents/en/CSR/codeofconduct/Code%20of%20Conduct_en.pdf) (see page 6).

27 Further information are here: <https://hmgroup.com/sustainability/leading-the-change/transparency/supply-chain/>

28 Read further: <https://wwd.com/sustainability/business/hm-textiles-fashion-global-change-awards-eu-1235150797/#.>

29 For more information on this benchmark, please see:

<https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/>.

30 H&M, Code of Conduct,

[https://about.hm.com/content/dam/hm/about/documents/en/CSR/codeofconduct/Code%20of%20Conduct\\_en.pdf](https://about.hm.com/content/dam/hm/about/documents/en/CSR/codeofconduct/Code%20of%20Conduct_en.pdf)

31 <https://hmgroup.com/sustainability/leading-the-change/transparency/supply-chain>.

32 Read further: <https://wwd.com/sustainability/business/hm-textiles-fashion-global-change-awards-eu-1235150797/#.>

33 RMG Sustainability Council (RSC) <https://rsc-bd.org/en>.

34 Accord on Fire and Building Safety in Bangladesh, Status Inspections Program (7 April 2021)

<https://www.workersrights.org/wp-content/uploads/2021/04/Unfinished-Business-April-2021.pdf>.

Based on lessons learned from the Accord in Bangladesh for other garment-producing countries, the International Accord for Health and Safety in the Textile and Garment Industry was launched on 1 September 2021.<sup>35</sup> Based on pronounced interest from various stakeholders in Pakistan, a new accord came into effect in 2023, called the Pakistan Accord on Health & Safety in the Textile & Garment Industry (i.e. the **Pakistan Accord**). The Pakistan Accord set out the same mission as the Bangladesh Accord: training and awareness raising on safety, independent factory inspections, an independent worker complaints mechanism as a source of worker remedy, and factory transparency<sup>36</sup>. The emergence of these three accords – the Bangladesh Accord, the International Accord, and the Pakistan Accord – are proof of the concept that, where stakeholders come together and identify a challenge, there can indeed be improvements even though the ‘fast fashion’ model persists.

The question remains not only how sustainable these programmes, strategies and initiatives are in the long run; more importantly, what the stakeholder buy-in is, including brands and buyers. For example, one challenge facing the realisation of workers’ rights is the requirement of an annual rise in workers’ wages; another is the costly programmes, including training, and expensive infrastructure and operational upgrades and repositioning to address brands and buyers’ demands with regards to ethical business. Albeit not all countries might agree on the necessity to regulate consumption patterns<sup>37</sup> for the sake of protecting workers’ rights, the growing concern that labour rights must be respected, upheld and protected is undeniable.

This is also visible through the rise of lawsuits from trade unions. The 2023 case of G-Star Raw, in which the company was ordered to pay damages to its long-term supplier in Vietnam, further manifested that brands are responsible for their supply chain<sup>38</sup>. In times when those who have become the victims of irresponsible business practices are still unlikely to receive judicial remedies, the **case of G-Star Raw** is a potential game-changer. An Amsterdam court sanctioned the Dutch fashion brand G-Star Raw for failing to recognise responsibility for one of its main Vietnamese suppliers during COVID-19. In the pursuit of increased brand responsibility for their suppliers, this is the first time a court has legally acknowledged that suppliers ‘whose rights have been infringed by European brands can claim financial compensation for losses suffered “during the pandemic”’.<sup>39</sup> Such litigation is part of a growing trend for courts worldwide to hold businesses accountable for breaches of human and labour rights, and environmental destruction (see Chapter 12).

While **Cambodia’s GFT sector** still awaits such cases, it shows that RBC is making its way through the global business realm. While it is not realistic to expect the Cambodian Courts to accept and trial lawsuits of workers and their representatives against brands, it is not too unrealistic to witness foreign courts, most likely European ones, to address such cases in their courts and act in the interest of labourers. As long as Cambodian decision-makers prioritise international brands sourcing from its GFT sector above everything else, Cambodian suppliers will do their best to keep up with their regional competitors, including Vietnam<sup>40</sup>. However, international developments in RBC and new regulations in industrialised

35 Accord on Fire and Building Safety in Bangladesh, Agreement on new, expanded Accord. 25 August 2021.

<https://bangladeshaccord.org/updates/2021/08/25/brands-and-unions-reach-agreement-on-new-expanded-worker-safety-pact>.

36 International Accord for Health and Safety in the Textile and Garment Industry, *New workplace safety program in Pakistan* (2022) <https://internationalaccord.org/countries/pakistan/>.

37 For example, ‘fast fashion’ is supposed to be eliminated and replaced by ‘slow (sustainable) fashion’ under the European Unions’ textile strategy. Meanwhile, the United States remains the largest market for ‘fast fashion’.

38 Ruffenach, Emma, *G-Star Raw ordered to pay damages to Vietnamese supplier*. *Fashion Network* (14 April 2023) <https://www.fashionnetwork.com/news/G-star-raw-ordered-to-pay-damages-to-vietnamese-supplier,1506161.html>.

39 Ruffenach, Emma, *G-Star Raw ordered to pay damages to Vietnamese supplier*. *Fashion Network*, (14 April 2023) <https://www.fashionnetwork.com/news/G-star-raw-ordered-to-pay-damages-to-vietnamese-supplier,1506161.html>.

40 Trade numbers for Cambodian and Vietnamese textile exports to various world regions can be found here: [https://wits.worldbank.org/CountryProfile/en/Country/KHM/-Year/2021/TradeFlow/Export/Partner/by-country/Product/50-63\\_TextCloth/Show/Partner%20Name;XPRT-TRD-VL;XPRT-PRDCT-SHR;/Sort/XPRT-TRD-VL/Chart/top5](https://wits.worldbank.org/CountryProfile/en/Country/KHM/-Year/2021/TradeFlow/Export/Partner/by-country/Product/50-63_TextCloth/Show/Partner%20Name;XPRT-TRD-VL;XPRT-PRDCT-SHR;/Sort/XPRT-TRD-VL/Chart/top5) and [https://wits.worldbank.org/CountryProfile/en/Country/VNM/-Year/2021/TradeFlow/Export/Partner/all/Product/50-63\\_TextCloth](https://wits.worldbank.org/CountryProfile/en/Country/VNM/-Year/2021/TradeFlow/Export/Partner/all/Product/50-63_TextCloth).



states, will have impacts in Cambodia. Indeed, in Cambodia, law firms are playing a role in explaining RBC as an important new 'facet' of doing business in the country:

Global supply chains are growing more significant, and international trade agreements and legislation, including sustainability and social and environmental due diligence, are evolving. These kinds of rules are already bringing about a new dynamic at the corporate offices of multinational brands and retailers, who are as a result also boosting their interaction with suppliers in the Asian production nations. Future competitiveness will heavily depend on how well-prepared the export industries of Cambodia are for these needs.<sup>41</sup>

## 4. Further discussion

In any given market-driven economy, the ability to **compete** is a natural part of doing business. In the case of Cambodia's GFT sector, this ability to compete poses a dilemma. Brands sourcing from the country continue to place demands and put contractual pressure on producing factories to be able to secure low prices and fast deliveries. That perpetuates the 'fast fashion' business model. On the other hand, some Western governments, such as the European ones, promote and apply pressure for better pay and working conditions for Cambodian workers, including respect for the rights of labour unions. It remains to be seen if these governments are willing to support, including financially and by bearing other costs, the suppliers and exporting countries that struggle to meet these new requirements for RBC.

The Cambodian government has the challenging task of finding a **long-term sustainable path** that preserves the competitiveness of the Cambodian GFT industry without sacrificing labour standards and human rights. This task is not easy, especially given the trust that was lost during the COVID-19 pandemic, when (Western) brands refused to pay their Cambodian factories, leading to massive layoffs and factory closures. It also poses the important question of how the Cambodian government would deal with such incidents and whether it could and should hold these international businesses accountable. During the pandemic, the Cambodian government stepped in and paid cash assistance to the workers. Besides that, there are a number of ILO conventions that remain to be ratified (Labour Inspection Convention, Employment Policy Convention, Tripartite Consultation Convention, Occupational Safety and Health Convention, and Promotional Framework for Occupational Safety and Health Convention).

## 5. Conclusions

There are complexities to be acknowledged in applying RBC in Cambodia's garment sector. The model of fast fashion has, in a way, benefitted Cambodia's GFT industry business model – but not its workers – as it has helped manifest Cambodia on a global list of preferred production destinations even though the country offers a higher minimum wage compared to Bangladesh and Vietnam. The growth of the GFT industry has attracted the Cambodian population, especially women from rural areas, to find jobs in the sector in cities such as Phnom Penh.

There are many international human rights frameworks and RBC initiatives that have impacts in Cambodia. Such important international and national initiatives will serve as important pressure points for the Cambodian government, factories and brands alike to address much-needed revision of how garments and other goods are produced in Cambodia. The country's laws will have to adjust to a changing environment. Such local laws address employers, namely factories (manufacturers, suppliers),

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41 Sok Siphana & Associates, *Launch of Cambodia's First Responsible Business Hub* (2022)  
<https://www.soksiphana.com/resources/events/launch-of-cambodias-first-responsible-business-hub/>.

rather than the responsibilities carried by international brands and buyers. Cambodia still has not ratified some conventions that would assist the country in protecting labour rights and thus facilitate RBC. Certain rights covered by RBC, specifically trade union-related rights, are not respected in Cambodia's GFT sector as prescribed by international human and labour rights conventions and laws.

Brands' purchasing practices can be either a major obstacle or the gateway to realising the UNGPs in Cambodia's GFT sector. These practices are the core of brands' business models and require open and truthful interaction with their sourcing partners. If businesses and factories can find a way to overcome this imbalance, purchasing practices could lead to a fairer way of doing business with Cambodia's GFT sector.

## 6. Further readings

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2. Ong, S., *Asian garment makers call for more help from brands to adapt as Europe calls time on fast fashion*, Reuters (23 August 2023) <https://www.reuters.com/sustainability/society-equity/asian-garment-makers-call-more-help-brands-adapt-europe-calls-time-fast-fashion-2023-08-23/>.
3. Oxfam, *Responsible Business Practices: Cambodia's Changing Business Landscape* (2023) <https://cambodia.oxfam.org/latest/stories/responsible-business-practices-cambodias-changing-business-landscape>.
4. Sreysros Keo, *Information Note #7: UN Cambodia's Support to Garment Workers in COVID-19 Response*, United Nations Cambodia, (15 June 2021) <https://cambodia.un.org/en/131493-information-note-7-un-cambodia%E2%80%99s-support-garment-workers-covid-19-response>.
5. U.S. Department of State, *2021 Investment Climate Statements: Cambodia, Chapter 8, Responsible Business Conduct* (2021) <https://www.state.gov/reports/2021-investment-climate-statements/cambodia/>.



# **CHAPTER 14**

## **Industry Application: Tourism**



**Sokphea Young<sup>1</sup>**

**T**he significant **contribution of tourism** to development worldwide became more apparent when the COVID-19 pandemic hit the world. Due to the pandemic, the loss of the tourism industry's economic contribution has hurt almost all countries, seeing its contribution to Gross Domestic Product (GDP) decline from 25.9% in 2019 to 9.0% in 2020<sup>2</sup>. Beyond its economic contribution, the tourism industry has both positively and negatively impacted nature and biodiversity conservation. Positively, the sector has contributed to conservation through ecotourism and nature-based tourism, with the desire for nature changing the profile of tourism more than ever, driven by the COVID-19 experience. Tourism seasonality might no longer be relevant as people desire more leisure and soul-connecting journeys. At the present time, the global ageing population has been and will be driving the tourism industry.

In Cambodia, tourism, contributing to one-quarter of the national GDP, has experienced product diversification, which is discussed in national policies as 'travel beyond the temple'. Cambodian young people are travelling more often than ever before, constituting a new trend with the aid of social media sharing and 'nature-based destination marketing'. A desire for an eco-friendlier tourism experience is increasing due to the awareness programs developed by the government, non-profit organizations and individual information-sharing among travellers. However, **adverse impacts** from the tourism and hospitality industry are also evident. These include commercialization and exploitation of natural resources, change in the local indigenous population, skyrocketing real estate prices and transformation of the local landscape, labour and human rights abuse, and other issues resulting from irresponsible tourist businesses and inappropriate tourist behaviour at tourism sites.

These harmful tourism practices in Cambodia and worldwide call for RBC standards and actions tailored to the tourism industry. In this **chapter**, we first examine the main concepts and frameworks for responsible tourism and human rights, and explore some case studies to illustrate the problems and solutions.

## 2. Frameworks

**T**he concepts of responsible tourism and sustainable tourism overlap, and the two terms are used interchangeably, but the latter tends to dominate the former. While the term 'sustainable tourism' is used more often, it is driven mainly by the sustainable development approach, but tourism' is used more often, it is driven mainly by the sustainable development approach, but and freedom of association.<sup>3</sup> This chapter considers human rights impacts and measures as indicators for responsible and sustainable tourism.

### 2.1 Responsible and sustainable tourism

The term '**responsible tourism**' was first coined and defined in the Cape Town Declaration<sup>4</sup> in 2002 alongside the World Summit on Sustainable Tourism. It is defined as 'making better places for people to live in and better places for people to visit'.<sup>5</sup> The definition entails the need to improve the lives of people around the tourist sites and destinations, which requires necessary participation and responsibility from several actors, such as operators, hotels, local businesses, governments, residents, and tourists. This definition of sustainable tourism also encompasses the responsibility of respect for, and protection and

1 The chapter benefited from research and drafting from Veasna Ky. (Chapter 14)

2 United Nations' World Tourism Organisation (UNWTO), *Tourism and covid-19- unprecedented economic impacts* <https://www.unwto.org/tourism-and-covid-19-unprecedented-economic-impacts>.

3 See George, B. P., & Varghese, V., Human rights in tourism: Conceptualization and stakeholder perspectives, *EJBO-Electronic Journal of Business Ethics and Organization Studies* (2007).

4 Cape Town Declaration on Responsible Tourism <https://responsibletourismpartnership.org/cape-town-declaration-on-responsible-tourism/>.

5 Goodwin, H. *Taking responsibility for tourism*, Oxford, Goodfellow. (2011)

promotion of human rights. Achieving sustainability of tourism businesses at the expense of the rights of communities, especially the right to a healthy environment, is a highly important area in government policy and planning decisions (see Chapter 19 on environmental rights).

‘Sustainable tourism’ is explained by the UNWTO in a similar manner to sustainable development, which balances economic, environmental and social conditions; it is tourism that:

- ‘makes optimal use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes and helping to conserve natural heritage and biodiversity;
- respects the socio-cultural authenticity of host communities, conserves their built and living cultural heritage and traditional values, and contributes to inter-cultural understanding and tolerance; and,
- ensures viable, long-term economic operations, providing socio-economic benefits to all distributed stakeholders, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation.’<sup>6</sup>

Tourism affects many aspects of **human rights**, such as the right to information and participation in decision-making processes, to protection against discrimination, to housing, food, water, health and education, to work with dignity, to join trade unions, to protection against forced labour and to privacy. This is recognised by the tourism industry, which also indicates that the human rights of potentially high-risk groups must be protected, especially migrant workers, children, women, indigenous people, and people with disabilities.<sup>7</sup> As shown by the eco-tourism cases presented below, tourism positively impacts human rights, such as rights to an ecological and healthy environment, rights to adequate living conditions and livelihoods of the host communities (through income generation). The numerous impacts on human rights, society and the environment have been rigorously explained in an impact assessment of the tourism industry in Myanmar.<sup>8</sup>

‘Greenwashing’ and ‘whitewashing’ occur when a business makes false claims or half-truths regarding the environmental and social impacts of their product/service and how they discharge their corporate responsibilities. One common marketing slogan of many hoteliers is the ‘eco-resort/hotel’, but are these truly eco-friendly or ecological? The major water consumption in the hospitality industry is for the pool, followed by the golf course. Many luxury eco-resorts use the abundant water source near the river or sea to build large swimming pools. Refilling and maintaining these pools consumes a high rate of energy. Responsible tourism requires operators, hoteliers, governments, local people, and tourists to be accountable and responsible for their actions.

## 2.2 Legal and policy frameworks

### UNWTO Global Code of Ethics

The United Nations World Tourism Organisation (UNWTO) developed a global code of ethics for the tourism industry for actors involved in the business. Among the Code’s 10 articles, which cover the economic, social, cultural and environmental components of travel and tourism, the following articles are essential prescriptions of human rights vis-a-vis tourism:

- Tourism’s contribution to mutual understanding and respect between peoples and societies

<sup>6</sup> United Nations World Tourism Organisation (UNWTO), *Sustainable development* <https://www.unwto.org/sustainable-development>.

<sup>7</sup> The Rountable’s commitment to respect human rights in tourism <https://www.humanrights-in-tourism.net/our-commitment>.

<sup>8</sup> MCRB, DIHR and IHRB, *Myanmar tourism sector wide impact assessment* (2015)

[www.humanrights.dk/publications/sector-wide-impact-assessment-myanmars-tourism-sector](http://www.humanrights.dk/publications/sector-wide-impact-assessment-myanmars-tourism-sector).

- Right to tourism
- Liberty of tourist movements
- Rights of the workers and entrepreneurs in the tourism industry<sup>9</sup>

### **ASEAN sustainable tourism framework**

In the context of ASEAN, the ministers of tourism from the member countries adopted the notion of responsible tourism and sustainable tourism in 2023. As part of **ASEAN Economic Community (AEC) Blueprint 2025**, ASEAN has the vision to make Southeast Asia a 'quality tourism destination' that offers a unique and diverse ASEAN experience and is committed to sustainable tourism development. The ASEAN Tourism Ministers have endorsed the ASEAN Framework on Sustainable Tourism Development in the Post-COVID-19 Era to realise the vision.

**ASEAN's vision of sustainable tourism** focuses on: i) sustainable economic growth; ii) social inclusiveness, employment, and poverty reduction; iii) resource efficiency, environmental protection, and climate change; iv) cultural values, diversity, and heritage; v) and, mutual understanding and peace, health, safety, and security<sup>10</sup>. These strategic priorities provide guiding principles that each member state needs to adopt and contextualise to ensure the tourism industry contributes to sustainable economic growth and is responsible and accountable for the adverse impacts that the touristic activities of businesses or individuals may induce.

### **Cambodia's regulatory framework**

Cambodia's regulatory framework for protecting and respecting human rights is enshrined by its constitution as the overarching legal framework. Apart from the constitution, Cambodia's commitment to respect human rights in the tourism sector is laid out in the **Law on Tourism**<sup>11</sup>. The law prescribes the authority of the Ministry of Tourism and competent authorities to tackle human rights issues in the tourism industry.

Article 27 of the Law states the public authorities shall have the following duties: '... Refrain from differential treatment or discrimination based on nationality ... Take the necessary measures to protect the safety and security of the tourists and their belongings and, in all circumstances, ensure the respect of their fundamental human rights.' Article 27 indicates the fundamental human rights of tourists are to be respected, not only by the public authorities but also by the businesses.

Article 48 of the Law prescribes that all tourism business operators and their agents, employees and contractors shall comply with the following obligations:

- Comply with this Law and regulations (Prakas) in force on standards, codes of conduct, codes of ethics and conditions of tourism licence;
- Instantly complain or report to the nearest Tourist Police, authorities in-competence or tourist authority, in case of having known or suspected the offences of drug trafficking and usage, human trafficking and confinement, child trafficking and sexual exploitation/prostitution, dissemination of pornographic pictures and materials or other criminal offences;
- Abide by the UNWTO Global Code of Ethics so far as it concerns the conduct and responsibilities of tourism businesses, agents, employees and contractors.

<sup>9</sup> UNWTO *Global Code of Ethics for Tourism*, <https://www.unwto.org/global-code-of-ethics-for-tourism>.

<sup>10</sup> ASEAN Framework on Sustainable Tourism Development

[https://asean.org/wp-content/uploads/2023/01/ASEAN-Framework-on-Sustainable-Tourism-Development\\_compressed.pdf](https://asean.org/wp-content/uploads/2023/01/ASEAN-Framework-on-Sustainable-Tourism-Development_compressed.pdf).

<sup>11</sup> Cambodia, Law on Tourism <https://www.tourismcambodia.org/mot/cambodia-tourism-law>.

## Roundtable Human Rights in Tourism

Human rights impacts have become increasingly recognized and important in many industries with the adoption of the UNGPs in 2011 (Chapters 1 and 3). The tourist industry is no exception and has responded with an **international multi-stakeholder initiative**, the Roundtable Human Rights in Tourism. It supports tourist businesses to respect human rights according to the UNGP by preventing, addressing, and remedying human rights abuses committed along the value chain in their tourist business operations, as the UNGPs prescribes.

### 3. Applications

In Cambodia, the impacts of tourism on human rights and the responsibility thereof of the industry can be drawn upon in cases such as that of child trafficking and sex tourism, large-scale tourist development zone (Sihanouk Ville) and other cases of resort development, and complex hospitality and entertainment. At the same time, there are cases where projects or businesses have striven to ensure socially and environmentally responsible practices. Eco-tourism projects and businesses, and or community-based eco-tourism have been the leading examples of responsible business, as some contribute to protecting the natural environment, respecting local culture, and contributing to income generation, as well as rights to livelihoods and adequate living conditions for the host communities and workers.

#### Child trafficking and sex tourism

The heavy influx has turned tourism into Cambodia's fastest-growing industry. Yet the disparity of economic development in the country has attracted many of the country's poor adults and children, including orphans<sup>12</sup>, looking to earn money. Due to a lack of skills and education, they are easily exploited. There is increasing evidence that **children and young women** (aged 18–24) disproportionately continue to be trafficked into labour and sexual exploitation in the tourism areas, placing the country as a destination for 'sex tourists'.<sup>13</sup> There is also considerable labour exploitation in the tourism industry, primarily in smaller guesthouses, restaurants and bars, as well as that associated with begging and street hawking.

Street-based **child sexual exploitation** is generally facilitated in person by the offender, who approaches children directly or through intermediaries in public places (streets, beaches, etc.). Foreign tourists or expatriates favour this type of exploitation, and it mostly affects boys. In 2015, a local NGO estimated that around 1,200 to 1,500 children were living on the street with no relation to their families, increasing their vulnerability to sexual exploitation in prostitution,<sup>14</sup> and 15,000 to 20,000 children were working on the street but returned to their families in the evening.

Since 2000, the Ministry of Tourism has implemented several initiatives in the area of **child-safe tourism** in Cambodia – perhaps most notably the Child-Safe Tourism Programme, in collaboration with World Vision and the Child-Wise Tourism Project. However, these initiatives primarily focused on the sexual exploitation of children. Realizing that children are also frequently trafficked and exploited for labour purposes in the tourism industry, the Ministry of Tourism in 2005 embarked on discussions with the International Labour Organization's Mekong Sub-regional Project to Combat Trafficking in Children and Women to expand its child-safe tourism campaign<sup>15</sup>. While the data on child trafficking and sex tourism is unavailable, Cambodia's effort to fight child-safe tourism is welcomed and has impressed international stakeholders working on child trafficking and sex tourism.

12 Bingle, M., *The Link between Tourism and Child Abuse in Cambodian 'Orphanages'*, Hum. Rts. Brief, 23, 4 (2020).

13 Thomas, F., & Mathews, L., *Who are the child sex tourists in Cambodia?*. Melbourne: Child Wise.

14 ECPAT, *Cambodia: A report on the scale, scope and context of the sexual exploitation of children* (2006) <https://ecpat.org/wp-content/uploads/2021/08/ECPAT-Country-Overview-Cambodia-2.pdf>.

15 Booking the tourism sector for a seat in anti-trafficking reports [https://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_099865.pdf](https://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_099865.pdf).

## Sihanouk Ville

Beach front and coastal areas of Cambodia have developed and transformed economically, culturally, and politically. Sihanouk Ville became the first destination for Chinese migrants, who are considered tourists and long-term dwellers in the province. Authors observed that the entertainment services, such as hotels and casinos, have grown exponentially, attracting billions of USD of investment in infrastructure (such as roads, highways, and bridges) and accommodation buildings.

While this is good for the provincial economy, the impact on the province has been complex due to **cultural clashes** and order issues caused by the influx of foreign migrants (especially from China)<sup>16</sup>. According to the US Department of State, experts noted widespread negative attitudes toward nationals of the People's Republic of China (PRC), partly due to links with criminal activity, particularly in Sihanoukville city. Newspapers reported stories of crimes committed by PRC residents and business owners (mostly against fellow PRC nationals), including murder, shootings, armed robbery, gang violence, kidnapping, trafficking in persons, extortion, counterfeiting, pornography, drunk driving, and drug possession<sup>17</sup>. These have caused adverse impacts on the rights of host communities to safety, security and health, but the influence of Chinese migrants on the local economy is prominent<sup>18</sup>. The province's economic development policy has traded off the rights of tourists, migrants, and the host communities.

## Naga Casino and Hotel

Awarded a casino license in 1994, NagaWorld is a huge integrated hotel-casino entertainment complex in Cambodia<sup>19</sup>. NagaWorld has garnered many awards, including but not limited to Cambodia's prime minister's eco-tourism business award for 2019-2020, the Asia Responsible Business Award (2019) and the ASEAN Green Hotel Award Standard 2016-2018.

However, in April 2021, NagaWorld announced the layoff of 1,329 people. Even though it declared a loss in 2021, the company earned a net profit of about US\$50 to US\$100 million per year from 2022 to 2023<sup>20</sup>. The **mass layoff** was alleged to undermine the right to freedom of association, incomplete payments and unfair dismissals. The Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU), representing the casino workers, claims that this is an attempt to reduce union influence at the casino and does not acknowledge the contribution of these workers to the company's growth. The union and workers also highlighted the unfairness of making workers redundant during the pandemic without adequate financial compensation<sup>21</sup>. To resist the violation of workers' rights and laws in the country, the dismissed workers took to the streets.<sup>22</sup> After more than a year of striking, the leaders of the independent union at NagaWorld were arrested and convicted for sustaining protest activities that the Cambodian government labelled as "incitement; they received up to multiple-year sentences."<sup>23</sup>

16 Young, Sokphea, "China's belt and road initiative: Patron-client and capture in Cambodia." *The Chinese Journal of Comparative Law*, 8.2 (2020): 414-434.

17 US Department of State's Cambodia Human Rights Report (2022) <https://kh.usembassy.gov/wp-content/uploads/sites/80/2022-Country-Reports-on-Human-Rights-Practices-Cambodia%E2%80%8B.pdf>.

18 Po, Sovinda, and Kimkong Heng, "Assessing the impacts of Chinese investments in Cambodia: the case of Preah Sihanoukville province." *Pacific Forum Issues & Insights*, Vol. 19, (2019).

19 Associate Press, *Cambodian union chief who led long-running casino strike gets 2-year prison sentence* <https://apnews.com/article/cambodia-casino-labor-union-strike-nagaworld-9299708f2efa12520e2db67b92c9a9cf>.

20 Nagacorp, *Financial report performance* <https://www.nagacorp.com/eng/ir/finhigh.php>.

21 Business & Human Rights Resource Centre, Cambodia: Union members arrested after leading strike; NagaWorld casino announces layoffs and slashes pay, despite profitable year <https://www.business-humanrights.org/en/latest-news/cambodia-nagaworld-casino-slashes-jobs-and-pay-to-workers-despite-a-profitable-year/>.

22 Loughlin, N., Cambodia in 2022: Crime and Misgovernance, *Asian Survey*, 62(2), 324-335 (2023).

23 China Labour Bulletin, *In Cambodia, workers still on strike supporting ousted independent Nagaworld casino union and imprisoned leaders* <https://clb.org.hk/en/content/cambodia-workers-still-strike-supporting-ousted-independent-nagaworld-casino-union-and>.



### Dara Sakor multi-purposes resort

The Dara Sakor project of the Union Development Group (UDG) raises concerns about responsible business practices and controversies. Encompassing about 20% of Cambodia's coastline, the project aims to include tourism, industry, commerce, and technology sectors. However, **issues** emerge regarding the environmental impact, land conflicts, governance, corruption, and military implications<sup>24</sup>. Located within Botom Sakor National Park, the development caused rampant land conflicts, affecting the rights of the local communities to property ownership.

Dara Sakor's resort development **expropriated** the communities' lands, evicting them from the coastal areas.<sup>25</sup> Even though the communities claimed they had lived in the area since the collapse of the Khmer Rouge, the government claimed they had lived illegally in the area within the nationally protected area, the National Park of the country. This raised a legal debate about the rights to own property and the interpretation of laws. The company claimed they had followed and complied with the government regulations, such as carrying out environmental and social impact assessments. As such, they claimed that they are a socially and environmentally responsible business.

UDG's alleged **corruption** and ties to potential Chinese military interests in Cambodia fuel governance concerns. Speculation surrounds its military uses and impacts on regional stability. The U.S. Department of the Treasury's Office of Foreign Assets Control sanctioned UDG for seizing local land and alleged corruption<sup>26</sup>.

To address these complexities, businesses operating or intending to operate in Cambodia are advised to practice **caution and due diligence**. U.S. government advisories highlight potential risks related to human rights abuses, criminal activities, and corrupt practices in the country's business landscape<sup>27</sup>. Concerns regarding environmental impact, land conflicts, and governance issues underscore the importance of ethical conduct in challenging investment environments. Vigilance and responsible behaviour are essential in navigating high-risk investment scenarios like Cambodia.

### Shangri-La Hotel

Listed on the Stock Exchange of Hong Kong, Shangri-La Asia owns five-star luxury Shangri-La Hotels across Asia and Southeast Asia. The hotel in Phnom Penh, Cambodia, opened in 2021. The Shangri-La Hotel group developed its **Code of Conduct** and Ethics<sup>28</sup> (Code) to align with international frameworks, such as the UN Global Compact (see Chapter 3). In the Code, the Shangri-La Group aims to be leaders in corporate citizenship and sustainable development in the sector and to be responsible stewards of society and the environment.

Regarding human rights, the Shangri-La Group guides its staff and management on various **issues in the workplace** such as zero tolerance of forced labour, human trafficking and sexual exploitation; other standards refer to health and safety, and a culture of diversity and equal opportunities. At a minimum, the businesses must abide by the relevant national laws in all countries where the group operates. In its report to the UN Global Compact, the Shangri-La Group refers to labour rights, and it aims to uphold the

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24 Young, Sokphea, "China's belt and road initiative: Patron-client and capture in Cambodia.", *The Chinese Journal of Comparative Law* 8.2 (2020): 414-434.

25 Cambodia-China comprehensive investment and development pilot zone & Dara Sakor Seashore resort <https://thepeoples-map.net/project/cambodia-china-comprehensive-investment-and-development-pilot-zone-dara-sakor-seashore-resort/>.

26 Neil Loughlin, *The US Department of State, Cambodia business advisory on high risk investment and interaction* <https://www.state.gov/cambodia-business-advisory-on-high-risk-investments-and-interactions/>.

27 The US Department of State, *Cambodia business advisory on high risk investment and interaction* <https://www.state.gov/cambodia-business-advisory-on-high-risk-investments-and-interactions/>.

28 Shangri-La Group, *Code of Conduct and Ethics* (2019) <https://anyflip.com/khxs/csyz/basic>.

freedom of association and the right to collective bargaining according to national laws in every country of operation. This can take various forms, such as colleague unions, colleague councils and colleague welfare groups, depending on local legislation, culture, and workplace norms. According to the company, in 2021, there had been no reported instances of non-compliance with laws and regulations that have a significant bearing on the performance of the Group. In the same year, the group achieved 100 per cent completion of mandatory training modules on the Code of Conduct and Ethics.<sup>29</sup> However, as for any claims made through self-reporting, there is a need for independent parties and complaint mechanisms to verify whether or not the group has complied with its Code and the principles of the UN Global Compact.

### Eco-tourism businesses and resorts

Cardamom Tented Camp in Cambodia won the 2022 Hotel Investment Conference Asia Pacific Sustainable Hotel Award for Climate Action. On **climate** action, Cardamom Tented estimated that the forest the camp helps protect absorbed about 108,652 tons of carbon per year, according to Wildlife Works. Profits from the camp supplement the monthly salaries of 10 Wildlife Alliance forest rangers. The rangers protect the habitat from illegal poachers, loggers, riverbank sand dredgers and land encroachers. “The camp is powered by 100% onsite solar power for its electricity, has low impact heating and cooking, and natural wastewater filtration processes. The property recycles as much as possible and uses 100% organic personal care products. Plans include powering its boat with an electric battery, increasing local and onsite food sourcing, and undertaking community activities for conservation.”<sup>30</sup>

Owned by Mekong Valley Company, Hanchey Bamboo Resort is an Eco-Retreat resort which aims to harness principles of ‘employing locals, paying them good wages and using the revenue to fund on-site vocational training for poor area residents’. The resort was established to help, give **opportunities**, and train poor and disabled people in the community. It also hires girls who have been victims of violence and sexual abuse. The place takes pride in offering the best view of the river, sky and trees and nature-friendly cottages that truly resemble the Cambodian identity. All the staff are being trained for hospitality at the Buddhism for Social Development Action. Most bamboo was bought from local people so that they could also benefit from the resort’s existence. The company learned about bamboo for around two years before opening the resort. Young people from the NGO will be trained in the resort to get real experience and skills. BSDA programs cover a large scope, including education and vocational training for orphans and vulnerable children, community and democracy development and work with drug users and those infected with HIV/Aids<sup>31</sup>.

### Community-based Eco-tourism (CBET)

A number of community-based eco-tourism (CBET) projects have been established to model a **responsible and sustainable** tourism industry in Cambodia<sup>32</sup>. CBETs tend to be initiated or established by NGOs with the support of the communities and ministries involved such as the Ministry/Provincial Department of Tourism and the Ministry of Environment. CBETs are operated by communities to protect their natural resources, such as forests, waterfalls, flooded forests, rivers and waterfalls, coastal mangrove forests, bird sanctuaries, natural caves, etc. CBET employs and generates income for local communities, including their steering committee, and as such, the victors contribute to protecting the environment (like the privately-owned eco-tourism areas discussed above). The operational model of CBET

29 Shangri-La Group, *United Nations Global Compact Communication on Progress for FY 2021* (2021)

<https://sitecore-cd.shangri-la.com/-/media/Project/Shangri-La-Group/OurStory/Files/Community-And-Social-Impact/Sustainability-Reports/UNGC-Communication-On-Progress-2021-0621.pdf>

30 Khmer Times, *Cambodian’s cardamom tented camp wins hicap sustainable award for climate action* <https://www.khmer-timeskh.com/501168758/cambodias-cardamom-tented-camp-wins-hicap-sustainable-hotel-award-for-climate-action/>.

31 KhmerTime, *Nature up close, Kampong Cham bamboo resort*

<https://www.khmertimeskh.com/541813/nature-up-close-kampong-chams-bamboo-resort/>.

32 Müller, S., Huck, L., & Markova, J., *Sustainable community-based tourism in Cambodia and tourists’ willingness to pay*. *ASEAS-Austrian Journal of South-East Asian Studies*, 13(1), 81-101 (2020).

demonstrates the right to protect the environment of the communities and also the right to clean the environment of the communities and visitors (see Chapter 19 on the right to the environment).

Among many cases, Chi Pat Eco Tourism in Koh Kong province supported 332 families who are members of the community and receive direct benefits from tourism activities. They usually earn at least \$15 daily from treks in the jungle. While the economic spin-offs primarily benefit members of the eco-tourism community, the remaining families can still sell visitors agricultural products they have harvested or various local souvenirs. Being surrounded by a lush rainforest, Chi Pat Eco Tourism community organizes treks in the jungle and village-based activities to show local and international tourists how Cambodians have lived for centuries in remote areas<sup>33</sup>.

Khong Phsar is a CBET within three provinces: Kampong Speu, Koh Kong, and Pursar. This picturesque spot is ideal for hiking and camping, managed jointly by the Provincial Department of Tourism in Kampong Speu and the Roleak Korng Chuerng community. The community members note that the highest income is from groups of bird photographers who spend more generously through a longer stay and purchase labour and services from the community. Formerly composed of individuals who migrated for work or were involved in illegal timber activities, the community members have transitioned to engaging in tourism-related tasks, serving as local guides, cooks, and tractor operators, and running local food and shops, thereby driving the local economy. According to one community leader, exposure and interaction with tourists have improved villagers' behaviour toward the environment, their hygiene, and household organization. The revenue generated from visitors' activities is channelled towards the community's upkeep, including conservation efforts, patrols, and infrastructure development such as roads, trails, and other amenities. In pursuing an eco-friendly experience, visitors seeking nature-based activities are advised to exercise responsible travel practices. The Ministry of Environment has recommended fines ranging from \$250 to \$2,500 for any tourists caught using vehicles in restricted areas, cutting down trees for firewood, or engaging in waste disposal that harms the environment<sup>34</sup>.

#### 4. Further discussion

**T**he chapter presented cases of good and bad practices of tourism and hospitality businesses in Cambodia. Several businesses, communities and NGOs translated the concepts of responsible tourism and human rights in tourism into action, initiating eco-tourism and CBET projects. While these are considered good examples, they are subject to discussion regarding what standards and principles were used to measure that they are responsible and sustainable tourism initiatives. There is no existing benchmark and **certification** on responsible tourism and human rights in tourism in Cambodia yet, but international social, environmental, and human rights standards/ conventions should be used to measure whether the tourism businesses have complied with them or not.

#### 5. Conclusions

**T**he country's economy has undergone a rapid transformation over recent decades, and the pace of urbanization has been faster than ever recorded. Tourism has contributed significantly to the country's economic growth, but this has come with costs because of adverse impacts caused by the tourism industry. While the positive impacts of tourism are manifested by the effort to apply the concept of responsible and sustainable tourism and human rights-friendly tourism, negative impacts are observed.

33 Cambodianess, *Chi Pat eco-tourism help reduce illegal jobs*  
<https://www.cambodianess.com/article/in-chi-pat-eco-tourism-helps-reduce-illegal-jobs>.

34 Phnom Penh Post, *Rules tightened safeguards Khong Phsar*  
<https://www.phnompenhpost.com/national/rules-tightened-safeguard-khng-phsar>.

On the positive side, the demand for eco-tourism contributes to sustainable economic development, protecting the environment and respecting human rights, aligning with UNWTO's code of ethics and commitments of the Association of Independent Tour Operators and ASEAN sustainable tourism framework. Also, eco-tourism implicitly promotes rights to a clean environment and rights to adequate living conditions and livelihoods.

On the negative side, however, large hotels, especially those originating from Southeast Asia or China, tend not to have proven how they operate socially and environmentally responsibly and in a more human rights-friendly way. The affected communities protested against the large-scale dispossession of their natural resources extracted for nature-based resort projects. The growth of tourism has attracted vulnerable groups, such as children, into the sector, exposing these groups to risks, such as sexual exploitation. The large-scale influx of long-term tourist migrants has also caused security and safety concerns among themselves and the host communities, affecting their rights to safety and security.

## 6. Further readings

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# **CHAPTER 15**

## **Industry application: Construction**



**Ratana Ly & Kimsan Soy**

**T**he construction sector has been underregulated and under-oversighted, and such insufficiency increases the chances of serious violations of workers' rights. Approximately **785, 210 people work** in the construction.<sup>1</sup> Workers in this sector, which includes subsectors such as construction projects (i.e., building, infrastructure) and construction materials (i.e., cement, and brick kilns) frequently face injuries, maltreatment, discrimination, and injustices. In the 2017 survey of 1,010 construction workers, most of whom in building construction, the Building and Wood Workers Trade Union Federation of Cambodia (BWTUC) found that nearly one in five of these workers had been injured; 41% was frustrated about a lack of safety gear; a majority had never been trained on occupational safety; and 91% of them were unable to access benefits from the National Social Security Fund.<sup>2</sup>

This **chapter** focuses on occupational safety and health (OSH) in building construction given that this subsector has been significantly growing since 2000, and the injuries related to this subsector are regularly reported in local news media. The collapses of building under construction in 2019 and 2020 shocked Cambodia, resulting in court cases and other legal and policy developments. This chapter will begin with terminological clarification and continue with introducing international and national legal frameworks on health and safety in building construction sector. The chapter then examines cases of building collapse, key challenges and possible responses.

## 2. Frameworks

**T**his section explains the **practice of subcontracting** and the need to regulate and enforce legal norms and standards, both national and international, to govern this building construction industry. Understanding these features can assist us in looking at laws beyond those directly enacted by the Cambodian state and see subcontracting as a practice that can complicate the application of several existing domestic laws.

### 2.1 Subcontractors

In principle, employers are responsible for ensuring workplace health and safety for workers.<sup>3</sup> Identifying who are workers' employers, however, is not straightforward. **Multilevel subcontracts** are common in the building construction, especially in large projects.

In Cambodia, Mekar (meaning "**foreperson/supervisor**") plays a vital role in labour and working conditions, by taking part to ensure the compliance with known relevant regulations. Mekar supervises a group of workers. They also recruit workers by using verbal agreements and pay workers daily. Some workers show up at the construction site for employment, and Mekar hires them on the spot. Yet Mekar has few resources to provide workers with safety gear and adequate protection. In a large construction project, Mekar tends to be a subcontractor – of another subcontractor that could be itself a subcontractor of another subcontractor of a contractor. These layers of subcontractors make it difficult to pinpoint who is legally responsible for workers' health and safety.<sup>4</sup>

1 National Institute of Statistics - Ministry of Planning, "Report on the Cambodia Labour Force Survey 2019," *National Institute of Statistics* (2019).

2 Andy Ball, Vutha Srey, Gerald Flynn, "Behind the Scaffolding: Cambodia's Construction Workers Suffer as City Skylines Soar", *VOD* (06 April 2022) <https://vodenglish.news/behind-the-scaffolding-cambodias-construction-workers-suffer-as-city-skylines-soar/>. (The survey summary in Khmer can be found via [https://drive.google.com/file/d/1C5TAh0xbInRMwtQ9neU00IYBxO\\_4N9mX/view](https://drive.google.com/file/d/1C5TAh0xbInRMwtQ9neU00IYBxO_4N9mX/view)).

3 Labour Law of Cambodia (1997), arts 2, 6, 65 & 83.

4 See, for example, Carol Strickler & Sovann Pou, "Labour Rights for Female Construction Workers Project 2016-2018," *CARE Cambodia* (2019) <https://www.careevaluations.org/wp-content/uploads/Labour-Rights-for-Female-Construction-Workers-Project-Cambodia.pdf>. See also, Socialprotection.org Systems, "Social Protection for Informal Construction Sector Workers: Case Cambodia," EU Social Protection Systems Programme, EU-SPS (2019) pp 1-2 <https://socialprotection.org/discover/publications/social-protection-informal-construction-sector-workers-case-cambodia>.



An agreement between a contractor and subcontractor may spell out terms and conditions as to whom is responsible towards workers and to what extent. However, in many cases, such agreements do not exist or need to be clarified. Moreover, some companies do not register themselves. In addition, some construction workers may not have an idea which companies they work for; and this **fuzzy employment relationship** exposes workers to more vulnerability, such as facing a challenge to register for National Social Security Fund (NSSF) to which workers with an employer can have a rather straightforward access.<sup>5</sup>

Suppose an employer is identified, but against what legal norms should we hold an employer legally and socially responsible for workers? Subsections 2.2 and 2.3 below explain some main sources of legal norms. These include domestic and internationally state-enacted laws and non-state laws such as standards and regulations that some employers voluntarily adopt.

## 2.2 International frameworks

The core **human rights treaties** and fundamental International Labour Organisation's (ILO) conventions are particularly relevant in terms of stipulating the rights of workers. For example, article 7(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires state members to ensure safe and healthy working conditions. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) protect women and girls from being negatively discriminated in all areas, including education and work.

The ILO has dedicated a large part of its work to workplace health and safety issues.<sup>6</sup> It has adopted a number of conventions, guidelines and technical standards on the topic. In recognition of its fundamental importance for workers, ILO added in 2022 the right to “a safe and healthy working environment” to its list of fundamental rights and principles at work.<sup>7</sup> The main ILO convention in the health and safety area is the **ILO Occupational Safety and Health Convention** of 1981,<sup>8</sup> accompanied by a Protocol adopted in 2002.<sup>9</sup> In 2006 the ILO adopted the Promotional Framework for Occupational Safety and Health Convention.<sup>10</sup> These are instruments laying down a comprehensive and detailed list of measures that states and employers can and should take. Complementing these, and offering even more detail, are ILO Recommendations and practical guides such as for inspectors.<sup>11</sup>

When it comes to the construction industry, there is a specific ILO convention, the Safety and Health in Construction Convention from 1988.<sup>12</sup> An important and detailed guidance is the **ILO Code of Practice for Safety and Health in Construction**, adopted in 1992 and revised in 2022<sup>13</sup> with 22 experts including one Cambodian expert. With 23 Chapters, the revised ILO code provides comprehensive guidance on policies, legislation, administrative measures, and mechanisms necessary to promote and protect workers' rights and safety. The code outlines key responsibilities and duties of the relevant stakeholders,

5 Nathalie Both, Martin Evans, Stefan Thewissen & Betina Ramírez López, “Practical Options for the Extension of Social Protection to Workers in the Informal Economy in Cambodia,” *ILO & Ministry of Labour and Vocational Training: NSSF* (2018) pp 26 & 42.

6 ILO, “Safety and Health at Work” <https://www.ilo.org/global/topics/safety-and-health-at-work/lang-en/index.htm>.

7 “ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up,” ILO (2022), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/normativeinstrument/wcms\\_716594.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf).

8 ILO, “Occupational Safety and Health Convention (No. 155)” (1981) [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C155](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155).

9 ILO, “Protocol of 2002 to the Occupational Safety and Health Convention, 1981” (2002) [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P155](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P155).

10 ILO, “Promotional Framework for Occupational Safety and Health Convention (No. 187)” [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C187](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187).

11 ILO, “Investigation of Occupational Accidents and Diseases - A Practical Guide for Labour Inspectors” (2015) [https://www.ilo.org/global/topics/safety-and-health-at-work/resources-library/publications/WCMS\\_346714/lang-en/index.htm](https://www.ilo.org/global/topics/safety-and-health-at-work/resources-library/publications/WCMS_346714/lang-en/index.htm).

12 ILO, Safety and Health in Construction Convention C167 (1988). [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:CON,en,C167,/Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C167,/Document)

13 ILO, “ILO Code of Practice for Safety and Health in Construction (Revised Edition)” (2022) [https://www.ilo.org/sector/Resources/codes-of-practice-and-guidelines/WCMS\\_861584/lang-en/index.htm](https://www.ilo.org/sector/Resources/codes-of-practice-and-guidelines/WCMS_861584/lang-en/index.htm).

especially the authority, employers, and professionals working in the construction industry, such as designers, engineers, architects among others. The OSH policies are set out in Chapter 3 with the focus on obligations of employers to comply with OSH standards required under national laws and regulations. Chapter 4 obliges employers to inform, educate and train workers on OSH standards and necessary knowledge and skills to protect themselves from harm while performing their work. This ILO code also provides technical standards and guidance on how to keep worker's safe when workers get involved in dangerous tasks and work with hazardous substances.

**Cambodia** has ratified the above-mentioned human rights treaties but not the ILO Conventions on workplace health and safety. Once a country has ratified an international treaty, it must demonstrate how it has taken actions to comply with these international obligations that it accepts at domestic and international levels (see chapters 3 and 4). A key action is to regulate the conducts of businesses that operate within Cambodia. In the absence of domestic regulation, the Constitutional Council of Cambodia notably opined in 2007 that some ratified human rights treaties directly apply to Cambodia.<sup>14</sup> This means, those rights treaties may still directly apply, arguably in all sectors of businesses, including the construction industry. For treaties it has chosen not to ratify, Cambodia can still find them as useful sources of international guidance and learning from other countries, and eventually decide to ratify them as a way to improve its national legal and policy frameworks.

### 2.3 Cambodia's frameworks

Cambodia has adopted several laws and regulations that impact the governing of workers' health and safety. The Ministry of Labour and Vocational Training (MLVT) issued several **Prakas** (ministerial regulations) in 2011 to govern aspects of the construction site. These regulations : (1) Prakas on storing equipment and waste emission, and sanitation at the construction site; (2) Prakas on preventing risks caused by climate change at the construction site; (3) Prakas on sanitation at the construction site; (4) Prakas on communicating information at the construction site. These Prakas have some implications on the health and safety of workers, but they do not directly touch upon workplace health and safety.

In 2019, the state adopted the **Law on Construction** which spells out more stringent rules and procedures to govern the construction sector, for example, by requiring those engaging in this construction to obtain an operation license or permit from the Ministry of Land Management, Urban Planning, and Construction (MLMUPC).<sup>15</sup> This law, nevertheless, does not focus on how to protect the health and safety of workers.

In 2020, the **MLMUPC** issued a directive to ban workers from residing on the construction sites.<sup>16</sup> At the end of 2020, the government replaced Sub-Decree No. 86<sup>17</sup> with a newly-adopted Sub-decree 224 on Construction Permit,<sup>18</sup> which provides more stringent procedures and measures on approval of obtaining and renewing construction-works permit. This new sub-decree extends its application to all related construction-work permits including site opening, construction, repair and demolition instead of only construction permits for construction and demolition work in Sub-decree No. 86. The MLMUPC further issued Prakas No. 047 on Danger Levels, Risk Avoidance Measures, and Dangerous Construction Management Procedures, aiming to protect health and safety in 2022.<sup>19</sup>

14 The Constitutional Council of Cambodia, "Decision No. 092/00/2007" (10 July 2007)

<https://archive.crin.org/en/library/legal-database/decision-cambodian-constitutional-council-dated-10-july-2007.html>

15 Law on Construction (2019), art 7.

16 Ben Sokhean, "Ministry Issues Written Directive to Improve Construction Safety," *Khmer Times*, (13 January 2020)

<https://www.khmertimeskh.com/679009/ministry-issues-written-directive-to-improve-construction-safety/>

17 Sub-decree (No. 86) on Construction Permit (19 December 1997).

18 Sub-decree (No. 224) on Construction Permit (30 December 2020).

19 The Ministry of Land Management, Urban Planning, and Construction "Prakas (No. 047) on Danger Levels, Risk Avoidance Measures, and Dangerous Construction Management Procedures" (01 February 2022).



Then in May 2022, the MLMUPC and the Embassy of Australia in Cambodia launched the **Construction Workplace Health and Safety Guidelines**,<sup>20</sup> a significant step in the journey to ensure the protection of those at the construction site. Thus, the instrument that is directly concerned with workplace health and safety have not arrived in the form of state-enacted law.

Moreover, the Criminal Code of Cambodia is a source of law to deal with crime associated with health and safety, such as in the case of intentionally causing injuries or death to workers.<sup>21</sup> The Civil Code of Cambodia is also relevant in term of dealing with contract, for example, regarding who are to provide health and safety equipment to workers.<sup>22</sup> Despite these multiple laws and regulations, additional laws, specifically on occupational health and safety are needed to govern numerous aspects of the construction industry.

There are also examples of relevant **non-state norms** to regulate workplace health and safety of construction workers in Cambodia. They can complement some state laws. However, unlike the state laws that are mandatory for businesses operating in Cambodia to follow, companies have the option to voluntarily adopt and apply non-state norms. The significance of the non-state norms in regulating workplace health and safety has been increasingly recognized.<sup>23</sup> These norms are numerous.<sup>24</sup> For instance, provided that a large construction project may require loans from bank, the bank may set conditions for businesses to comply or encourage businesses to follow certain guidelines in their business operations, which can include ensuring health and safety of workers. International Finance Corporation (IFC), for example, has its Environmental, Health, and Safety General Guidelines. Some businesses also voluntarily apply ISO health and safety standards, for example, ISO 45001.<sup>25</sup>

### 3. Applications

**W**ithin the context of insufficiently developed laws and limited enforcement in Cambodia, this section considers how the government and some stakeholders approach the construction industry and how they responded when there are building collapses in Sihanoukville and Kep provinces. It starts by discussing enforcement aspects and continues by explaining the practice of “Build first, and license later.” Then, it describes key events of the building collapse. After that, it identifies the breaches of laws and rights, explains how the lack of effective oversight conceals poor working conditions, and discusses the lack of adequate remedy for the affected workers.

#### 3.1 Enforcement of laws

The level of effectiveness of laws and regulations depends on their enforcement. Alongside the state, non-state actors engage in **monitoring and enforcing** legal norms which include state laws. Concerning the state, the police, the labour inspectors, and other competent authorities, for examples, monitor and implement laws, while the judiciary decides legal cases. The state bodies, however, are known to have limited capacity and resources to enforce laws in the construction industry.

20 Australian Embassy in Phnom Penh, “Australia and Cambodia: Improving Construction Sector Health and Safety in the Kingdom,” *Australian Embassy Media Release*, (24 May 2022)

<https://cambodia.embassy.gov.au/files/penh/20220524-media-release-construction-WHS-guidelines-launch-eng.pdf>

21 Criminal Code of Cambodia (2009).

22 Civil Code of Cambodia (2007).

23 Geoffrey Swenson, “Legal Pluralism in Theory and Practice” 20:3 *Int Stud Rev* (2018), pp 438–462.

24 Radu Mares, Kenneth Paul Charman, Soy Kimsan, “Business and Human Rights in Cambodia - A compendium of instruments and materials,” *The Raoul Wallenberg Institute of Human Rights and Humanitarian Law* (2021)

[www.rwi.or.id/publications/post/business-human-rights-cambodia-compendium](http://www.rwi.or.id/publications/post/business-human-rights-cambodia-compendium)

25 See, “ISO 45001:2018 on Occupational Health and Safety Management Systems” <https://www.iso.org/standard/63787.html>.

Other **stakeholders** besides the state have notably taken steps to implement the standards and protections contained in various laws, regulations, and norms. Advocacy groups, nongovernmental organization, trade unions, companies themselves can advance compliance of legal norms. However, some of these groups have their own priorities. The ILO reported that issues concerning working conditions in the construction sector have been left out by advocacy groups which have focused more on promoting labour rights and working conditions in the garment sector.<sup>26</sup> The emphasis on the garment sector is likely driven by donors, NGOs and international (Western) brands that import apparel products from Cambodia.<sup>27</sup> As opposed to the garment sector, a majority of the construction companies in Cambodia belong to Cambodian nationals, and many of the foreign construction companies are owned by Chinese. In many cases, neither Chinese and Cambodian owners experience similar pressure and responsibility as companies registered in Western countries which increasingly require companies to comply with human and labour rights when they operate their businesses.<sup>28</sup>

The enforcement of the applicable laws and regulations require the **technical capacity** and willingness of the concerned authorities and stakeholders. Yet, technical and legal knowledge, and professional negligence among civil servants, competent authorities, and many stakeholders is one of the key challenges. Training, therefore, is a useful way to spread knowledge on health and safety standards, and the rights of workers. In that aspect, the Ministry of Interior and the MLMUPC organize seminars to introduce the Law on Construction to stakeholders such as construction companies, architects, engineers, and provincial officials.<sup>29</sup> The dissemination workshops on the Cambodia's Construction Workplace Health and Safety Guidelines also take place, and stakeholders whether they be employers and employees are encouraged to educate their people and implement the Guidelines.<sup>30</sup> The protection of the rights of construction workers still rely heavily on the enforcement of domestic laws and by limited groups of actors such as by some state personnel, some companies, and some trade unions, but as noted earlier, useful laws and regulations that stakeholders should abide by are not limited to only domestic laws.

### 3.2 Cases of Building Collapses

Some construction projects in Cambodia use the “**build first, license later**”<sup>31</sup> approach, starting construction works and operations without securing construction permits beforehand. A reason for such practice by construction companies is due to cumbersome bureaucracy and ineffective administration involving various provincial and municipal departments.<sup>32</sup> Obtaining a construction permit can take a long time. The longer a construction project is delayed, the more the cost a construction company might incur, and the more likely the company seeks unlawful means to expedite the approval process, such as by being willing to engage in bribery.<sup>33</sup> As a consequence, competent authorities, especially inspectors, may find it extremely difficult to track down and monitor many illegal construction sites.

Building without having a **permit** or in accordance with the permit jeopardizes the health and safety of workers. The cases of building collapse in Sihanoukville and Kep provinces as explained below, demonstrate these hazards. We also include notable responses by the state bodies to address this fatal situation.

26 Jared Ferrie, “Cambodia Construction Boom Built on ‘Blood Bricks’ and Slavery – Report,” *Thomson Reuters Foundation* (16 October 2018) <https://www.reuters.com/article/cambodia-slavery-construction-idUSL8N1WP1Y7>.

27 See, Kimsan Soy, “Legal Protection of Construction Workers and the Right to Safe Working Conditions: Lessons from Cambodia, Sustainable Development Goals in Southeast Asia and ASEAN” *Brill* (2018).

28 Ibid.

29 Sangeetha Amarthalingam and Khat Leakhena, “Can the New Construction Law Work Out the Kinks in the Sector?,” *Phnom Penh Post* (19 November 2020) <https://www.phnompenhpost.com/special-reports/can-new-construction-law-work-out-kinks-sector>.

30 Australian Embassy in Phnom Penh, “Australia and Cambodia: Improving Construction Sector Health and Safety in the Kingdom,” *Australian Embassy Media Release* (24 May 2022).

31 World Bank Group, “Cambodia: Achieving the Potential of Urbanization” (August 2018), pp 39-41 <https://documents1.worldbank.org/curated/en/580101540583913800/pdf/127247-REVISED-CambodiaUrbanizationReportEnfinal.pdf>.

32 See, for example, *ibid*.

33 Sangeetha Amarthalingam and Khat Leakhena, “Can the New Construction Law Work Out the Kinks in the Sector?,” *Phnom Penh Post*, (19 November 2020).

On 22 June 2019, a building collapsed in **Sihanoukville** at dawn when the workers were asleep in that building, causing 28 deaths and 26 injuries to construction workers, including their children.<sup>34</sup> In July 2020, Preah Sihanouk Provincial Court prosecuted and convicted five individuals on three charges: manslaughter; causing unintentional injuries; and damage with aggravating circumstances, under articles 29, 207, 236, and 410 of the Criminal Code. In August 2020, they were sentenced to two and half to three years in prison. Four of the convicts are Chinese nationals known as the building owner and construction supervisors, while the other one is a Vietnamese national who was convicted and sentenced in absentia.<sup>35</sup> In addition to the criminal sentencing, the first-instance court ordered the five convicts to pay a total of 60 to 100 million riels (about USD 15,000 to USD 25,000) to the families of each of the dead as well as 20 million riels (USD 5,000) to each injured worker. The Phnom Penh Appeal Court upheld the guilty verdict against the five accused persons.<sup>36</sup> On 15 June 2022, the Supreme Court upheld the conviction of a Chinese national who owned the building, and he was the only one who had appealed.<sup>37</sup>

Six months after the collapse in Sihanoukville, on 03 January 2020, another building under-construction in **Kep City** collapsed, killing 36 and injuring 23 workers, including children. The incident in Kep happened during daytime. The causes of the building collapse in Kep were technically similar to the collapse in Sihanoukville, according to report findings by the working group established by the MLMUPC to investigate the case. The building in Kep started its construction five months before the authority's approval. At the time of the collapse, the building was being constructed for its seventh storey in defiance of the authority's approval for a five-storey hotel building.<sup>38</sup> The working group also reported that the construction materials used were quality and quantity substandard.<sup>39</sup> The construction supervisor was detained and released soon after, as he was deemed innocent of any wrongdoing, although reasons were not provided. The construction owner and his wife were arrested and charged with manslaughter and causing involuntary bodily harm under articles 207 and 236 of the Criminal Code. However, they were temporarily released on bail.<sup>40</sup> These two incidents are not the first and isolated cases of building collapses at the workplace where workers are exposed to dangerous working environments, but they are of larger magnitude.<sup>41</sup>

### 3.3 Analysis the Cases of Building Collapses

Here, we look at right violations and errors, such as the lack of safe and healthy workplace, the lack of adequate oversight, and the lack of effective remedy as critical issues of inadequate regulation and enforcement which require immediate attention. It is followed by some discussion on the immediate actions and long-term solutions, taken by the state's bodies and agencies, and some non-state actors.

#### Violations of rights and breaches of laws

The **right to safe and healthy working environment** are grossly violated, as evident in many deaths and injuries. Article 83(a)(6) of the Labor Law indicates that an employer commits a serious offence if the

34 Buth Reaksmeay Kongkea, "Justice Served: Conviction in S'ville Deadly Building Collapse Case Upheld," *Khmer Times* (16 June 2022) <https://www.khmertimeskh.com/501094999/justice-served-conviction-in-sville-deadly-building-collapse-case-upheld/>. (Some news media reported that the collapse happened on 23 June 2019.)

35 Khy Sovuthy & Ngay Nai, "Phnom Penh Appeal Court Upholds Lower Court Verdict on Sihanoukville Building Collapse," *Camboja News*, (06 August 2021) Phnom Penh Appeal Court upholds lower court verdict on Sihanoukville building collapse | *CamboJA News*.

36 Ibid.

37 Buth Reaksmeay Kongkea, "Justice Served: Conviction in S'ville Deadly Building Collapse Case Upheld," *Khmer Times* (16 June 2022).

38 Leonie Kijewski, "Death Toll Jumps in Cambodia Building Collapse," *Aljazeera* (05 January 2020) <https://www.aljazeera.com/news/2020/1/5/death-toll-jumps-in-cambodia-building-collapse>.

39 So JayaUdom, "Collapsed Building Had Too Little Rebar, Wrong Cement, Officials Say," *VOD* (09 January 2020) <https://www.khmertimeskh.com/50679407/shoddy-construction-blamed-for-kep-province-building-collapse/>.

40 Ben Sokhean, "Shoddy Construction Blamed for Kep Building Collapse," *Khmer Times* (14 January 2020) <https://www.khmertimeskh.com/50679407/shoddy-construction-blamed-for-kep-province-building-collapse/>.

41 Footwear Distributors & Retailers of America (FDRA), "Ceiling Collapse at Cambodian Shoe Factory Kills 3" *FDRA* (17 May 2013) <https://fdra.org/latest-news/ceiling-collapse-at-cambodian-shoe-factory-kills-3/>.



employer fails to “implement labor health and safety measures in the workplace.”<sup>42</sup> Article 230 requires establishments, including a construction company to set up their workplaces that “guarantee the safety of workers.”<sup>43</sup> Yet the buildings collapsed during which the construction workers and their family were staying, as described earlier.

The line management and supervisors allowed workers to **sleep on the construction site**. That being said, it is common for construction workers in Cambodia that they eat, sleep and live on the construction site,<sup>44</sup> and that they work without safety gears.<sup>45</sup> Majority of construction workers are like nomadic workers who move to live from place to place,<sup>46</sup> depending on the construction projects they are working on. They frequently bring their family members, including children, to travel and live with them, meaning the construction site is their workplace and temporary shelter. Although one can have a narrow interpretation of article 83(a)(6) and article 230, words in these articles are too vague to impose specific health and safety obligations on construction companies and contractors. Therefore, numerous contributing factors result in the breach of health and safety rights of workers.

### **Lack of inspections and oversight**

Aside from the businesses, some authorities are also responsible for the building collapse. The Labour Law also stipulates the role of **labour inspectors** to inspect workplaces, including construction sites, to ensure that employers comply with the laws, including, the safeguards of workers’ health and safety. While the labour inspectors belong to the MLVT, the responsibility to inspect the building goes beyond that of the MLVT.

The cases of collapsed buildings demonstrated a serious lack of building inspection and oversight by relevant authorities, particularly the MLMUPC and the MLVT through their subordinate agencies. Yet, it was also reported that the building in Sihanoukville was 80% completed and received two stop-work notices from authorities. Despite the warnings, the construction continued, and the stop-work notices were **not enforced**. The government also acknowledged the lack of effective enforcement of legal and safety compliance in the construction sites in Sihanoukville since October 2018, when the MLMUPC found that many ongoing construction projects were not authorized, with substandard construction safety and quality.<sup>47</sup> It appears, therefore, that the government were fully aware of the issues and did not take effective and timely measures to address the breach of laws and regulations before the shocking collapses.

From a legal perspective of the responsibility of relevant authorities, article 18 of Sub-Decree 86 on Construction Permit<sup>48</sup> requires the provincial and municipal office of the MLMUPC through their technical personnel to **follow up on approved constructions projects** on progress such as on foundations, poles, walls and floors. Article 20 also allows them to carry out inspections of the approved projects by visiting the construction sites “at all time.” Moreover, the technical team have the legal authority to suspend any construction work “in the event of non-compliance or incomplete compliance.”<sup>49</sup> In addition,

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42 Labour Law of Cambodia (1997).

43 Ibid.

44 Andy Ball, Vutha Srey, Gerald Flynn, “Behind the Scaffolding: Cambodia’s Construction Workers Suffer as City Skylines Soar”, VOD (06 April 2022).

45 B2B-Cambodia, “Construction Safety Standards Still Poor,” *B2B-Cambodia* (2015)

<https://www.b2b-cambodia.com/articles/safety-standards-still-poor-in-construction-industry/>.

46 Sorn Sarath and Runn Sreydeth, “The Majority of Construction Workers Are Still Not Registered for Government Benefits,” *Camboja News* (14 March 2023)

<https://cambojanews.com/the-majority-of-construction-workers-are-still-not-registered-for-government-benefits/>.

47 Equitable Cambodia, “Joint Statement: Occupational Health and Safety for Construction Workers and Safe Building Standards Must be Guaranteed” (2019) <https://equitablecambodia.org/website/article/3-2327.html>.

48 Sub-decree (No. 86) on Construction Permit (19 December 1997).

49 Ibid., art 20.



article 233 of the Labor Law authorizes the Labor Inspector and Labor Controllers under the auspice of the MLVT to pay visits to workplaces, including construction sites, in order to check compliance with relevant “legislative provisions and regulations regarding health, working conditions and safety.” The inspectors and controllers are not required to provide any prior notice for their visit, and they can issue an official report if they find any irregularity or non-compliance that may cause “a serious or imminent danger to the health or safety of the workers.”<sup>50</sup> There are, therefore, some existing applicable laws and regulations on safety control and oversight to protect construction workers from fatal and work-related accidents, but they are not effectively enforced.

### **Lack of effective remedy**

Criminal sentencing was met with the court’s verdicts as noted earlier, but civil compensation may not have been enforced fully and in a timely manner. Despite efforts made to ensure access to remedy for construction workers and their families, the receiving of remedy remains a key concern. In **Sihanoukville’s case**, one week after the incident, the government made a public statement to provide \$100,000 compensation generated from the government and humanitarian organizations to each victim’s family.<sup>51</sup> One of the victim families confirmed the receipt of \$30,000 compensation instead of \$100,000.<sup>52</sup> Besides, the compensation did not come from those found guilty. Moreover, civil compensation from the court’s verdict may not be effectively enforced. By mid-2022, it is reported that some of the victims both injured workers and family of the deaths did not receive any compensation from “nearly three years ago.”<sup>53</sup> There is no further update on whether they have received the compensation as ordered by the court to date. The broader issue of access to remedy is discussed in detail in chapter 5.

With regard to **Kep’s case**, the victims are represented by the government’s lawyers who work voluntarily to support vulnerable and indigent people in court cases. To date, there has not been publicly available information to determine whether the case was concluded and whether all the victims have received any court-case compensation or not. Nevertheless, a few days after the collapse incident, the government raised funds of about one million USD from various donors and announced to compensate each victim for approximately 10,000 USD for injuries and 50,000 USD for death together with another 10 million riels for the funeral.<sup>54</sup> There has not been publicly available information on whether all the victims have received the compensation package from the government, but there has been an absence of complaints as compared to the victims in Sihanoukville’s case concerning the receiving of remedy.

Concerning compensation, it is also quite common that victims simply **negotiate** with building owners and accept a small lump sum of compensation. Often time, this could be due to the victims not being aware of their rights and not having representatives; thereby, they perceive to have no bargaining power through formal or judicial processes.

In short, the above **analysis of the cases** indicate that (1) the practice of “Build first, license later” put those potential workers at health and safety risks; (2) the inadequate labour inspectors at the stage of construction increase the chances of workers facing unlawful mistreatments; (3) the deaths and injuries that occurred carry a risk of injustice especially if the employers cannot be identified; (4) the state’s responses somewhat indicated that the government exercises its obligation to protect workers. Yet the inadequate redress and compensation together with a failure to hold all responsible people accountable means more effective actions need to be taken by the state to consistently respect and protect the health and safety right of workers.

50 Labor Law of Cambodia (1997), art 234.

51 Khy Sovuthy, “Massive Payout for Sihanoukville Collapse Victims,” *Khmer Times* (02 July 2019) <https://www.khmertimeskh.com/619964/massive-payout-for-sihanoukville-collapse-victims/>.

52 Ibid.

53 Buth Reaksmey Kongkea, “Justice Served: Conviction in S’ville Deadly Building Collapse Case Upheld,” *Khmer Times* (16 June 2022) <https://www.khmertimeskh.com/501094999/justice-served-conviction-in-sville-deadly-building-collapse-case-upheld/>.

54 Chhut Chhing, “59 Died and Injured in the Building Collapse in Kep” *Cambodia Property* (05 January 2020) <https://www.cambodiaproperty.info/59-died-and-injured-in-the-building-collapse-in-kep/>.

**T**he previous section discussed the application of domestic laws by the state's agencies. In this section, we discuss the need for using non-state standards and regulations; the significant roles of non-state actors in governing workplace health and safety, and the role of education, social media and technology as a means to spread knowledge on health and safety standards.

In addition to applying domestic state laws, some construction companies operating in Cambodia voluntarily develop their own **codes of conduct** and define the standards and rules to govern their workplace. Those standards can reflect international human and labour rights protections, including on health and safety. This can be seen inside and outside some construction sites, showing placards with pictures of personal safety equipment that workers at the construction should or must wear. The pictures often come along with words in Khmer, English, or even Chinese about equipment. Some internal rules about safety and health are exhibited at some construction sites. Some companies in Cambodia monitor the implementation of their company codes, standards and guidelines they adopt. They might even hire an independent third party to audit their companies' adherence to health and safety standards. Nevertheless, other employers might choose to ignore standards unless they are compelled to do so by social, cultural, economic, or political pressure.

Often time, many **civil society** groups, nongovernment organizations, and trade unions play essential roles to put pressure on the state and companies to protect workers. They host events to remind the government to not forget those who were caught up in the building collapses and to take more actions to improve the laws, to inspect construction sites, to hold responsible employers accountable, and to ensure that workers receive social protection insurance.<sup>55</sup> For example, the BWTUC appealed to relevant authorities to expedite the compensation process after the court verdict became final and into effect. Separately, about ten victims' relatives joined a petition appealing to the Prime Minister and demanded for their court-ordered compensation to be enforced expeditiously.<sup>56</sup> For non-state actors such as the civil society and similar groups to operate effectively, freedoms of association and of expression must be respected. Social media and technology facilitate the sharing of information about health and safety among stakeholders. This sharing of information may include the news about rights violations, injuries, the causes, and the responses.

## 5. Conclusions

**T**he case of building collapses indicate the responsibility and accountability of all stakeholders, including duty bearers and rights holders, in the context of regulatory enforcement and compliance. The state, as a duty bear, has taken steps to improve its laws and enforcement. Still, more effective domestic laws and enforcement are needed. Furthermore, different stakeholders beyond the state can play essential roles in governing and ensuring the health and safety of workers.

In the building collapse in Sihanoukville and Kep, some employers and owners chose to breach the laws and safety standards. This situation does not indicate that all other employers and owners disregard the health and safety of workers. More businesses are becoming aware of domestic and international laws, non-state-based health and safety standards, and guidelines they can voluntarily abide by. Through education, technology, and media, such knowledge on workplace health and safety standards is spreading, and it gives hope that adherence to standards that are more stringent than domestic laws is

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<sup>55</sup> Equitable Cambodia, "Joint Statement: Occupational Health and Safety for Construction Workers and Safe Building Standards Must be Guaranteed" (2019).

<sup>56</sup> Sovann Sreypich, "Families of Building Collapse Victims Seek Compensation, Appeal to Prime Minister," *Cambodian Journalists Alliance Association* (18 October 2022) <https://cambojanews.com/families-of-building-collapse-victims-seek-compensation-appeal-to-prime-minister/>.



possible, especially in construction projects which are overseen by companies that are conscious about their reputations. The more companies adopt health and safety standards, the more knowledge about such standards spread and permeate the industry and possibly the larger society; and the changes of perception in the society about the need for having better health and safety workplace can put pressure on the companies which in turn spur the usage of more stringent standards.

## 6. Further readings

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2. Emerging Markets Consulting. "Labour Rights for Female Construction Workers: A Business Analysis of Implementing and Improving Labour Rights in the Construction Industry in Cambodia." *CARE Cambodia* (2016).
3. Katherine Brickell, Laurie Parsons, Nithya Natarajan & Sopheak Chann, "Blood Bricks: Untold Stories of Modern Slavery and Climate Change from Cambodia," *Royal Holloway, University of London* (2018).
4. Kimsan Soy, "Legal Protection of Construction Workers and the Right to Safe Working Conditions: Lessons from Cambodia," in Ronald Holzhaecker & Dafri Agussalim (eds) *Sustainable Development Goals in Southeast Asia and ASEAN*, Brill (2018).

# **CHAPTER 16**

## **Human Rights Spotlight: Migrant Workers**



**Rattanakhida Kong and Leang Sok**

**M**igration is a global phenomenon occurring internally within a country and across borders to second or third countries. Migrant workers play an integral role in the global labour force, making substantial contributions to their home countries through remittances and to their host countries through increased productivity.

At present, no single country is exclusively a sending **country or receiving country**. Cambodia, while primarily a sender of a significant number of migrant workers often engaged in labour-intensive and low-paying occupations, also receives migrant workers. Cambodia has dispatched labourers to multiple countries in the region and beyond, such as Thailand, Malaysia, Hong Kong, Saudi Arabia, Singapore, South Korea and Japan. Among these, the estimated number of Cambodian migrants to Thailand varies from 1.7 million to two million, with approximately 20 percent lacking proper documentation. Additionally, Cambodian individuals opt to migrate of their own will to various destinations. At the same time, the free market economy, Foreign Direct Investment (FDI), and Free Trade Agreements (FTA), along with bilateral, regional and international development cooperation, have led to an increasing influx of foreign migrant workers into Cambodia in pursuit of diverse employment opportunities.

Migration takes various **forms**, including official government-to-government agreements, engagement through Private Recruitment Agencies (PRA), professional and personal contracts, illegal border crossing, and, in some unfortunate cases, individuals being trafficked or smuggled. It is important to note that, despite various known negative consequences, many migrant workers secure jobs in foreign countries as illegal migrant workers, often referred to as 'irregular or undocumented' workers.

This **chapter** will present an overview of the labour migration landscape, introduce key concepts related to the migration cycle, discuss various types of migrant workers and the vulnerabilities they face throughout their migration journey, examine the legal framework at the domestic, regional and international levels, and conclude by addressing the impact of these frameworks and suggesting ways to improve collaboration of relevant stakeholders in the protection of the human rights of migrant workers.

## 2. Frameworks

**C**ommon issues facing prospective migrant workers include fraudulent recruitment practices, infringement of job contracts (such as delayed deployment and inadequate compensation), forced labour and human trafficking, exploitation in various forms (such as wage withholding, underpayment, work-related accidents, and long working hours), and unfair treatment.<sup>1</sup>

### 2.1 Key terms and explanations

**Migration** has long been a multifaceted issue; hence, to lay out a foundation for discussion in the subsequent part of this chapter, it is necessary to define and explain some specific terms associated with migration. These terms also separate the different contexts in which people migrating will find themselves and their varying exposure to risks of human rights abuse. It also helps clarify what RBC might require in different situations to effectively prevent and remedy adverse human rights impacts. The term 'migration' is broad and lacks a universally accepted definition under international law. However, it encompasses various aspects and all forms of movement by individuals residing in a particular place, whether within a country or across international borders, whether temporarily or permanently.

**Migrant worker (or Migrant for employment)** means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly

<sup>1</sup> ILO Regional Office for Asia and the Pacific, 'Assessing Complaints Mechanisms and Remedies for Cambodian Migrant Workers.' Policy Brief (2022). [https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/documents/briefingnote/wcms\\_858978.pdf](https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/documents/briefingnote/wcms_858978.pdf).

admitted as a migrant worker. Thus, an international migrant is broadly defined as ‘any person who changes their country of usual residence,’ but this excludes temporary movements for leisure, business trips, medical treatment, religious pilgrimages, and short visits.<sup>2</sup>

**Regular or documented migrant workers** are considered as documented or in a regular situation if they are authorised to enter, stay and engage in a remunerated activity in the State of employment pursuant to that State's law and to international agreements to which that State is a party.

**Irregular or non-documented migrant workers** are considered non-documented or irregular if they do not comply with the conditions provided for regular migrants. ‘Non-documented’ means holding invalid documents authorising their entry, stay or working status in the destination country.

**Migration corridors** are designated routes used by migrants to traverse from one place to another, encompassing legal and illegal means in pursuit of improved livelihoods. Some may begin legally, but end up as irregular workers due to a lack of proper work permits, while others cross borders illegally without knowing what jobs they will find.

**Labour exploitation** encompasses various forms of mistreatment, from inadequate remuneration and hazardous work environments to severe abuses such as forced labour. Migrant workers, due to their legal status and limited safeguards, frequently find themselves susceptible to exploitation.

**Human trafficking** encompasses the recruitment, transportation, or harbouring of individuals to exploit them, such as for sexual exploitation, forced labour, slavery, or organ removal. In contrast, **migrant smuggling** pertains to facilitating irregular border crossings, which involves assisting migrants in entering or staying in a country unlawfully.

**Private recruitment agencies (PRA)** are licensed by the government to carry out the actual work of sending workers to employers. That entails an extensive process including paperwork arrangements, contract preparation, visa applications, and work permits before handing over the recruits to the end-point employers.

## 2.2 Migration Cycle and Vulnerabilities

Labour migration follows a **cycle** that includes (1) recruitment and deployment, involving sending migrant workers in the pre-departure stage; (2) the transit stage;<sup>3</sup> (3) employment, where employers receive migrants at the destination stage; and (4) the return, re-integration, or onward migration.<sup>4</sup> Each step in the migration cycle could provide positive benefits and pose vulnerabilities and risks of human rights abuse. Throughout the migration cycle, various stakeholders are involved, encompassing the sending State (or source country), which supplies workers to the receiving State (or destination country). For regular migrant workers, this process is typically coordinated by the licensed PRAs of the sending State, who must adhere to official migration corridors. In the destination countries, key stakeholders include the final employers, ranging from family or micro-business enterprises to large multinational corporations. In contrast, irregular migrants, lacking official documentation, must navigate from a sending country, cross the border into the destination country, and connect with their end-point employers.

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2 The United Nations Department of Economic and Social Affairs (UN DESA), *Recommendations on Statistics of International Migration*, Revision 1 (1998) para. 32 [https://unstats.un.org/unsd/publication/seriesm/seriesm\\_58rev1e.pdf](https://unstats.un.org/unsd/publication/seriesm/seriesm_58rev1e.pdf).

3 With the absence of universally accepted definition of ‘transit migration’, the term generally refers to the migrants temporarily residing in one or more countries with the aim of reaching a further and final destination. Please see: OHCHR. 2016. ‘A/HRC/31/35: Report on the Situation of Migrants in Transit’ Submission to Human Rights Council A/HRC/31/35. Office of the United Nations High Commissioner for Human Rights (OHCHR), <https://www.ohchr.org/en/documents/reports/ahrc3135-report-situation-migrants-transit>.

4 IOM, ‘Migrant Worker Guidelines for Employers.’ PUB2021/125/R. Geneva (2020) <https://publications.iom.int/books/migrant-worker-guidelines-employers>.



Both regular and irregular migrant workers are often subject to **vulnerabilities** of different kinds. ODI has conducted studies regarding vulnerabilities in Southeast Asia and has found a range of vulnerabilities across the migration cycle.<sup>5</sup> Some migrant workers end up in slave-like conditions, as in the fishing boats. Human Rights Watch found that captains compelled predominantly Burmese and Cambodian fishing workers to work overtime hours well beyond those set out in law. Boat owners and captains violated legal requirements to pay wages at least monthly, frequently paying fishing workers once every six months – or sometimes once a year at subminimum wages<sup>6</sup>.

The issue of migrant workers was also raised in **UN reports on Cambodia**, indicating that ‘Women often leave their families to go abroad either as documented or undocumented workers. For those moving overseas, arguably more should be done to ensure appropriate data monitoring, including establishing data management systems, documenting the migrant workers and their workplaces and residences, establishing safe shelters for those with problems.’<sup>7</sup> Integrating gender considerations into policy-making and planning can contribute to individuals’ social and economic empowerment and promote gender equality; leaving such considerations out can expose them to further risks and vulnerabilities and perpetuate or exacerbate inequalities (see Chapter 17)

### 2.3 Legal Frameworks in the Migration Aspects

Since the discussion of this chapter will mainly pivot within the Cambodian context, this section looks more closely at the legal framework within Cambodia before delving into regional and international legal and policy frameworks.

#### Cambodian Legal Framework

The labour migration patterns observed in Cambodia align with the prevailing regional trends, which have witnessed increased closer connectivity and integration within the ASEAN region over the past few decades. Efforts to address the challenges faced by Cambodian migrants and their families are of paramount importance in safeguarding their well-being and upholding their rights.

The country has laid the groundwork for robust governance of migrant workers and safeguarding their rights by establishing comprehensive legal frameworks and instruments. These foundations are rooted in **key laws** and regulations, including the Labour Law of Cambodia; the Law on the Prevention and Suppression of Human Trafficking; the Law on the Protection of Cambodian Women and Children from Domestic Violence; the Policy on Labour Migration for Cambodia 2019-2023; the Sub-Decree No. 57 on the Sending of Khmer Workers to Work Abroad; and, the Sub-Decree No. 190 on the Management of the Sending of Cambodia Workers Abroad through Private Recruitment Agencies, amongst many others.

For effective management and protection of migrant workers, the Ministry of Labour and Vocational Training issued several **Prakas** (ministerial regulations) in consultation with the ILO in 2013. These Prakas are gender-sensitive and prioritise gender equality, including: defining the use of migration-wise key terms; governing the recruitment process and pre-departure orientation training; regulating the private recruitment agency; the complaint mechanism for migrant workers; the inspection of private recruitment agencies; awards and punishments for private recruitment agencies; the services of private recruitment agencies in the workplace and repatriation; and, the use of minimum standards for overseas job place service contracts.

5 For further details on migration cycles and vulnerabilities, please refer to Jespersen, S., Alffram, H., Denney, L. and Domingo, P. *Labour migration in Cambodia, Laos, Thailand and Vietnam: migrants’ vulnerabilities and capacities across the labour migration cycle*, ODI Thematic brief. London: ODI (2022)  
<https://odi.org/en/about/ourwork/political-economy-of-labour-exploitation-and-trafficking-inpersons-in-southeast-asia/>

6 HRW, *Thailand: Labour Abuses Persist in Fishing Fleets* (2018)  
<https://www.hrw.org/news/2018/07/15/thailand-labor-abuses-persist-fishing-fleets>.

7 United Nations Human Rights Council, *Assessing protection of those at risk of being left behind: Report of the Special Rapporteur on the situation of human rights in Cambodia* (2019)  
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## International Legal Framework

The **ILO and the IOM** are the two leading international organisations with a mandate to promote decent work conditions and the rights of migrant workers.

In 2004, Cambodia affixed its signature to the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (also known as the **Migrant Workers Convention**). This Convention is an international treaty whose scope extends across all stages of the migration process, encompassing pre-migration preparations, departure, transit, the duration of stay in the host state, and the eventual return to the home country. A crucial provision is Article 25, which states that migrant workers must receive treatment at least as favourable as that provided to the host country's nationals regarding remuneration, working conditions (including overtime, hours, rest, holidays, safety, health, and termination), and employment terms (including minimum age and restrictions).

The Migrant Workers Convention is one of the least ratified conventions (currently standing at 58 states), while Cambodia placed its signature in 2004, but has not ratified the treaty. The **lack of ratification** partly explains the reluctance of states to invest resources and extend protection to entire families. Some migrant workers may travel with family members and without a job, placing an additional responsibility on receiving states to safeguard not only the rights of the migrant workers but also those of their family members.

Since its establishment in 1919, the ILO has endeavoured to promote social justice, establish international standards for the world of work and labour migration, and protect the rights of all workers, including migrants. There are **three main ILO Conventions** on migrant workers. However, it should be noted that Cambodia has not ratified these Conventions, which means these do not create legal obligations for Cambodia and remain an international standard of good practice until Cambodia decides to be bound by these conventions.

The **Migration for Employment Convention (ILO C97)** provides several rights for migrant workers that are 'lawfully within the territory' of a state, such as remuneration and social security (within certain limits) without discrimination (Article 6). It also obliges member states to the extent that their national laws and regulations allow them to combat deceptive propaganda regarding emigration and immigration (Article 3).<sup>8</sup>

The **Convention on Migrant Workers (ILO C143)** supplements ILO C97 and focuses on the situation of 'illegally employed migrant workers'. It obliges states to control the movements of migrant workers, punish employers and those organising the illicit movement of workers and offer protection to workers who have lost their employment and risk being categorised as 'illegally employed'. The convention also obligates states to actively identify whether there are illegally employed migrant workers within their borders and their employment conditions (Article 2).<sup>9</sup> It also highlights the significance of consulting with representative organisations of employers and workers to gather information on this matter.

The **ILO Convention 181** covers PRAs and contains detailed provisions on their responsibilities regarding migrant workers (see section 3 below).<sup>10</sup>

The **IOM**, recognised as a Related Organization of the UN System since 2016, has held a prominent role in international migration since its establishment in 1951.<sup>11</sup> It is guided by the UN Convention and has

8 ILO, *Migration for Employment Convention (Revised)*, (1949) No. 97 [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100\\_instrument\\_id:312242](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312242).

9 ILO, *C143 - Migrant Workers (Supplementary Provisions) Convention*, (1975) No. 143 [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100\\_instrument\\_id:312288](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312288).

10 ILO, *Private Employment Agencies Convention*, (1997) Article 12 [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326).

11 ILO & IOM, *Agreement Between the International Labour Organization (ILO) and the International Organization for Migration (IOM)*: (2020) [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms\\_759064.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms_759064.pdf).

not adopted more conventions. IOM developed and worked to implement a Migration Governance Framework,<sup>12</sup> including three principles and objectives. These are essential elements for facilitating organised, safe, regular, and responsible migration and mobility of people through well-planned and well-managed migration policies.

The **three IOM principles** include 1) adherence to international standards and fulfilment of migrants' rights; 2) formulation of an evidence-based policy and a whole-of-government approach; and 3) collaboration with partners to address migration and related issues. The three objectives comprise: 1) enhancing the socioeconomic well-being of migrants and society; 2) effectively addressing the mobility dimensions of crises; and 3) ensuring that migration takes place in a safe, orderly and dignified manner.

IOM is able to bring together **governments, civil society and the private sector** to establish labour migration programmes and mechanisms that balance their various interests and address migrants' needs. The IOM approach aims to foster the synergies between labour migration and development, and facilitate the development of policies and programmes that are in the interest of migrants and society, providing effective protection and assistance to labour migrants and their families.<sup>13</sup>

The **relationship between ILO and IOM** concerning migration involves cooperation and collaboration; these two international organisations signed an agreement in 2020 to establish a framework for such cooperation and collaboration, aimed at enhancing the benefits of migration for all.<sup>14</sup> The framework directs both organisations to work hand-in-hand for improved migration governance, capacity building and policy coherence at national, regional and global levels. According to the agreement, the ILO and IOM seek to

further develop and strengthen their cooperation in order to advance on common priorities and enhance their effectiveness and impact in pursuing their respective mandates, including in relation to supporting their respective constituents in implementing the Global Compact for Safe, Orderly, and Regular Migration (GCM), building on complementarities, comparative advantages and added value while also avoiding duplication...<sup>15</sup>

Thus, the new ILO-IOM Agreement leverages the agencies' comparative advantages, expertise, and respective constituencies. Through the promotion of joint initiatives, the Agreement seeks to bolster international migration governance and promote cooperation, capacity building, and joint advocacy to promote migrants' rights and decent work opportunities.

### Regional Policy Framework

In addition to international law, the protection and promotion of migrant workers are primarily addressed in the **ASEAN Socio-Cultural Community Blueprint** and the **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers**. The Declaration, adopted in 2007, calls upon both home and host countries to ensure the rights and dignity of migrant workers, ranging from protection against exploitation, discrimination, and violence to labour migration governance and the fight against human trafficking. Following the adoption of the Declaration, a Committee on the Implementation of the Declaration was established to fulfil the associated obligations and responsibilities.

According to the 2018 **ASEAN Consensus**, the receiving state must take necessary and appropriate measures to ensure fair treatment, combined with the prevention of abuses, exploitation and violence

12 IOM, *Migration Governance Framework* [https://www.iom.int/sites/g/files/tmzbd1486/files/about-iom/migof\\_brochure\\_a4\\_en.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/about-iom/migof_brochure_a4_en.pdf).

13 IOM, *Labour Migration* <https://www.iom.int/labour-migration>.

14 ILO-IOM, *ILO and IOM Sign Agreement to Strengthen Collaboration on Migration Governance*, Joint Press Release (2020) <https://www.iom.int/news/ilo-and-iom-sign-agreement-strengthen-collaboration-migration-governance>.

15 ILO-IOM, *Agreement between ILO and IOM* (2020) [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms\\_759064.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms_759064.pdf).

towards migrant workers residing in its territory. It shall undertake measures against inappropriate actions of employers towards its foreign employees to ensure that proper procedure is conducted for legally hiring migrant workers.<sup>16</sup> The Consensus outlines in detail a commitment to implement the ASEAN Declaration, adopted in 2007, on the protection and promotion of the rights of migrant workers and to contribute to the realisation of the ASEAN Socio-Cultural Community Blueprint 2025, which includes a commitment to the protection and promotion of migrant workers' rights, including social protection.

The sending state bears duties to ensure its citizens' protection and fair treatment abroad. The sending and receiving states shall consider **pre-departure, arrival and post-arrival** orientation for migrant workers to prepare for employment. The basic knowledge a migrant should acquire consists of 'human and labour rights, general working and living conditions, laws, policies, regulations, culture, norms, and practices of the Receiving State, avenues of assistance in the Receiving State and such other matters as will enable them to comply with administrative or other formalities of the Receiving State'.<sup>17</sup> Migrants are entitled to free, prior and informed information about the migration journey.

## 3. Applications

### 3.1 Cambodia's Migration Chains

**T**his section will explore existing mechanisms that Cambodia has put in place regarding work migration and the challenges those mechanisms face. It will also explain the roles and responsibilities of businesses, governments and other stakeholders to ensure respect for the human rights of migrant workers at all stages of the migration cycle.

Despite the number of legal and policy frameworks, the implementation mechanisms, and the designated relevant institutions at domestic, regional and international levels, there is persistent and even increasing **exploitation and human rights violations** of migrants. It is, therefore, of utmost importance that all actors involved comply with their obligations, play their respective roles diligently, and find new and more effective ways to address the issues (including the remediation mechanisms). Under the UNGPs (see Chapters 1 and 6), businesses have a responsibility to undertake RBC and due diligence across their value chains, and states have obligations to protect the human rights of citizens and residents.

#### Actions by sending states (Cambodia)

The Cambodian government has made significant strides in its responsibility to protect migrant workers, including combatting trafficking in persons. At the national level, several governmental **ministries and institutions** spearhead these efforts:

*The National Committee for Counter Trafficking* is a national mechanism for coordinating human trafficking combatting efforts.

*Ministry of Labour and Vocational Training* is in charge of labour migration management and promotion of labour in- and out-of-country. The Department of Employment and Manpower is mandated to work closely with and oversee in- and out-labour migration.

*Ministry of Foreign Affairs and International Cooperation*: the Ministry's primary function is to channel information through Cambodian Embassies and Consulates overseas. It also coordinates the technical guidance in negotiating with foreign countries on related migration issues.

<sup>16</sup> ASEAN Consensus on the Protection and Promotion of the Right of Migrant Workers <https://asean.org/wp-content/uploads/2018/03/3-March-2018-ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers.pdf>.

<sup>17</sup> *Id.*

The Ministry of Interior assumes a critical role by issuing passports to facilitate overseas migration and receive repatriated workers. The Ministry's Anti-Human Trafficking & Juvenile Protection unit is responsible for endeavours to combat trafficking in persons.

*Inter-Ministerial Taskforce for Migration:* established in 2007 to develop, implement and coordinate policy, action plans and recommendations to the government on labour migration issues.

*Manpower Training and Overseas Sending Board:* established in 2006 under MoLVT, acts as a public employment agency for recruitment, training and sending workers to South Korea and coordinates government-to-government agreements.

*Inter-Ministerial Working Group for the Implementation of the MoU with Thailand:* established in 2005 to oversee the implementation of the employment MoU with Thailand, tasked with identifying irregular migrant workers.

In Cambodia's Ministry of Labour's 2019-2023 Policy on Labour Migration, several key **challenges** are outlined, such as: (a) lack of national laws and policies for labour migration management; (b) limited data management system for labour migration; (c) incomplete cooperation with relevant authorities and institutions; (d) ineffective private recruitment agencies; (e) insufficient pre-departure worker orientation; (f) low-skilled job opportunities in destination countries; (g) inadequate presence of labour advisors/attachés in host nations; (h) lack of mechanisms for recognising returning migrant workers' skills, (i) lack of coordination with migrant workers' families, (j) absence of integration mechanisms for migrants in the community, and (k) an underdeveloped social security allowance transfer system for Cambodian migrant workers abroad.<sup>18</sup>

Despite **bilateral agreements** between sending and receiving states, migrant workers' rights abuses remain significant. For instance, in 1998, Cambodia and Malaysia signed an MOU to send Cambodians to work in Malaysia through licensed PRAs. From 1998 to 2015, Cambodia sent 52,265 workers to Malaysia, with 76% being women working as domestic workers. Due to reports of abuse and exploitation, the Cambodian Government banned sending domestic workers to Malaysia in October 2011.<sup>19</sup> Similarly, Indonesia's 2006 MOU with Malaysia did not prevent the abuse of some domestic workers, leading the Indonesian government to halt their deployment to Malaysia in 2009.<sup>20</sup>

Various **tools and measures** have been implemented throughout the migration chain to enhance victim identification, monitoring, regularisation and legalisation, detection of exploitation, and the provision of corrective measures. These include hotline helplines, outreach programs, workplace inspections, joint task forces, legal aid and support, and legalisation programs. However, challenges such as limited resources, language barriers, unaccountability of PRAs, and bureaucratic complexities further intensify the current state of vulnerabilities of migrant workers.

While regular migrant workers may encounter difficulties accessing the **complaint mechanisms**, irregular workers face even more significant barriers and are often excluded from formal protection systems. They may struggle to access criminal or civil remedies for their grievances, and even if they do, the resolution process can be protracted.

Though Cambodia has various mechanisms to deal with the issue of human trafficking and labour migration more broadly, a holistic or **whole-of-government approach** is needed to avoid loopholes for

18 Ministry of Labour and Vocational Training, *Policy on Labour Migration for Cambodia 2019-2023* (2018) <https://asean.org/wp-content/uploads/2021/12/1.-Labour-Migration-Policy-2019-2023.pdf>.

19 OECD/Cambodia Development Resource Institute, *Interrelations between Public Policies, Migration and Development in Cambodia*, *OECD Development Pathways*, OECD Publishing, Paris(2017) <http://dx.doi.org/10.1787/9789264273634-en>.

20 Tess Bacalla, *ASEAN Locks Horns on Migrant Workers' Rights*, Reporting ASEAN, <https://www.reportingasean.net/asean-locks-horns-on-migrant-workers-rights/>.

unscrupulous employers and PRAs to take advantage of. As the UN Global Compact for Safe, Orderly and Regular Migration indicates,

Migration is a multidimensional reality that cannot be addressed by one government policy sector alone. To develop and implement effective migration policies and practices, a whole-of-government approach is needed to ensure horizontal and vertical policy coherence across all sectors and levels of government.<sup>21</sup>

Labour attachés, consulates, and **embassies** operating under the Ministry of Foreign Affairs play a vital role in safeguarding the well-being and interests of Cambodian migrant workers abroad. These diplomatic entities offer essential services, including guidance through legal procedures, resolution of labour disputes, coordination with local authorities, and provision of necessary support services to migrant workers. Cambodia has labour attaches in a foreign country with a certain number of migrant workers, for example, in Thailand. Labour attaché, in addition to the formal embassy function, should be playing this crucial role in monitoring the situation of migrant workers in the receiving countries.

### **Actions by PRAs**

Private recruitment agencies (PRAs) play a critical role in assisting migrant workers by acting as a point of contact and communication between employers in the host country and relevant authorities. According to ILO Convention 181,<sup>22</sup> the primary **responsibilities of PRAs** to provide services, among others, about: (a) collective bargaining; (b) minimum wages; (c) working time and other working conditions; (d) statutory social security benefits; (e) access to training; (f) protection in the field of occupational safety and health; (g) compensation in case of occupational accidents or diseases; (h) compensation in case of insolvency and protection of workers claims; (i) maternity protection and benefits, and parental protection and benefits. These measures align with the general due diligence and RBC expectations under the UNGPs, as adapted to the context of PRAs and migration setting (Chapters 1 and 6). The whole recruitment process by PRA should strictly follow existing guidelines to ensure a human rights-based approach, gender sensitivity and an accessible grievance mechanism (detailed in Chapter 5).

**ILO's General Principles and Operational Guidelines for Fair Recruitment** cover recruiting all workers, including migrant workers, directly by employers or intermediaries. They apply to recruitment within or across national borders, as well as to recruitment through temporary work agencies, and cover all sectors of the economy. The following are the provisions on responsibilities of businesses and public employment services, which should: (a) respect human rights when recruiting workers, including through human rights due diligence assessments of recruitment procedures, and should address adverse human rights impacts with which they are involved; (b) undertake recruitment to meet established labour market needs and never as a means to displace or diminish an existing workforce, lower wages or working conditions, or otherwise undermine decent work; (c) charge no recruitment fees or related costs or otherwise borne by recruited workers and jobseekers; and (d) not retain passports, contracts or other identity documents of workers.<sup>23</sup>

**Inspection** either by the PRAs, by sending and receiving states, or by other means will be crucial to monitor the situation of the migrant workers at their workplace if they are well-recorded. The government is obliged to ensure that PRAs have a mechanism set up to regularly monitor the situation of human rights abuses by businesses, while migrant workers have a mechanism to report any rights violation.<sup>24</sup>

21 World Bank, OECD, and UNDP, *Measuring Policy Coherence for Migration and Development A new set of tested tools* (2020) <https://reliefweb.int/report/world/measuring-policy-coherence-migration-and-development-new-set-tested-tools>.

22 ILO, *Private Employment Agencies Convention*, (1997) Article 12 [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326).

23 ILO, *General Principles and Operational Guidelines for Fair Recruitment*, (2019) art 15-18.

24 *Id* 29.



### Action to be taken by the Receiving States

Though Cambodia has long been a sending country of migrant workers, more and more workers have entered Cambodia for employment. The influx of foreign aid to rebuild the society's development saw foreign workers entering the country. The establishment of the Extraordinary Chambers in the Court of Cambodia (ECCC) to try the leaders of the atrocious regime of the Khmer Rouge, that killed around two million people, brought about many legal and transitional justice professionals. Recent **development assistance and trade** agreements with China have seen an influx of Chinese workers in Cambodia.

Moreover, many foreign workers have fallen prey to labour exploitation and **human trafficking**. Recently, some countries have requested the Cambodian government to launch rescue operations for foreign workers here. For example, a cross-border operation by Thai and Cambodian police rescued 66 Thai nationals from captivity in Cambodia, where they were forced or tricked into running telephone scams.<sup>25</sup> Indonesia is set to fly out 202 of its nationals who have been rescued from various online gambling and scamming centres in several parts of Cambodia in the past few months.<sup>26</sup>

ILO's Migration for Employment Convention requires the receiving States to provide protection to migrant workers lawfully within their territory. States shall 'apply, **without discrimination** in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals' in respect of matters such as:

- remuneration, which includes family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
- membership of trade unions and enjoyment of the benefits of collective bargaining; and
- accommodation;
- social security, which refers to employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, but these are subject to certain limitations.<sup>27</sup> However, Cambodia has not ratified ILO Convention 97 and is thus not legally bound by its provisions.

### Actions to be taken by employers, including multinational enterprises

Currently, **the costs** involved in migration is also a source of vulnerability for prospective migrants. As it costs an average of USD 542 or higher and would take up to six months, migrant workers opt for irregular migration. However, it offers less protection in failing to guarantee that migrant workers will not be exploited at the workplace.<sup>28</sup> As most Cambodian migrant workers try to get out of poverty, this cost would be overwhelming to most of the workers, and before they get a job, related costs, including interest, could hike up much more. These costs and the interest loans taken out to pay them can leave workers in situations of debt bondage.<sup>29</sup>

The responsibilities of businesses regarding migration, whether employers or PRAs have been clarified in recent years. One critical development has been the **Employer Pays Principle**, which ensures that migrant workers are not indebted and in situations of dependency bordering on forced labour. The

25 Sebastian Strangio, *The joint police operation offered the latest evidence of an organized crime racket that spans the Mekong region*, The Diplomat (2022) <https://thediplomat.com/2022/04/police-rescue-66-thai-nationals-from-scam-call-centers-in-cambodia/>.

26 The Khmer Times *Indonesia set to fly out 202 of its nationals after their rescue from clutches of online scammers in Cambodia* (2022) <https://www.khmertimeskh.com/501135775/indonesia-set-to-fly-out-202-of-its-nationals-after-their-rescue-from-clutches-of-online-scammers-in-cambodia/>.

27 ILO, C97 on Migration for Employment Convention, article 6.

28 Jespersen, S., Alffram, H., Denney, L. and Domingo, P., *Labour migration in Cambodia, Laos, Thailand and Vietnam: migrants' vulnerabilities and capacities across the labour migration cycle*, ODI Thematic brief London: ODI (2022) [https://www.aseanact.org/wp-content/uploads/2023/02/Thematic\\_brief\\_1\\_FINAL.pdf](https://www.aseanact.org/wp-content/uploads/2023/02/Thematic_brief_1_FINAL.pdf).

29 IHRB, *Migrant Workers Recruitment Fee-The Increasing Debt Burden*, [https://www.ihrb.org/uploads/member-uploads/Migrant\\_Worker\\_Recruitment\\_Fees\\_-\\_The\\_Increasing\\_Debt\\_Burden.pdf](https://www.ihrb.org/uploads/member-uploads/Migrant_Worker_Recruitment_Fees_-_The_Increasing_Debt_Burden.pdf).

Employer Recruitment Fee Principle is as follows: No worker should pay for a job – the recruitment costs should be borne not by the worker but by the employer.<sup>30</sup> There are numerous costs that migrant workers end up paying (picture below).



**Adidas** reports that it is working with more than 20 recruitment agencies across Taiwan, Thailand, the Philippines, and Vietnam as part of its work on recruitment fees. The company also discloses that it is part of a two-year partnership with the International Organization for Migration, which, it states, involves specialised training for recruitment agencies in sending countries and its business partners in receiving countries. Adidas says that this partnership also increases engagement with second-tier suppliers that employ migrant workers. It also discloses that it is working to understand the costs of recruitment in different migrant corridors and high-risk countries, such as Taiwan and Thailand, by conducting on-site investigations, which include interviews with migrant workers and labour agencies. The company reports that, as part of its efforts to tackle recruitment fees, it is focusing particularly on the corridors from Vietnam to Taiwan, the Philippines to Taiwan, and Myanmar to Thailand.<sup>31</sup>

**PVH** discloses that 112 migrant workers at a Thai supplier had paid recruitment-related fees relating to visas, health checks, and work permits amounting to US\$22,900. It states that the supplier repaid the fees to workers and provided evidence of repayment to PVH. It changed its onboarding process to include interviews with migrant workers to determine whether fees had been paid. The company further discloses that the corporate responsibility committee of its board of directors meets four times a year and monitors performance on social and human rights indicators. It states that this includes targets on the elimination of worker-paid recruitment fees and issues including the impacts of the Covid-19 pandemic on supply chain workers and human rights.<sup>32</sup>

## 4. Further discussion

**M**igrant workers constitute a significant and often **vulnerable segment** within the global workforce. Several factors, including labour exploitation, discrimination, and xenophobia, legal status and documentation, a lack of social protection, and human trafficking, among others, are pressing issues that warrant attention and a spotlight on their situation. It is the shared responsibility of all stakeholders, including home, host, and transit countries, national and international organisations, the private sector,

<sup>30</sup> IOM, 'Guidance Note - Recruitment Fees and Related Costs,' International Labour Organization (2020)

<https://publications.iom.int/books/migrant-worker-guidelines-employers-guidance-note-recruitment-fees-and-related-costs>.

<sup>31</sup> Know The Chain, *Responsible Recruitment of Migrant Workers*,

<https://knowthechain.org/responsible-recruitment/#1618136761652-c0b90d08-03d3>.

<sup>32</sup> *Id.*

as well as migrants themselves, to address these challenges and ensure that legitimate labour migration practices are in place, regardless of the territory of migration and the nationality of migrant workers.

As commonly known, people choose to migrate because they perceive it as a means of increased **opportunities** and improved livelihood, even if it means taking risks. However, little do they know that the coming dangers may be higher than expected. Not all migration journeys result in adverse outcomes, but not all are fortunate either. The loophole here is that those who tend to migrate are from disadvantaged groups in rural and remote areas, where word-of-mouth is part of their lives. Local people often prefer to listen to returning migrant workers, relatives, friends, and neighbours from their community, rather than believing the information disseminated by competent authorities regarding safe (labour) migration. They perceive migration, primarily through irregular channels, as being fraught with risks, particularly when they witness these risks first-hand.

Another dilemma is the **return and reintegration** into the community. Some migrant workers do not have savings after years of working abroad and do not know what they could pursue. Therefore, it is essential to have an initiative or support provided to them upon returning home. This may not be the case for all migrant workers, but if the issue is not addressed, it will contribute to the migration cycle and vulnerabilities. Based on this conclusion, it is of utmost importance to have policies and programs tailored to the needs of prospective migrant workers and migrant returnees, with the collective efforts of all stakeholders focused on protecting their human rights and preventing risks.<sup>33</sup>

## 5. Conclusions

**A**s a global phenomenon, migration has contributed to the global economy and various governments. Migration journeys have been regulated under multiple national, regional, and international laws, policies, and soft laws and guidelines. When securing employment, migrant workers may face numerous risks in unfamiliar territory and become wholly cut off from the social interactions they once enjoyed before migration. Vulnerability is very high because migrant workers may lack legal status. If employers know this, they may exploit this status regarding wages, working conditions, welfare, social protection, and legal protection.

The human rights of migrant workers could be secured if all stakeholders who benefit from their journey take steps to respect and protect human rights. Private Recruitment Agencies (PRAs) are businesses that recruit workers and, therefore, should be instructed and guided by government policies to be responsible for respecting the human rights of migrant workers. While ensuring that the PRAs respect human rights and conduct due diligence in line with the UNGPs, the sending state's obligation to protect migrant workers does not end at the initial phase of the journey, which is the sending. In such cases of cross-country migration, the receiving country must also comply with its international obligations and ensure that employers in their jurisdiction respect human rights as per the UNGPs. Employers have their independent responsibilities under the UNGPs to respect human rights, irrespective of whatever failures of the sending and receiving states, and have received international guidance such as the 'employer pays principle'. Moreover, cooperation by governmental agencies at bilateral and multilateral levels, and among all businesses involved along the migration corridor, should establish mechanisms for remediation. Indeed, proper governance of migration corridors is essential for preventing and remedying labour exploitation, human trafficking, and human smuggling toward employment.

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<sup>33</sup> Drawing from author's experiences engaging in fieldwork with migrant returnee, prospect migrant workers and their families.

1. ASEAN; ASEAN *Guidelines on Effective Return and Reintegration of Migrant Workers.* Jakarta (2020) <https://asean.org/wp-content/uploads/2021/08/07-ASEAN-Guidelines-on-Effective-Return-and-Reintegration10.pdf>.
2. Dennison, James, 'Narratives: A Review of Concepts, Determinants, Effects, and Uses in Migration Research.' *Comparative Migration Studies* 9 (1): 50, (2021) <https://doi.org/10.1186/s40878-021-00259-9>.
3. IOM, '*Labour Migration in Asia: What Does the Future Hold?*' PUB2023/006/E. International Organization for Migration (IOM), (2020).
4. OECD and Cambodia Development Resource Institute; Chapter 2. Cambodia's Migration Landscape.' *In Interrelations between Public Policies, Migration and Development in Cambodia*, OECD Development Pathways. (2017)
5. OHCHR, '*Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework.*' Geneva (2011) <https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights>.

# **CHAPTER 17**

## **Human Rights Spotlight: Gender Equality and RBC**



**Leang Sok**

**M**ore and more women worldwide have entered the **workforce**. Accessing job opportunities has provided positive economic changes to families in particular and society, domestically and globally. Being an active economic person has empowered many women individually and financially. The private sector plays a vital role in supporting women's economic empowerment. Women's presence in the workforce is evident everywhere in Cambodia, regardless of sectors of business enterprise, patterns, scales and sizes. Economic empowerment is an important condition for making progress towards gender equality.

Women's participation in the formal economy is one of the essential indicators of gender equality. However, the workplace remains androcentric due to continued prevalence of issues such as pay gaps, leadership positions, harassment, violence, and other forms of discrimination against women<sup>1</sup>. Access to quality jobs remains difficult for women, mostly in precarious and lowest-paid occupations, especially in the garment, textile and export processing industries<sup>2</sup>.

This **chapter** will explore the concepts related to gender equality and non-discrimination, the relevant frameworks, and concrete cases posing aspects of gender in the context of RBC and human rights.

## 2. Frameworks

### 2.1 Concepts and terminology

**W**hen the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979, it referred only to sex-based discrimination. However, in 2010, the UN Committee on Discrimination against Women, Recommendation No. 28, indicated that the convention covers gender-based discrimination against women. The term '**gender**' refers to socially-constructed identities, attributes, and roles for women and men, and society's social and cultural meaning for these biological differences, resulting in a hierarchical relationship between women and men and in the distribution of power and rights favouring men and disadvantaging women<sup>3</sup>.

**Discrimination against women** means 'any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'<sup>4</sup>. Discrimination can be direct (de jure) or indirect (de facto) discrimination.

**Direct discrimination** exists when unequal treatment between workers of different race, colour, sex or any other ground covered by the Convention stems directly from laws, rules or practices making an explicit difference between workers on these grounds. **Indirect discrimination** means rules and practices which appear neutral but in practice lead to disadvantages primarily suffered by persons of one sex, race, colour or other characteristics.<sup>5</sup>

**Gender equality** refers to the 'equal rights, responsibilities, and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same, but that women's and men's

1 Women's Legal and Human Rights Bureau, Inc. (WLB), *Providing a Gender Lens to the UNGP on Business and Human Rights*, (undated) <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Gender/WLB.pdf>.

2 *Id.*

3 United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendations No. 28 on the Core Obligation of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women* (2010) <https://www2.ohchr.org/english/bodies/cedaw/docs/cedaw-c-2010-47-gc2.pdf>.

4 Article 1, *Convention on the Elimination of All Forms of Discrimination Against Women* (1979) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

5 International Labour Organization (ILO), *Gender mainstreaming strategies in decent work promotion: Programming tools* (2010) p.12 [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_143849.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_143849.pdf).



rights, responsibilities, and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs, and priorities of both women and men are considered, recognizing the diversity of different groups of women and men. Gender equality is not a women's issue, but should concern and fully engage men as well as women. Equality between women and men is seen as a human rights issue and a precondition for and indicator of sustainable people-centred development.<sup>6</sup>

The **empowerment of women** and girls 'concerns their gaining power and control over their lives. It involves awareness-raising, building self-confidence, expansion of choices, increased access to and control over resources, and actions to transform the structures and institutions which reinforce and perpetuate gender discrimination and inequality. This implies that to be empowered, they must not only have equal capabilities (such as education and health) and equal access to resources and opportunities (such as land and employment), but they must also have the agency to use these rights, capabilities, resources and opportunities to make strategic choices and decisions (such as is provided through leadership opportunities and participation in political institutions).<sup>7</sup>

**Gender mainstreaming** is 'the process of assessing the implications for women and men of any planned action, including legislation, policies, or programmes, in all areas and at all levels. It is a strategy for making women's and men's concerns and experiences an integral dimension of the design, implementation, monitoring, and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.'<sup>8</sup>

Understanding gender and women's rights is also shaped by the notion of '**intersectionality**'. The concept of intersectionality describes how inequalities related to gender, race, ethnicity, sexual orientation, gender identity, disability, class and other forms of discrimination 'intersect' to create unique dynamics and effects<sup>9</sup>. For example, marginalised and vulnerable women include indigenous women, rural and urban poor women, women with disabilities, and SOGIE women i.e. Sexual Orientation, Gender Identity and Expression, women in the informal economy, incarcerated, and elderly women<sup>10</sup>. Not only are they at higher risk of discrimination, but these grounds of inequality can become mutually reinforcing and therefore must be analysed and addressed simultaneously. For example, tackling the gender pay gap alone – without including other dimensions such as race, socio-economic status, and immigration status – will likely reinforce inequalities among women<sup>11</sup>. In empowering women and promoting gender equality, discrimination should be looked at beyond the person's sex, as other gender dimensions are factors compounding inequality, and failing to take gender-based discrimination into perspective, an effort to tackle inequality would not be effective.

A **gender equity** continuum ranging from harmful gender inequity practice to programming that actively promotes gender equity is often used when donor and development agencies want to assess how gender is addressed in a program<sup>12</sup>. The range on that gender equity continuum includes gender exploitative, gender responsive, gender positive and gender transformative:

**'Gender exploitative** means that a programme intentionally or unintentionally reinforces or exploits gender inequality to reach intended outcomes. It ignores gender norms, existing discrimination and inequalities.'

6 European Institute for Gender Equality, *Gender Equality*, <https://eige.europa.eu/gender-mainstreaming/glossary>.

7 European Institute for Gender Equality, *Empowerment Of Women*, <https://eige.europa.eu/gender-mainstreaming/glossary>.

8 ECOSOC Agreed Conclusions (1997/2) <https://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>.

9 Center for Intersectional Justice, *What is intersectionality?* <https://www.intersectionaljustice.org/what-is-intersectionality>.

10 Women's Legal and Human Rights Bureau, Inc. (WLB), *Providing a Gender Lens to the UNGP on Business and Human Rights*, (undated) <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Gender/WLB.pdf>.

11 Center for Intersectional Justice, *What is intersectionality?* <https://www.intersectionaljustice.org/what-is-intersectionality>.

12 Donor Committee for Enterprise Development (DCEd), *Working towards gender transformative programming, Part of the WEE Gateway* <https://www.enterprise-development.org/weegateway/working-towards-gender-transformative-programming>.

‘**Gender sensitive** means that a programme is aware of the different gender roles, responsibilities and inequalities in society, but that there is limited ambition to address existing structural imbalances or to change power relations.’

‘**Gender positive** means that different genders’ roles and responsibilities have been considered from the programme design phase, to ensure that men and women can participate in and benefit from the programme. Gender-positive programs can also specifically take actions to include women from more traditionally excluded groups, such as women belonging to certain income levels or women with disabilities.’

‘**Gender transformative** means challenging the existing gender roles, responsibilities and unequal power relations by addressing the root causes of inequality.’<sup>13</sup>

Since the introduction of a free market economy in Cambodia, women have been a major contributor to the labour force in almost all sectors. The existing application of gender-neutral policies and actions does not consider women’s and other genders’ interests, needs, and priorities to ensure that they reach their full potential. To address gender issues, as well as intersectionality, businesses are advised to conduct **gender-responsive due diligence (GRDD)**. ‘GRDD is based on the recognition that human rights violations are not gender-neutral and should not be treated as such. GRDD ensures that a gender lens is applied to each step of the due diligence process and encourages companies to actively support gender equality.’<sup>14</sup> (see detailed steps in the next section). The analysis of gendered needs, stereotypes, and discrimination are all elements to be taken into consideration, including the insights into differentiated impacts on men and women and other genders; also necessary is the preparation of a mitigation plan to be used if any incidents happen that lead to the inferiority of women and different genders in the workplace.

## 2.2 International frameworks

There are a number of international treaties and frameworks that clarify gender aspects and set international standards; they inform the RBC context as well. In 1995, the **Beijing Declaration** and Platform for Action was adopted to advance women’s rights. The Declaration states:

... removing all the obstacles to women’s active participation in all spheres of public and private life through a full and equal share in economic, social, cultural, and political decision-making. This means that the principle of shared power and responsibility should be established between women and men at home, in the workplace, and in the wider national and international communities. Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development, and peace.<sup>15</sup>

The UN **Sustainable Development Goals (SDG)** contains 17 goals, and Goal 5 is devoted to achieving gender equality and empowering all women and girls. Furthermore ‘gender’ is considered a cross-cutting element across all other Goals. The SDGs indicate that ‘Realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets. The achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities. Women and girls must enjoy equal access to quality education, economic resources and political participation as well as equal opportunities with men and boys for employment, leadership and decision-making at all levels.’<sup>16</sup>

13 *Id.*

14 *Gender-Responsive Due Diligence*, <https://www.genderduediligence.org/>.

15 Ngouv, M and Mares, R, *Gender*, in *Business and Human Rights in Cambodia 2021, A Compendium of Instruments and Materials*, p.630.

16 United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015) para. 20 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>.

**The Universal Declaration of Human Rights (UHDR)** is the foundation document of the UN human rights system and provides in Article 2 that ‘everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...’. Article 2 of **CEDAW** provides that state parties must address all aspects of their legal obligations under the Convention to respect, protect, and fulfill<sup>17</sup> women’s right to non-discrimination and to enjoy equality.

In June 2019, the ILO adopted a **Convention on eliminating violence and harassment in the world of work (C190)**. Article 4(2) of the Convention provides that ‘each Member shall adopt, in accordance with national law and circumstances and in consultation with representative employers’ and workers’ organizations, an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work.’<sup>18</sup> In addition, the same Article provides a list of considerations when violence and harassment in the world of work involve third parties, where applicable, which includes: ‘(a) prohibiting in law violence and harassment; (b) ensuring that relevant policies address violence and harassment; (c) adopting a comprehensive strategy to implement measures to prevent and combat violence and harassment; (d) establishing or strengthening enforcement and monitoring mechanisms; (e) ensuring access to remedies and support for victims; (f) providing for sanctions; (g) developing tools, guidance, education and training, and raising awareness, in accessible formats as appropriate; and (h) ensuring effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies.’<sup>19</sup>

The 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs), introduced principles to prevent, mitigate, and remediate business-related adverse human rights impacts. The UNGPs lacked an explicit and detailed gender lens. In 2017, the UN Working Group on business and human rights began addressing this issue and in 2019 issued the **Guidance to states and businesses on integrating a gender perspective in UNGPs**<sup>20</sup>. The Guidance provides a brief overview of discrimination and differentiated impacts experienced by women and girls in the context of business activities and analyses selected gender equality standards. The Guidance proposes a three-step gender framework – i.e., gender-responsive assessment, gender transformative measures, and gender transformative remedies – that States, business enterprises and other stakeholders could use to achieve substantive gender equality.

Gender responsive assessment: ‘Review whether laws, policies, norms, standards and practices are, directly or indirectly, discriminatory towards women; Assess how the State or business enterprise’s current and future actions or omissions might adversely affect women; Collect sex-disaggregated data; Consider intersectionality; Ensure meaningful participation of women and women’s organizations in the assessment process; Engage gender-sensitive experts to conduct impact assessments; Evaluate the effectiveness of gender-transformative measures and remedies.’<sup>21</sup>

Gender transformative measures: ‘Make a public commitment to achieve substantive gender equality; Practice rights-based empowerment of women; Take measures (including affirmative action) to achieve substantive equality and eliminate all forms of discrimination, harassment and violence against women; Engage gender-sensitive experts to evaluate the efficacy of measures taken; Communicate regularly with stakeholders; Collaborate with women’s organizations; Sensitize decision-makers about gender equality; Conduct advocacy for gender equality.’<sup>22</sup>

17 Details on ‘protect, respect, fulfil’ framework in Chapter 3: International Frameworks for responsible business conduct.

18 ILO, *Violence and Harassment Convention*, (2019) (No. 190) [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190).

19 *Id.*

20 Human Rights Council, *Gender Dimensions of the Guiding Principles on Business and Human Rights* (2019) <https://www.undp.org/sites/g/files/zskgke326/files/publications/RBAP-2019-Gender-Dimensions-Guiding-Principles-Business-and-Human-Rights.pdf>.

21 *Id.*, p.11

22 *Id.*, p.11

Gender transformative remedies: ‘Offer a range of preventive, redressive and deterrent remedies; Engage women’s organizations and gender sensitive experts to identify appropriate remedies; Address both specific and systematic abuses affecting women; Propose remedies that could change discriminatory power structures and reduce violence against women; Engage with Governments and other stakeholders to reform discriminatory laws.’<sup>23</sup>

Finally, the Guidance uses this gender framework to provide specific guidance (including illustrative actions) for each of the 31 principles of the UNGPs. ‘The assessment should be responsive: it should be able to respond to differentiated, intersectional and disproportionate adverse impacts on women’s human rights, as well as to discriminatory norms and patriarchal power structures. The consequent measures and remedies should be transformative in that they should be capable of bringing change to patriarchal norms and unequal power relations that underpin discrimination, gender-based violence and gender stereotyping.’<sup>24</sup>

**OECD Guidelines on Multinational Enterprises on Responsible Business Conduct**, recently updated in June 2023, state that ‘enterprises are expected to promote equal opportunities for all, with special emphasis on equal criteria for selection, remuneration, training, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or those workers with family responsibilities. Relevant in this regard is ILO Convention 190 on Violence and Harassment<sup>25</sup>. It also states that ‘corruption disproportionately affects those belonging to marginalised or vulnerable groups or populations and can exacerbate gender inequalities. Businesses have an important role in combating these practices by considering overlapping forms of structural discrimination related to ethnicity, race, sex, and sexual orientation, among other factors, when setting up controls, ethics, and compliance programmes.’<sup>26</sup>

In 2018, OECD developed a **Due Diligence Guidance for Responsible Business Conduct**, which poses the question, ‘How can an enterprise integrate gender issues into its due diligence?’ It then explains that ‘applying a gender perspective to due diligence means thinking through how actual or potential adverse impacts may differ for or may be specific to women. For example, it is essential to be aware of gender issues and women’s human rights in situations where businesses may disproportionately impact women. It involves adjusting, as appropriate, the actions enterprises take to identify, prevent, mitigate and address those impacts to ensure they are effective and appropriate.’<sup>27</sup>

The UN Global Compact, together with the specialized entity UN Women, in 2011, developed a document on **Women’s Empowerment Principles – Equality Means Business**. They provide seven comprehensive principles including ‘(1) Establish high-level corporate leadership for gender equality; (2) Treat all women and men fairly at work – respect and support human rights and non-discrimination; (3) Ensure the health, safety and well-being of all women and men workers; (4) Promote education, training and professional development for women; (5) Implement enterprise development, supply chain and marketing practices that empower women; (6) Promote equality through community initiatives and advocacy; and (7) Measure and publicly report on progress to achieve gender equality.’<sup>28</sup>

23 Id, p.11

24 United Nations, Human Rights Council, *Gender dimensions of the Guiding Principles on Business and Human Rights, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises* (2019) p.10 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/146/08/PDF/G1914608.pdf?OpenElement>.

25 Organisation for Economic Co-operation and Development (OECD), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023) p.31 <https://doi.org/10.1787/81f92357-en>.

26 Id, p.41.

27 Organisation for Economic Co-operation and Development (OECD), *OECD Due Diligence Guidance for Responsible Business Conduct* (2018) <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

28 UN Global Compact and UN Women, *Women’s Empowerment Principles – Equality Means Business* (2011) [www.unglobalcompact.org/library/65](http://www.unglobalcompact.org/library/65).

**Gender-responsive due diligence (GRDD)** has primarily been designed and developed for multinational enterprises and brands with global value chains<sup>29</sup>. This NGO-driven multi-stakeholder initiative offers a platform for ‘any company that has started, or is going to start, implementing human rights due diligence and is keen to ensure that gender is deliberately considered throughout.’<sup>30</sup> GRDD applies a gender lens to each step of the due diligence process to minimise the adverse business impacts on women and contribute to gender equality, namely: ‘Step 1: Define gender-responsive policies and embed them in management systems; Step 2: Identify and assess adverse impacts; Step 3: Address adverse impacts; Step 4: Track implementation and results; Step 5: Communicate how impacts are addressed; and Step 6: Support and provide for remediation.’<sup>31</sup>

### 2.3 National framework

The **Constitution of Cambodia** guarantees women’s rights to equal employment opportunities and payment, assigns housework to have equal value as work outside the home, and prohibits the exploitation of women in employment (Articles 36 and 45). The 1997 Labour Law prohibits discrimination on account of sex in hiring, work assignment, training, advancement, promotion, remuneration, social benefits, and discipline or termination of employment contracts (Article 12), and the Criminal Code penalizes discrimination related to employment (Article 267).

Cambodia has produced various legal and policy documents on gender equality and women’s empowerment at a national strategic and sectoral level. For example, Cambodia introduced a consecutive five-year strategic plan for gender equality and women’s economic empowerment called **Neary Rattanak**. The current one is Neary Rattanak V—Five-Year Strategic Plan for Strengthening Gender Mainstreaming and Women’s Empowerment (2019-2023). The Neary Rattanak V formulated six key strategies<sup>32</sup>, among which the first strategy is Women’s Economic Empowerment. This Strategic Plan identified key challenges and opportunities, which include the need for additional support for capacity and skilled development, strengthening social protection and safety at work, lower opportunities and resources management for women than men, and the work-life imbalance<sup>33</sup>.

Women’s Economic Empowerment (WEE) has been recognized in the RGC’s agenda through national policies, with programs for 2014-2018 including a national policy framework for social protection (2016-2025), a National Policy on Technical Vocational Education and Training (2017- 2025), a National Employment Policy (2014-2025), a National Framework on Small and Medium Enterprise (SME).<sup>34</sup> These are meant to prepare women joining the workforce or starting their own business to benefit from these policies.

## 3. Applications

**I**n the Cambodia Labour Force Survey (CLFS) in 2019, the labour force participation rate of the working-age population (aged 15 or older) was estimated at 69.3% (among which 77.2% for males and 62.4% for females), while urban areas 67.7% in and 70.2% in rural areas.<sup>35</sup> The same survey indicates that of the

29 Gender-responsive Due Diligence, <https://www.gendervediligence.org/about/>.

30 *Id.*

31 See explanations for each step: <https://www.gendervediligence.org/what-is-gender-responsive-due-diligence/>.

32 There are 6 strategies: (1) Women’s Economic Empowerment; (2) Education of Women and Girls; (3) Health of Women and Girls; (4) Legal Protection for Women and Girls; (5) Women in Public Leadership and Politics; and (6) Gender in Climate Change. Details in Neary Rattanak V (2019-2023): <https://www.mowa.gov.kh/wp-content/uploads/2021/02/Neary-Rattanak-V-final-Eng.pdf>.

33 Ministry of Women’s Affairs (MoWA), Neary Rattanak V (2019-2023) p.3 <https://www.mowa.gov.kh/wp-content/uploads/2021/02/Neary-Rattanak-V-final-Eng.pdf>.

34 *Id.*, p.2.

35 Ministry of Planning, ILO & ADB, *Report on the Cambodia Labour Force Survey* (2019). [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_821320.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_821320.pdf).



estimated 7.9 million people who were employed in 2019, 52.2% were male and 47.8% were females. The majority of the employed population (65.7%) were found in the rural areas, while 34.3% were in urban areas. By analysing the industrial sector, the highest share of the employed population was found in the services sector (39.8%), while the share of agriculture was 33.1% and that of industry was 27.0%.<sup>36</sup>

### 3.1 Implementation of policies

Cambodia has established various mechanisms to ensure gender equality. At the national level, the **Ministry of Women's Affairs (MoWA)** plays leading, partnering, and coordinating roles in implementing the Neary Rattanak V. Furthermore, the Cambodian National Council for Women (CNCW), which is an inter-ministerial body tasked to oversee the gender equality agenda as well as writing the country's report to meet the government's obligation before the CEDAW Committee. At the sectoral level, in 2018, 28 out of 30 ministries have prepared and implemented strategic segregation strategies by sector via the creation of Gender Mainstreaming Action Groups (GMAGs) to implement their respective Gender Mainstreaming Action Plan (GMAP)<sup>37</sup> at respective ministries and institutions.

There also exists the **Technical Working Group on Gender (TWG-G)**, which is part of a national coordination forum between the government and development partners within the process of GMAGs at different ministries. This is where the government could seek collaboration and assistance from development partners to ensure that gender sensitivity is inclusive in all areas in which private sectors are involved.

Even though GMAGs and GMAP are supported by various legal instruments and policy documents, there are flaws that explain why gender issues remain. Neary Rattanak V acknowledges that 'insufficient accountability of ministries and other government institutions on promoting gender equality and updating and institutionalizing the gender mainstreaming action plan'<sup>38</sup> cause slow gender mainstreaming and implementation.

Even though Cambodia has done quite a lot on the laws, policies, strategies, and action plans at national, inter-ministerial, sub-national, and sectorial levels to promote gender equality and empowerment of women in the workplace and employment, **gaps** remain in some sectors and geographical locations. Some sectors are not covered by the enacted laws, policies, strategies and action plans, including the corporate conduct of violations of human rights and women's rights.

Most ministries representing different sectors in Cambodia have created **gender mainstreaming action groups (GMAG)** and claim to address gender issues and deliver gender mainstreaming in their respective sectors. However, the composition of GMAG is ad hoc working groups composed of the ministry's staff from different departments that preference their primary tasks, and this leaves gender mainstreaming issues to the secondary task level and not seen as essential or necessary. The question is whether each ministry or institution should create a separate gender unit that functions on gender matters, just as other divisions or departments have specific tasks and responsibilities.

The gaps have been highlighted by several **UN monitoring mechanisms** (see Chapter 3), such as the Human Rights Treaty Bodies, the Universal Periodic Review (UPR) process, and domestic CSO reports submitted to the UN. For instance, in the 2019 UPR recommendations, Mexico recommended that the Cambodian government 'adopt, in consultation with civil society organizations, comprehensive legislation

36 *Id.*

37 So far, not all the ministries have their sectoral GMAP, while some have updated a few times.

38 Ministry of Women's Affairs (MoWA), Neary Rattanak V (2019-2023) p.7

<https://www.mowa.gov.kh/wp-content/uploads/2021/02/Neary-Rattanak-V-final-Eng.pdf>



and policies against discrimination and violence based on sexual orientation or gender identity, and guarantee their implementation through all public entities, in particular in the education, health and labour sectors.<sup>39</sup>

The **CEDAW Committee** (2019) claimed that Cambodia's mechanism to promote gender equality and women's empowerment is ineffective. The Committee, therefore, recommended with regard to the legislative framework that the government should 'ensure that its national legislation includes a definition of discrimination against women, covering direct and indirect discrimination in the public and private spheres, including intersecting forms of discrimination, in line with article 1 of the convention [CEDAW]<sup>40</sup>. Regarding the national machinery for the advancement of women, it was recommended that the government '(a) ensures that the Cambodian National Council for Women has the autonomy, authority, and human, technical, and financial resources necessary to effectively function as the national machinery for the advancement of women; (b) allocates sufficient resources and funding from the national budget for the implementation of action plans and policies for gender equality, including the fifth national strategic plan for gender equality and the empowerment of women (2019–2023)<sup>41</sup>. On employment, it recommended that the government 'adopt and implement comprehensive legislation to prevent and respond to violence and harassment, including sexual harassment, in the workplace, and establish an independent complaints mechanism to ensure that victims have effective access to redress and that perpetrators are held accountable<sup>42</sup>.

The Government of Cambodia's commitment to addressing women's rights in the **garment industry** showed signs of progress. At the beginning of 2018, pregnant women started to receive extra maternity benefits supported by the National Social Security Fund (NSSF). During a speech to workers in September 2018, Prime Minister Hun Sen said that 'about 42,000 female garment workers delivered about 43,000 babies so far this year. We spent 17 billion riels or about \$4.15 million on them.<sup>43</sup>

### 3.2 Business cases

Women are often disproportionately affected by business practices, particularly in the garment sector -- **textile, apparel, footwear and travel goods** -- that employs more than 800,000 workers and more than 80% of them being women.<sup>44</sup> Businesses that uphold their human rights responsibilities conduct human rights due diligence mindful of gender aspects. Brands have often been called on to express their concerns to the government to improve the human rights situation in the corporate environment. For example, several NGOs called on multinational apparel companies sourcing from Cambodia 'to take a stand against this repression, and to urge the Cambodian government to respect human rights and labour rights.<sup>45</sup> They have also urged big brands to use their leverage: 'They are profiting from doing business in the country, and if they want to claim to be doing so responsibly, they need to put principles into practice. Without basic freedoms and a government that respects human rights, workers and trade unions, the garment sector will suffer.'<sup>46</sup>

39 UN, Human Rights Council, *Recommendations of the Universal Periodic Review on the Human Rights Situation in Cambodia (3rd Cycle)* (2019) <https://cambodia.ohchr.org/sites/default/files/UPR%E2%80%8B%20Rec-Eng.pdf>.

40 UN, Committee on the Elimination of Discrimination against Women, *Concluding observation on the sixth periodic report of Cambodia* (2019) par.9 [https://digitallibrary.un.org/record/3838743/files/CEDAW\\_C\\_KHM\\_CO\\_6-EN.pdf?ln=en](https://digitallibrary.un.org/record/3838743/files/CEDAW_C_KHM_CO_6-EN.pdf?ln=en).

41 *Id.*, par. 15(a) & 15(b).

42 *Id.*, par. 17(d).

43 Kunthea, M., *PM: \$4.15 million spent on pregnant garment workers*, The Khmer Times (29 September 2018) <https://www.khmertimeskh.com/534592/pm-4-15-million-spent-on-pregnant-garment-workers/>.

44 Royal Government of Cambodia, *Industrial Transformation Map for Textile and Apparel Industry 2023-2027* (March 2023)

45 Ilona, *Brands must speak out about violations in Cambodia*, Clean Clothes Campaign, (17 August 2023) <https://cleanclothes.org/news/2017/10/03/brands-must-speak-out-about-violations-in-cambodia>.

46 *Id.*

## VF Corporation

As a parent company of brands like The North Face, JanSport, and Timberland, the VF Corporation sources apparel and travel goods from over 20 factories in Cambodia, worth up to \$350 to \$400 million a year.<sup>47</sup> In its **human rights policies**, VF highlights Women's Rights, as women make up approximately 80% of the workforce of their apparel supply chains. as the company states: 'Central to our women's rights initiative of VF Corporation, dedication to eliminating gender-based violence is also the key for VF mission. Without upholding workplace safety first, VF won't be able to achieve other workplace priorities, including eliminating discrimination, promoting female leadership, and supporting parents through expanded childcare initiatives.'<sup>48</sup>

Brand holders like VF have **power** and can play crucial roles in calling on the factories they source products from to rectify situations of non-compliance and to remedy labour rights abuses. As the NGO Worker Rights Consortium wrote in a statement: 'Unless the brands speak up loud and clear, we fear that the work of Cambodian trade unions, labour rights NGOs and other civil society organizations will be significantly impaired'<sup>49</sup>.

VF Corporation has prioritized the issue of **women's empowerment** throughout its supply chain, including through CEO-level commitments, and over the last two years, the company has put particular emphasis on Gender-Based Violence and Harassment (GBVH). GBVH became a VF priority after a comprehensive assessment in 2018 to understand the risks and opportunities and to discover what other industry stakeholders were doing to address this critical issue. This has been done through the gender response due diligence process, especially identifying and assessing the impacts of their operation across global supply chains of apparel products and goods.<sup>50</sup>

## Better Factories Cambodia

Women workers have faced a number of discrimination and labour rights abuses which include pregnancy-based discrimination, sexual harassment, and denial of maternity benefits<sup>51</sup>, hiring discrimination, promotion, and dismissal.<sup>52</sup> To address these issues, the Better Factories Cambodia (BFC) programme was developed in 2001. Operating as a partnership between the ILO and the International Finance Corporation (IFC) it has the mandate to assess **compliance with labour standards** in garment-exporting factories in Cambodia<sup>53</sup>.

Two decades later, BFC published its Gender Strategy (2017-2018) as it gained a stronger understanding of gender issues after analysing data gathered from 395 garment factory assessments between May 2016 and April 2017 and incorporating **gender-marked indicators** in their assessment after conducting a gender assessment and due diligence. The assessments aimed to make gender dynamics in the Cambodian garment industry more visible, deepening BFC's understanding of those issues and supporting stakeholders to take appropriate action<sup>54</sup>.

47 Sineat, Y., *Apparel Giant VF Corporation refutes ministry's allegations*, The Phnom Penh Post (March 2018)

<https://www.phnompenhpost.com/national/apparel-giant-vf-corporation-refutes-ministrys-allegations>.

48 VF Corporation, *Human rights*, (Accessed on 30 September 2023) <https://www.vfc.com/responsibility/people/human-rights>.

49 Vivian, H., *Brands encouraged to speak out against human rights violations in Cambodia* (Oct 2017)(Accessed on 30 September 2023., p.7) <https://fashionunited.uk/news/business/brands-encouraged-to-speak-out-against-human-rights-violations-in-cambodia/2017100326119>.

50 Gender Responsive Due Diligence, *Case Study: Identifying and prioritising adverse impacts of a global apparel supply chain* <https://www.genderduediligence.org/identifying-and-prioritising-adverse-impacts-in-a-global-apparel-supply-chain/>.

51 Human Rights Watch, *'Work Faster or Get Out' Labor Rights Abuses in Cambodia's Garment Industry* (2015) [https://www.hrw.org/sites/default/files/reports/cambodia0315\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/cambodia0315_ForUpload.pdf).

52 *Id*, p.8.

53 ILO & IFC, *Better Factories Cambodia, Towards Gender Equality: Lessons from factory compliance assessments (2017-2018)* (2018) <https://betterwork.org/wp-content/uploads/Toward-Gender-Equality-2017-18.pdf>.

54 *Id*.

## CARE Cambodia

Research by CARE Cambodia found that **sexual harassment** is a barrier to i) equal participation in paid work, ii) equal participation in the workplace, and iii) reducing the quality of working life. Sexual harassment leads to productivity costs for businesses<sup>55</sup> of an estimated USD 89 million annually in the Cambodian garment industry.<sup>56</sup> CARE Cambodia initiated a multi-stakeholder approach to address the issues, a collaborative initiative with ILO's BFC, the Garment Manufacturers Association of Cambodia (GMAC), relevant ministries, and the factories. In this project, CARE developed a workplace sexual harassment prevention package for garment factories that includes a workplace sexual harassment policy, an implementation guide for factories, and comprehensive multimedia training modules for factories to deliver to staff to help them prevent and report sexual harassment.<sup>57</sup>

CARE Cambodia got financial support from **Primark** for a two-and-a-half-year project to promote harassment-free workplaces in Primark's supply chain and influence industry change so all women garment workers could feel safe and respected at work. This project was implemented in five of the many factories where Primark sources its products.<sup>58</sup>

This initiative was adopted by the Sewing for a Brighter Future (SBF) initiative – Worker Well-being 2.0, supported by the **Levi Strauss** Foundation. The initiative aims to improve the health and well-being of factory workers in Levi Strauss' strategic factories<sup>59</sup>.

Primark reports that it is a partner of the **ILO's Better Work program** in Cambodia, Indonesia, and Vietnam and establishes 'factory-level committees to support worker-manager communication;' half of the committee members must be women. It requires suppliers to establish grievance mechanisms and states that workers can report grievances through a mechanism on its website<sup>60</sup>.

## Adidas<sup>61</sup>

Adidas, which also sources its garments from Cambodia, has made access to remedy available across its global supply chain. In 2020, Adidas handled 22 complaints using its third-party **complaint mechanism**. In India, whose workers' complaints are similar to Cambodia, Adidas commissioned an independent third party to conduct off-site investigative interviews and confirmed a range of harassment-related issues primarily targeted at female workers.<sup>62</sup> The findings put pressure on Adidas to take action to address the harassment issues in the factories where they ordered or sourced the products.

In this context, Adidas has an open policy and process in place to **remediate** human rights violations within its supply chain. They use a dedicated third-party grievance channel to track and address potential and actual human rights violations effectively. They specifically focus on gender-based violations/issues and the accessibility of the information shared around how to access remediation. Adidas shares the number and status of cases reported per annum. This aligns with Gender-Responsive Due Diligence (GRDD) Step 6, whereby companies must provide for remediation, as well as GRDD Step 5 due to the open nature in which they share this information.

55 CARE International, 'I know I cannot quit.' *The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry* (2017).p.4 [https://care-cambodia.org/wp-content/uploads/2023/07/SHCS\\_Research\\_Summary\\_March\\_2017.pdf](https://care-cambodia.org/wp-content/uploads/2023/07/SHCS_Research_Summary_March_2017.pdf).

56 *Id.*, p.2.

57 Care International, Cambodia, *STOP Sexual Harassment Project*, <https://www.care.org.au/stop-sexual-harassment-project/>.

58 Care International, Cambodia, *Creating safe and respectful workplaces in the garment industry* <https://care-cambodia.org/our-work/women-economic-justice/creating-safe-and-respectful-workplaces-in-the-garment-industry/>.

59 Care International, Cambodia, *Sewing for a Brighter Future (SBF) – Worker Well-being 2.0* <https://care-cambodia.org/our-work/women-economic-justice/sewing-for-a-brighter-future-sbf-worker-well-being-2-0/>.

60 Primark. *Know the Chain, Apparel and Footwear Benchmark: Company Scorecard 2021* [https://primark.a.bigcontent.io/v1/static/2021\\_KTC\\_AF\\_Scorecard\\_Primark](https://primark.a.bigcontent.io/v1/static/2021_KTC_AF_Scorecard_Primark).

61 Gender Responsive Due Diligence, *Case Study: How to use sexual harassment and abuse mechanisms to provide remediation* <https://www.genderduediligence.org/how-to-use-sexual-harassment-and-abuse-policies-to-provide-remediation/>.

62 Adidas, *Human Rights & Responsible Business Practices: Frequently Asked Questions (updated, May 2020)* [https://www.adidas-group.com/media/filer\\_public/76/df/76dfb7a9-a406-4678-a78f-02d8f154441c/2020\\_adidas\\_human\\_rights\\_faq.pdf](https://www.adidas-group.com/media/filer_public/76/df/76dfb7a9-a406-4678-a78f-02d8f154441c/2020_adidas_human_rights_faq.pdf).

**A**chieving respect for women's rights in business activities and the workplace through RBC intersects with governance and institutional structure. In Cambodia, there is **uncertainty** about who among the ministries is responsible for gender equality in business operations. It is uncertain who and what mechanisms should be used. Even though the Ministry of Women's Affairs is considered a champion of promoting gender equality and women's empowerment, it does not have jurisdiction to address the violation of women's rights in business operations.

In Cambodia, women account for approximately 52% of the total population and play a significant role in economic growth and sustainable development. Gender discrimination and inequality are still occurring due to **cultural and social barriers**. Cultural and social norms are entrenched in Cambodia's institutional and societal contexts. To understand the limitations of ensuring gender equality and women's rights in business, it is important to understand the cultural and social norms of the country.

## 5. Conclusions

**G**ender equality has gained traction in all sectors due to efforts to achieve the 2030 Sustainable Development Goals. There are many principles, guidelines, instruments, and tools for gender equality and gender mainstreaming. International treaties such as the CEDAW, ratified by Cambodia, are only the first step to addressing discrimination such as exists in Cambodia. Realising the end goal of gender equality requires commitment, implementation, and persistent efforts. The private sector and RBC play an important and complementary role in the government's actions toward gender equality.

The economic growth and foreign investments could either promote or hinder women's rights in the workplace, women's empowerment and gender equality. Gender-responsive due Diligence (GRDD) is an essential and practical tool for businesses committed to RBC and following the UNGPs. GRDD is an entry point for local and multinational enterprises to comply with local and international regulatory frameworks. GRDD can effectively address businesses' adverse impacts on women's rights and other vulnerable groups, and protect the business reputation with investors and consumers. Gender diversity, including at the level of board of directors, is also an important asset for businesses that seek innovation and different perspectives on navigating complex situations. A Commitment to RBC principles and using GRDD allows for new synergies with government agencies to realize gender equality and promote women's entrepreneurship.

## 6. Further readings

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2. OHCHR, *Gender dimension of the Guiding Principles on Business and Human Rights* <https://www.undp.org/sites/g/files/zskgke326/files/publications/RBAP-2019-Gender-Dimensions-Guiding-Principles-Business-and-Human-Rights.pdf>.
3. UNWOMEN, *Intersectionality resource guide and toolkit* (2021) <https://www.unwomen.org/sites/default/files/2022-01/Intersectionality-resource-guide-and-toolkit-en.pdf>.
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5. Clean Clothes Campaign, et al., *Stitched Under Strain: Long-term wage loss across the Cambodian garment industry* (2023) <https://actionaid.org.au/wp-content/uploads/2023/09/24160-AAA-Cambodia-Workers-Report-D5-%C6%92-singles.pdf>

# **CHAPTER 18**

## **The Digital Age and RBC**



**Sithy Hor and Rattanakhthida Kong**

**T**he term ‘digital age’ oftentimes links with the digital transformation brought forth by the Fourth Industrial Revolution (IR 4.0), a term first mentioned in 2015 by the Founder and Executive Chairman of the World Economic Forum, Klaus Schwab, in which he refers to the rapid breakthrough of digital technologies and the integration of these digital technologies into almost all aspects of our lives and society. **Digital technologies** include but are not limited to artificial intelligence (AI), machine learning (ML), big data, and blockchain, among many others, which are being integrated into various forms and platforms such as online platforms, social media, and online service providers. These digital technologies are mentioned specifically for their significance in the gathering, storing, and processing of data, which has also raised concerns about data privacy and data security. Should such data privacy and security be compromised, misuses of information can endanger the enjoyment of many other human rights, from civil and political rights to socio-economic rights and access to basic services.

The integration and transformation of these digital technologies have impacted both the public and private sectors in areas ranging from production to management and governance.<sup>1</sup> These require the attention of relevant stakeholders to ensure the maximum **benefits** from digital transformation can be derived and equitably shared, and to minimize the **risks** of negative impacts occurring. It is undeniable that the use of new digital technologies and tools create various opportunities for business in accelerating their commercial operations, and even delivering Responsible Business Conduct (RBC) and contributing to sustainable development. In particular, the use of AI and ML can assist in identifying, analyzing, and tracking adverse impacts on human rights, as clarified by the UNGPs. As new digital technologies and tools are being used in businesses, there are concerns regarding the potential violation of human rights, especially the right to privacy and freedom of expression. This poses a dilemma between the unlimited flow of data and its benefits, and the need to protect individuals and societies against misuse of data and new capabilities brought by the digital revolution. It is both businesses and governments that can take advantage of new data to infringe human rights, intentionally or inadvertently.<sup>2</sup>

The United Nations has introduced the Business and Human Rights in Technology Project, alternately known as the B-Tech Project. The Organisation for Economic Co-operation and Development (OECD), which adopted authoritative and detailed guidance on RBC, has also revisited some of its existing standards related to digitalisation in order to ensure that the existing standards of RBC are relevant in this digital age. Thus, this chapter will account for the **UN and OECD guidance**, discuss how these digital technologies can assist in RBC, and identify some dilemmas that these digital technologies have brought forth. Although not discussed in this chapter, it is also worth mentioning that there are many other international and regional efforts relevant to digital transformation, such as the European General Data Protection Regulation (GDPR) of the European Union (EU) in 2018, and International Labour Organisation’s (ILO) Agenda for the Future of Work in 2019.

## 2. Frameworks

**A** **brief definition** will be provided for a better understanding of digital technologies mentioned in this chapter. AI refers to the intelligence system with the ability to understand, learn, decide, and achieve complex goals. Whereas AI is a broader term to explain how computers can mimic human intelligence, ML is a subset of AI as it adapts and improves its ability through algorithms and experiences to identify patterns. Big data refers to the gathered data sets of various information and data, which is then processed and analysed, using AI and ML, to enable faster decision-making, personalisation, and

1 Klaus Schwab, *The Fourth Industrial Revolution: What it means, how to respond* (2016),

<https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/>.

2 Center for Human Rights and Global Justice, *Technology and human rights*, NYU (website) <https://chrgj.org/focus-areas/technology/>.



insights. Blockchain technology is a system of collecting data in a way that records digital information, ensures integrity and transparency, and improves the efficiency of transactions.<sup>3</sup>

In terms of data analysis and anomaly detection, AI and ML algorithms can **analyse and categorize** enormous amounts of data, including emails, documents, user profiles, communications, interactions, behaviour patterns, and data access patterns. They can identify unauthorized access, unusual data transfers, suspicious data extraction, and unexpected behaviours of users or devices, which can potentially flag security effects. Besides, these technologies can be instructed for pattern recognitions and predictive analytics to early detect red flags or patterns of unethical practices, data breaches, and privacy violations using the precedented data or models. Additionally, AI techniques, such as the Natural Language Processing (NLP), that concerns computer understanding of human language, is also a perk. This systematic approach can be applied to analyse text data/summarization, sentiment analysis, spam detection<sup>4</sup> and to identify the specific keywords or phrases which may manifest potential security risks or sensitive information leaks. For instance, documents or communications such as posts, comments, and messages are being analysed to comprehend the sentiment and context around the discourses concerning unauthorized data usage, manipulation or privacy breaches by the AI algorithms. Likewise, monitoring of regulatory compliance or non-compliance is of importance for RBC. The algorithms can be trained to probe and peruse necessary regulations and rules such as data and users' protection laws, privacy policies and ethical practices for ensuring compliance.

When a person engages in online activity, there exists a **digital footprint**. Consider the cases of Google and Facebook; for example, Google's disclosure of user data to law enforcement agencies (encompassing IP addresses, location data, and communication records), and Facebook's removal of content considered to be subversive materials based on state's complaints. Each of these scenarios poses significant risks to individual rights, including the fundamental rights to freedom of expression and privacy. In the same vein, when the right to privacy is breached through means such as physical or online surveillance, monitoring of communications or activities, and unwarranted intrusion into private, family, or domestic affairs, it impedes an individual's right to exercise their freedom of expression and can enable persecution and other abuses of human rights.

The use of digital technologies is thus not without its pros and cons, and indeed riddled with **dilemmas and balancing acts**. It provides innovative development tools and can harness data for policy and development. However, the combination of these digital technologies allows the analysis and even prediction of users' behaviour, which could infringe some fundamental human rights, such as the right to privacy and freedom of expression, but also the right to vote, and generally have personal autonomy over own choices and decisions. For instance, data collection can extract users' personal information without informed consent and potentially provide such personal information to businesses or governments that can force businesses to disclose such data and thus enable repression. In some case, these personal data are even distributed to commercial third parties without the users' consent.

In other cases, law enforcement or intelligence agencies demand these data from the businesses storing them and engage in **mass surveillance** as in the Snowden case discussed below. There is a fear of pervasive surveillance as our data are collected and processed without our knowledge and put to uses we do not understand or agree with. Data can be used to project biased or harmful views and to provide misinformation. Examples can be found in the Cambridge Analytica scandal and Facebook in the Myanmar case in the application section. In the case of the Cambridge Analytica scandal, it has

<sup>3</sup> See more definition of the mentioned technologies and other technologies at Dav Ansan (eds.), *Understanding Fourth Industrial Revolution* (2021), *Cambodia Development Center*.

<sup>4</sup> Mah, P. M., Skalna, I., & Muzam, J, Natural Language Processing and Artificial Intelligence for Enterprise Management in the Era of Industry 4.0 (2022), *Applied Sciences*, 12(18), Article 18, <https://doi.org/10.3390/app12189207>.

influenced the users' voting decisions through the algorithm identifying users' behaviour and subsequently circulating political advertising, whereas Facebook in the Myanmar case was exploited to increase hate speech and incite violence.

**Online interactions** will leave a digital footprint and transactional information that may be susceptible to monitoring by unintended parties; these interactions include social media communication, browsing and using search engines, file and document storage, and parts of daily life activities, such as online purchases, financial transactions, public transportation, and other public service usages.<sup>5</sup> For example, it has become possible to discern an individual's identity<sup>6</sup> through personal information such as employment history, travel history, tax records, location data from mobile or digital device, people's movements recorded from automated licence plate scanners, identification via IP addresses, or use of scanning technologies.<sup>7</sup> Vast amounts of digital data are thus generated that, without adequate safeguards, can be accessed and used, or misused negligently or intentionally by private or public actors.

The OECD has identified eight main categories of **human rights** endangered by the tech sector. These include: 1) right to non-discrimination; 2) right to privacy; 3) right to life and personal security; 4) freedom to opinion and expression; 5) right to freedom of association 6); right to work;

7) right to take part in government; and 8) right to adequate standard of living.<sup>8</sup> This chapter will primarily focus on the right to privacy and freedom of opinion and expression. Turning to the tech industry, more emphasis will be placed on online businesses<sup>9</sup> and social media companies (platforms).

Besides these challenges, digital technologies can provide opportunities to contribute to achieving the **Sustainable Development Goals (SDG)**. According to the International Telecommunication Union (ITU), only 26% are online in low-income countries, 56% in lower-middle-income, 79% in upper-middle-income, and 92% in high-income countries.<sup>10</sup> Such a digital divide can be bridged to connect the remaining 2.7 billion people. The UN Global Digital Compact recognizes this divide and seeks to ensure an open, free, and secure digital future for all. To achieve this, human rights serve as a foundation to build upon. This requires the involvement of all relevant stakeholders including both the public and private sector.<sup>11</sup>

Because AI is a relatively new yet fast-moving force for its users, namely businesses, governments, and individuals, there is a need for a comprehensive understanding of its **capabilities** along with the backlash. In addition to the risk identification, prioritization, tracking, and monitoring capabilities that AI and ML possess, continuous improvement and learning, coupled with human oversight, remain imperative. AI and ML models can continuously learn and adapt from bygone experiences, ongoing feedback, and new data inputs round the clock, thereby enabling them to enhance their accuracy and effectiveness over time, even as the complexity and sophistication of the tasks increase.

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5 Andreja Rither, *Protection of Privacy and Personal Data on the Internet and Online Media* (2011), <https://assembly.coe.int/CommitteeDocs/2011/RihterviepriveeE.pdf>; Michael J. Oghia, *Information Not Found: The 'Right to Be Forgotten' as an Emerging Threat to Media Freedom in the Digital Age* (2018), <https://www.cima.ned.org/publication/right-to-be-forgotten-threat-press-freedom-digital-age/>.

6 Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression* (2013), [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf).

7 Bernhard Debatin, Jennette P. Lovejoy, Ann-Kathrin Horn, and Brittany N. Hughes, *Facebook and Online Privacy: Attitudes, Behaviors, and Unintended Consequences* (2009), *Journal of Computer-Mediated Communication* 15 (1): 83–108. <https://doi.org/10.1111/j.1083-6101.2009.01494.x>.

8 For more details of each right, see OECD, *Artificial intelligence & responsible business conduct* (2019), <https://mneguidelines.oecd.org/RBC-and-artificial-intelligence.pdf>.

9 Online businesses refer to any businesses that provide product and service online such as Netflix, Grab, Foodpanda, etc., which gather and store users' information.

10 ITU, *internet use* (2022), <https://www.itu.int/itu-d/reports/statistics/2022/11/24/ff22-internet-use/>.

11 United Nations Office of the Secretary-General's Envoy on Technology, *Global Digital Compact Policy Brief* (2023), [https://www.un.org/techenvoy/sites/www.un.org.techenvoy/files/Global\\_Digital\\_Compact\\_Policy\\_Brief\\_Infographics\\_2.pdf](https://www.un.org/techenvoy/sites/www.un.org.techenvoy/files/Global_Digital_Compact_Policy_Brief_Infographics_2.pdf).

Equally important, while AI and ML techniques are intertwined with **human involvement**, the human-machine interface can raise certain concerns. Within the field of data analytics, there can be instances of algorithmic bias, lapses in data management, script errors, and mis-judgments in model-training data, which can compromise the quality, fairness, privacy, security, and compliance aspects. On the horizon, to address AI-associated risks, it is crucial to uphold ethics in its application, including self-policing and drawing boundaries that define and restrict its usage.

The frameworks for tech and RBC will be presented below: the UN B-Tech Project on applying the UNGPs to the tech sector and the digital age, and the OECD standards related to the governance of data and digital security.

### **The UN B-Tech Project**

With the UNGPs as a foundation, the UN B-Tech project looks to further provide guidance for states and businesses to implement the three pillars of the UNGPs, which are the state's duty to protect human rights, the corporate responsibility to respect human rights, and the access to remedy. The Project has **four main areas** of focus: human rights risks in business models, human rights due diligence and end-use of technology, accountability and remedy, and the smart mix of policy measures for RBC.<sup>12</sup> This B-Tech Project will guide states and businesses on the integration of human rights safeguards in digital technologies, whether it is for development, application, or sale purposes. It brings clarity on how the tech sector can implement RBC in this digital age. Additionally, the proposed smart mix of regulation, incentives, and public policy tools will assist in identifying and responding to the challenges of digital technologies.

B-Tech Project defines a **business model** as “the value a company seeks to deliver, and to whom and how it delivers that value in the pursuit of commercial success”.<sup>13</sup> Business models built on gathering large amounts of data (personal data) have increased rapidly due to the availability of digital data and the technological advancement in collecting and processing personal data. At the same time, it has also raised quite a concern regarding how these large volumes of personal data are being exploited and sold to third parties. The use of algorithmic systems has been criticised for its analysis of the behaviour pattern of the user without knowledge or consent, and for reproducing and enhancing existing biases in society. Reviewing a business model allows for businesses to identify and reflect on negative effects and undertake human rights due diligence.

### **OECD frameworks related to digitalization and RBC**

In response to the advancement of digital technologies, OECD has revisited some of its **frameworks** in connection to digitalisation and RBC.<sup>14</sup> These frameworks and principles include the re(use), access and governance of data, digital security, and policy-making in view of the digital transformation. The OECD Privacy Guidelines,<sup>15</sup> introduced in 2013, are a cornerstone for data protection and privacy. They have framed respect for privacy as a fundamental value and a condition for the free flow of personal data across borders. Such clarification on the protection of personal data is important due to the nature and context of how data is processed and used, whether it is in the public or private sectors. Several basic principles are also included in the Privacy Guidelines to ensure that personal data and privacy are protected such as:

- Collection limitation principle: ‘There should be limits to the collection of personal data and any such data should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject.’

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12 United Nations Human Rights Office of the High Commissioner, *UN Human Rights Business and Human Rights in Technology Project* (2019), [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/B\\_Tech\\_Project\\_revised\\_scoping\\_final.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/B_Tech_Project_revised_scoping_final.pdf).

13 United Nations Human Rights Office of the High Commissioner, *Addressing Business Model Related Human Rights Risks* (2020), [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/B\\_Tech\\_Foundational\\_Paper.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/B_Tech_Foundational_Paper.pdf).

14 See OECD, *Digitalisation and Responsible Business Conduct: Stocktaking of policies and initiative* (2020), <https://mneguidelines.oecd.org/Digitalisation-and-responsible-business-conduct.pdf> for the background of the Privacy Guidelines.

15 OECD, *The OECD Privacy Framework* (2013), [https://www.oecd.org/sti/ieconomy/oecd\\_privacy\\_framework.pdf](https://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf).

- Data quality principle: 'Personal data should be relevant to the purposes for which they are to be used, and...should be accurate, complete and kept up-to-date.'
- Purpose specification principle: 'The purposes for which personal data are collected should be specified not later than at the time of data collection and the subsequent use limited to the fulfilment of those purposes...'
- Use limitation principle: 'Personal data should not be disclosed, made available or otherwise used ...' unless there is consent or a law.
- Security safeguards principle: data should be protected against risks from loss of data, unauthorized access and other risks.
- Openness principle: there should be 'a general policy of openness about developments, practices and policies with respect to personal data.'
- Individual participation principle: the individual has several rights related to their data, such right to obtain details on his/her personal data, to challenge those holding data, and to have the data deleted or modified.
- Accountability principle: a data controller should comply with any measures taken to implement the above principles.<sup>16</sup>

With the growing usage of digital technologies, **personal data** is being collected, used, and stored in ever larger volumes. The 2015 OECD Recommendation on Digital Security, Risk Management for Economic and Social Prosperity raised two key points: consider and approach a digital risk similar to an economic risk; and, adopt digital security measures with consideration of others' interests.<sup>17</sup> The OECD Principles for Internet Policy Making seek to promote and protect the global free flow of information. They call on the public and private sectors to work together to improve personal data protection, consumers' protection, and to address any cybersecurity issues.<sup>18</sup>

### The Global Network Initiative (GNI)

The GNI is a multi-stakeholder initiative with members such as Facebook, Google, and Microsoft. It adopted the GNI Principles on **Freedom of Expression and Privacy** ('the GNI Principles').<sup>19</sup> They require members to conduct independent assessments and define criteria in areas such as governance, due diligence and risk management, freedom of expression and privacy in practice, transparency and engagement, and follow-up and improvement. In terms of privacy, the GNI principle laid out the protection of personal information and data for the participating companies to respect. Likewise, the freedom of expression is ensured by the participating companies to avoid or minimize any impact that may restrict the information from being delivered or any opportunities for communication.

The GNI has set out **implementation guidelines** for participating companies. Companies will prepare policies and procedures to assess and respond in case there are demands by the government to restrict or disclose any content or personal information. This guideline asks the companies to obtain a written demand, or verbally when the law only permits that, to any request made by the government to restrict content (freedom of expression) or to disclose personal information (privacy). When these demands appear to be overboard, unlawful, or inconsistent with any domestic or international laws or procedures,

16 See OECD, *The OECD Privacy Framework* (2013), [https://www.oecd.org/sti/ieconomy/oecd\\_privacy\\_framework.pdf](https://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf).

17 See OECD, *Digital Security Risk Management for Economic and Social Prosperity* (2015), <https://www.oecd-ilibrary.org/docserver/9789264245471-en.pdf?expires=1694516437&id=id&accname=ocid177253&checksum=B25AC0312C2EDD03DD6BA5C723B4BEE1>.

18 OECD, *Recommendation of the Council on Principles for Internet Policy Making*, OECD/LEGAL/0387. (2011), <https://www.oecd.org/sti/ieconomy/49258588.pdf>.

19 Global Network Initiative (GNI), *The GNI Principles*, <https://globalnetworkinitiative.org/gni-principles/>.

companies are required to seek clarification or assistance to address such situations.<sup>20</sup> This shows how the broad concepts of human rights due diligence promoted by the UNGPs can and must be adapted to account for the specifics of the tech industry and the right to privacy. Multi-stakeholder initiatives, bringing together companies and CSO academics and other stakeholders, have been used repeatedly to specify RBC and provide clearer guidance in difficult operational contexts.

### Cambodia's frameworks

As Cambodia embraces digital transformation to reach its ambition as a high-income country by 2050, the government has set out various policies and frameworks to build and accelerate digital transformation. In particular, the Cambodia Digital Economy and Society Policy Framework 2021-2035 lays out the foundation and a pathway for development towards a digital society in Cambodia.

Currently there are no regulations that directly and comprehensively address the issue of data and privacy protection in connection to the digital transformation. However, there is a **general framework** offered by Article 40 in the Cambodia Constitution, which states that “the rights to privacy of residence, and to the secrecy of correspondence by mail, telegram, fax, telex and telephone shall be guaranteed.” The Civil Code of the Kingdom of Cambodia also has a general provision on data and privacy, Article 10, which provides that “individual rights include the right to life, personal safety, health, freedom, identity, dignity, privacy, and other personal benefits or interests.”

The Cambodian government has begun to consider **new laws** to govern various aspects posed by digitalisation. Thus, the Law on Consumer Protection of 2019 and the Law on E-Commerce of 2019 provide protection for consumer data, such as preventing the access of consumers’ personal data by another person without consent or use of the data for any malicious intent. Moreover, the government has been drafting a cybercrime law<sup>21</sup>, and a cybersecurity law and a personal data protection law.<sup>22</sup> Should these draft laws be adopted, the collection, use, process, and disclosure of our data would be better protected and secured.

The Cambodia Digital Economy and Society **Policy Framework** 2021-2035 sets out a clear vision of “building a vibrant digital economy and society by laying the foundations for promoting digital adoption and transformation in all sectors of society – the state, citizens, and business – to promote new economic growth and improve social welfare based on the new normal.”<sup>23</sup> Digital government, digital citizens, and digital businesses are the three main pillars in building a digital economy and society of Cambodia. This framework highlights the need for businesses to modernise their structure in preparation for digital transformation and to create entrepreneurship and start-up ecosystems. In this framework, consideration of data is included to enhance the accuracy of data, and at the same time, ensure the sharing and security of data. Policy measures listed in this framework can provide openings for regulators to consider socio-economic impacts of the digital transformation and advance the principle of RBC and human rights.

## 3. Applications

**W**hen discussing concerns about personal data security and privacy breaches, one often refers back to the Snowden Case in 2013, which involved the disclosure of classified documents, and the Cambridge Analytica scandal in 2018, which entailed the misuse of data for political profiling and targeted advertising. These incidents served as major wake-up calls for users, governments, and businesses worldwide.

20 Global Network Initiative, *Implementation Guidelines*, <https://globalnetworkinitiative.org/implementation-guidelines/>.

21 Nov Sivutha, *Draft law on cybercrime fast-tracked* (2022), <https://www.phnompenhpost.com/national/draft-law-cybercrime-fast-tracked>.

22 Kang Sothear, *MPTC finalizes more draft laws, policies on cybersecurity, posts* (2022),

<https://www.khmertimeskh.com/501180686/mptc-finalises-more-draft-laws-policies-on-cybersecurity-posts/>.

23 Supreme National Economic Council, *Cambodia Digital Economy and Society Policy Framework 2021 - 2035* (2021).



The **Snowden case** concerned mass surveillance by a US agency, the National Security Agency (NSA). Edward Snowden worked at the NSA for four years before he disclosed top-secret documents to the public. The disclosed top-secret documents show a large-scale intelligence gathering and surveillance of US citizens by governmental agencies of the US, UK and other countries. Most of the data was collected by tech corporations through telephone, internet and web operation. Information and data were extracted through cookies, log-in information, and even through the activation of location sharing and other social media sites.<sup>24</sup> It has to be noted that this data was generated from online or social media usage and was extracted through the machine learning system and algorithms without the users' knowledge. While this revelation exposed the mass surveillance by the government, the private corporations including Apple, Facebook, Google, Microsoft, Skype, Yahoo, and YouTube also played quite a role in this as they allowed either willingly or unwilling for the extraction of these information and data. With the assistance of these companies, direct access to their servers was given to NSA as they bypassed encryption and privacy controls. Personal data, which should be collected for 'certain limited, specified, and transparent purposes', were exploited instead. This shows their failure in data protection.

The **Cambridge Analytica scandal** also shared the same data breach issue as information and data were extracted for political purposes. The disclosed documents showed that this data analytics firm mined data of 50 million Facebook individual users and then used this information to develop an algorithm. That algorithm was successfully used to influence the US election of 2016 and voting behaviour, as it provided the new capability to deliver political advertising and target specific voters much more precisely than ever before.<sup>25</sup> That shows how the availability of large amounts of data, available on Facebook social media platform, were exploited by entrepreneurs to create and sell new tools and capabilities without any consideration of democratic principles and RBC.

The social media platforms have a role in fuelling hate speech and violence incitement offers another example. It involves **Facebook** and the plight of Rohingya Muslims in Myanmar. Facebook's algorithms were exploited by the Myanmar's armed forces to increase posts on hate speech and violence against the Rohingya.<sup>26</sup> Due to the carelessness of Facebook, this social media platform became 'a means for those seeking to spread hate and cause harm.'<sup>27</sup>

All these cases have showed how safe and secure our data and privacy are within this fast-paced, growing, digital economy society. As **business models** of tech companies who collect, store, and process data continuously evolve and expand, there is a need for reassurance that our data is secure and not misused. Other business sectors increasingly gather and store our data. For instance, health-related businesses where our input of data can provide better monitoring of our health, or delivery business where our personal information and address are needed to deliver their product or service to the consumer's location.<sup>28</sup>

New laws and safeguards are necessary for the (re)use, access, and governance of data are necessary for businesses, whether it is a tech companies or businesses that have access to consumers' or users' data. A better governance of data is reflected in the EU's ground-breaking **General Data Protection Regulation** (2016). GDPR imposes obligations on any businesses that deal with personal data of the EU citizens, whether they are located in the EU or outside of the EU.<sup>29</sup>

24 David Lyon, *Surveillance, Snowden, and Big Data: Capacities, consequences, critique* (2014), <https://journals.sagepub.com/doi/pdf/10.1177/2053951714541861>.

25 Carole Cadwalladr and Emma Graham-Harrison, *Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach* (2018), <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.

26 Chad de Guzman, *Meta's Facebook algorithms 'proactively' promoted violence against the Rohingya, new Amnesty International report asserts* (2022), <https://time.com/6217730/myanmar-meta-rohingya-facebook/>.

27 Dan Milmo, *Rohingya sue Facebook for £150bn over Myanmar genocide* (2021), <https://www.theguardian.com/technology/2021/dec/06/rohingya-sue-facebook-myanmar-genocide-us-uk-legal-action-social-media-violence>.

28 Timothy Morey, Theodore Forbath, and Allison Schoop, *Customer data: Designing for Transparency and Trust* (2015), <https://hbr.org/2015/05/customer-data-designing-for-transparency-and-trust>.

29 *A user-friendly guide to the General Data Protection Regulation (GDPR)* <https://www.gdpreu.org>.



In **Cambodia**, the tech industry and applications of digitalization are at an early stage, but still pose risks to the data and privacy of individuals and businesses alike. According to the report from the Telecommunication Regulator of Cambodia, there are more than 17.82 million internet subscribers, among which around 13.2 million use Facebook.<sup>30</sup> Moreover, the usage of food delivery apps, logistics delivery apps, and transportation apps have increased noticeably, especially during and after the COVID pandemic. These types of business employ workers on a temporary and part-time basis. This is known as ‘gig economy’. While these types of work provide flexibility and more freedom to the drivers and delivery workers, these types of job provide little or no job security at all. Particularly, there are no job benefits or any paid annual leave like the normal job. Digital payment is accepted almost everywhere in the country. With all the convenience and new business models enabled by digitalization, there is a need to ensure that the vast amounts of data collected is not misused to infringe on rights to privacy. Also attention is to examine the potential disruption created by new business models and their effects on the protection of labour rights and livelihoods. Impact assessments and new safeguards are needed.

For instance, in the due diligence and risk management of Facebook, there is a systemic review for potential privacy impacts and for any changes that might impede freedom of expression. They have a Human Rights team to conduct **human rights impact assessment** (HRIA). For example, Facebook conducted a HRIA in Cambodia in 2019 due to the human rights concerns, especially towards the freedom of expression. One of the findings in the report suggests that Facebook is necessary to provide freedom of expression and can serve as an essential platform for independence news as well as an increase in the accountability and transparency of the government. One of the risk mitigation measures is to prevent the spread of disinformation.<sup>31</sup> For transparency purposes, Facebook also has various mechanisms in place such as a dedicated stakeholder engagement team to inform its stakeholders of human rights issues, the Facebook Newsroom for a regular update, and open documents such as the Community Standards and Transparency Report.<sup>32</sup>

One illustration is the suggestion made by the Facebook’s (Meta’s) **Oversight Board** to suspend the account of the (Former) Prime Minister of Cambodia. The Oversight Board was created to assess and decide whether there is any violation to the freedom of expression in their platform. In June 2023, the Board suggested a suspension of the Cambodia Prime Minister for at least six months. The review was made in relation to a video posted in January and the Board deemed it as a violation to the platform policies against inciting violence.<sup>33</sup> However, this recommendation was rejected by Meta in August 2023.<sup>34</sup> Meta determined that although the video may be cited as violence and is therefore to be removed from the platform, it cannot be considered as a crisis situation to restrict the former Prime Minister’s accessibility to the platform.

## 4. Further discussion

**A**I and ML are technologies that play a crucial role in managing and **analyzing large volumes of data** pertaining to national security, intelligence, public services, and data privacy regulations. Nevertheless, the technology comes with a double-edged sword. In the digital age, the naturally unlimited flow

30 Chea Vanyuth, *Internet users at 17.82 million in October* (2022), <https://www.khmertimeskh.com/501197606/internet-users-at-17-82-million-in-october/>.

31 Facebook, *Cambodia Human Rights Impact Assessment* (2020), <https://about.fb.com/wp-content/uploads/2021/03/FB-Response-Cambodia-HRIA.pdf>.

32 Global Network Initiative, *The GNI Principles at Work* (2019), <https://globalnetworkinitiative.org/wp-content/uploads/2020/04/2018-2019-PAR.pdf>.

33 Regine Cabato and Rebecca Tan, *Meta oversight board calls for Cambodian leader’s accounts to be suspended* (2023), <https://www.washingtonpost.com/world/2023/06/29/meta-hun-sen-cambodia-suspended-accounts/>.

34 Regine Cabato, *Meta rejects own board’s request to suspend account of Cambodian strongman* (2023), <https://www.washingtonpost.com/world/2023/08/30/meta-cambodia-facebook-hun-sen/>.

of data, along with the need to protect human rights, are two sides of the same coin. On the one hand, there are significant benefits associated with open access to data and information. On the other hand, there are potential risks to privacy and many other human rights. Such a dilemma is very relevant in the context of RBC and human rights due diligence as the kind of safeguards or corrective actions are not immediately clear.

For example, as shown throughout the chapter, there is an ongoing struggle to strike a balance between freedom of expression and the right to privacy in the internet era. The '**right to be forgotten**' (RTBF) recognizes personal privacy and enables individuals to request the removal of specific private information from search engine results and other online platforms.<sup>35</sup> It grants individuals greater control over their digital footprint. One notable RTBF case was the 2014 ruling by the European Court of Justice in a case involving Google Spain.<sup>36</sup> The EU court determined that individuals have the right to request the removal of outdated, irrelevant, inaccurate, and privacy-infringing content from internet search results. However, RTBF has also been a topic of concern. The removal requests have been deemed to be controversial and lack firm ground in which information might involve the public figures and criminal records. The case serves an example for the cautious consideration for implications and limitations of the right to ensure a fair and just application which respects and protects the individual privacy whereas the public interest is carefully safeguard and prioritized.

Another dilemma is between privacy and **convenience**. For example, cookies – refers to data sent by a web server that is placed in your browser and returned each time you access the same server. To be consent with cookies is indeed a pact you make online – pose a tradeoff between your privacy and convenience. The risk is this kind of cookies identify individual users and record all kinds about your activity.

## 5. Conclusions

**RBC** is a principle which expects businesses to mitigate any adverse impacts of their operations and to contribute positively to the economic, social, and environmental development and growth of the country. In the digital world, personal information and data are being gathered, stored and processed by business and governments. With these large amounts of data, businesses and governments should set up safeguards in line with the principles of RBC. Not only consumers' and users' data and privacy are at risk, but freedom of expression and numerous other civil and political rights as well as access to essential public services.

The adaptation of the RBC principles in the UNGPs to the digital realm and the specific business models and impacts of tech companies has received attention from the UN B-Tech Project. The OECD also revisited digital-related standards such as Privacy Guidelines and highlighted the importance of data governance and digital security through policy frameworks, measures of operators, cooperation between both the public and private sector, and international cooperation.

Cambodia, which has set itself the ambitious plan to transform into a digital society and achieve its status as a high-income country by 2050, needs to step up its effort to mitigate any adverse impacts that may brought forth by digital transformation.

<sup>35</sup> Ashley Nicole Vavra, *The Right to be Forgotten: An archival perspective* (2018), <https://www.jstor.org/stable/48618003>.

<sup>36</sup> The European Court of Justice, *Google Spain SL and Google Inc v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* (2014).

1. OECD, *Platform Companies & Responsible Business Conduct* (2019), <https://mneguidelines.oecd.org/RBC-and-platform-companies.pdf>.
2. Philip Alston, *The digital welfare state*, Report of the Special Rapporteur on extreme poverty and human rights (2019) <https://undocs.org/en/A/74/493>.
3. The World Bank, *Benefitting from the Digital Economy: Cambodia Policy Note* (2018), <https://documents1.worldbank.org/curated/en/100841543598854492/pdf/128267-REVISED-Digital-Economy-web.pdf>.
4. Sue Anne Teo, 'How Artificial Intelligence Systems Challenge the Conceptual Foundations of the Human Rights Legal Framework', *Nordic Journal of Human Rights* 40:1 (2022) <https://doi.org/10.1080/18918131.2022.2073078>.
5. David Kaye, *Surveillance and human rights*, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/41/35 (2019) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/148/76/PDF/G1914876.pdf?OpenElement>.

# **CHAPTER 19**

## **Environmental Protection and RBC**



**Sokphea Young & Sovanlongdy Uy**

**C**ambodia is a developing country with an abundance of **natural resources and environmental diversity**. The country's effort to develop has induced intensive environmental challenges including but not limited to deforestation, overfishing, air and water pollution, land degradation and natural resource depletion. Economic growth and development activities are causing further environmental degradation, leading to concerns about long-term sustainability. Business operations, including large infrastructure investment projects, have positive as well as adverse impacts on the environment and human rights, as recognized in numerous international instruments on RBC (responsible business conduct), including the OECD Guidelines for Multinational Enterprises (see Chapter 3). Therefore, RBC is crucial in addressing environmental harms and protecting the environment, and an indispensable part of sustainable development.

This **chapter** explains the key concepts of environmental human rights and business responsibilities for environmental protection. It will introduce related frameworks and definitions of corporate environmental responsibilities, before highlighting how these frameworks are applied in Cambodia. The chapter then discusses key challenges to practical implementation and application.

## 2. Frameworks

**T**he term 'environmental protection' encompasses many aspects of environmental practice and policy. Related policy and regulatory frameworks clarify the responsibilities and roles of businesses in environmental sustainability.

### 2.1 Concepts of responsible business in environmental protection

The concept of **planetary boundaries** emerged in response to adverse environmental impacts caused by economic activities. It portrays 'the safe operating space' for human activities to maintain a stable and sustainable planet by defining nine boundaries, including: climate change, biodiversity loss, nitrogen cycle, phosphorus cycle, ozone depletion, ocean acidification, global freshwater, change in land use, chemical pollution, and atmospheric aerosol<sup>1</sup>. It is claimed that three boundaries – climate change, biodiversity loss, and nitrogen cycle – have crossed their thresholds due to the adverse impacts of human activities (including corporate activities).

The prevention of corporate and human activities causing the crossing of 'planetary boundaries' could be achieved through 'command and control' regulations, which is a strict regulatory approach to obtaining corporate compliance with the law and the achievement of policy goals.<sup>2</sup> Governments can use other **regulatory approaches** such as 'responsive regulation' to progressively increase pressure on businesses and give them multiple chances to comply with their obligations. The regulators can use tools ranging from education, persuasions, warnings, administrative fines, license suspension or termination, to criminal sanctions to navigate businesses to be accountable to the public and address civil society's concerns.<sup>3</sup>

**Environmental justice (EJ)** argues that economic growth fundamentally clashes with the environment, resulting in unjust ecological distributions between the powerful and the powerless.<sup>4</sup> EJ generally refers to fair and inclusive treatment of everyone regardless of race, gender, nationality, citizenship, or income

1 Rockström, J. et al, 'Planetary boundaries: exploring the safe operating space for humanity', *Ecology and society*, 14(2). (2009) <https://www.stockholmresilience.org/download/18.8615c78125078c8d3380002197/ES-2009-3180.pdf>

2 Sinclair, D., Self-regulation versus command and control? Beyond false dichotomies, *Law & Policy*, (1997) 19(4), 529-559. [https://www.researchgate.net/publication/229611187\\_Self-Regulation\\_Versus\\_Command\\_and\\_Control\\_Beyond\\_False\\_Dichotomies](https://www.researchgate.net/publication/229611187_Self-Regulation_Versus_Command_and_Control_Beyond_False_Dichotomies)

3 Ayres I, Braithwaite J, *Responsive Regulation: Transcending the Deregulation Debate*, New York: Oxford University Press (1992), pp. 3–20.

4 Sze, J., *Environmental justice in a moment of danger*. University of California Press (2020).

concerning environmental risks and benefits. As such, it embodies and intertwines with human rights as harms caused by businesses impacts on human livelihoods, their rights to life, health and safety, self-determination, and many other human rights.

Environmental justice also reflects the notion of 'environmental human rights'. The environment is often seen as a non-human entity and therefore not a holder of human rights.<sup>5</sup> From an anthropocentric standpoint, humans are seen as separate and even superior to nature, leading to decisions that fulfil human needs but downplay the environmental impacts and ecosystems. On the other hand, ethical anthropocentrism delves into the environmental ethics necessary for humankind to survive in this natural world. Recent developments in human rights point in this direction, especially the UN recognition of the **human right to a clean environment**. This newly recognised human right stresses the importance of a healthy environment for realising basic human rights, such as the right to life, health, water, food, and development.<sup>6</sup>

**Corporate environmental accountability** (CEA) refers to the responsibility of environmental officeholders (e.g. state) and the private sector to justify their actions and be answerable to the public.<sup>7</sup> Many believe that achieving social and environmental responsibilities or accountability is only possible if there is a change in the governance of the corporations (corporate leadership and diversity).

The concept, **Environment, Social, and Governance (ESG) investing** has become popular in both the industrialised and developed countries.<sup>8</sup> This notion of ESG investing corresponds to the demand for corporate accountability in the general and growing interest in socially responsible investment (see Chapters 1 and 10). Coined in 2004 in a Global Compact report, ESG is adopted by investors and businesses to assess their ethical commitment and sustainability performance measured on environmental, social, and governance indicators. Regulators (such as financial regulators and stock exchanges) increasingly require businesses to disclose their ESG performance. While ESG is broad, the "E" aspects demand businesses ensure that their activities contribute to environmental protection and do no further harm to the environment and its beneficiaries. The "E" includes climate change and Net-zero (see framework below).

Due to the limits of command and control measures, the UNGPs proposed that states employ a '**smart mix**' of policy measures.<sup>9</sup> Such a combination of laws and policies, at national and international levels, including mandatory and voluntary measures, is promising and is capable of fostering legal compliance and RBC. However, political will and effort from the government of Cambodia is needed to incorporate such measures, in collaboration with its international partners, including adopting mandatory human rights due diligence (HRDD) (see Chapter 6) into Cambodian law.

## 2.2 International frameworks

To address climate change (as one of the planetary boundaries trespassed by human activities) at the **Paris Agreement** on Climate Change in 2015, member states committed to reducing carbon emissions, maintaining emissions lower than 1.5oC by 2030, and achieving Net-zero by 2050. The commitment

5 L. Goralnik, M.P. Nelson, Anthropocentrism, Editor(s): Ruth Chadwick, Encyclopedia of Applied Ethics (Second Edition), Academic Press, (2012) pp 145-155, <https://www.sciencedirect.com/topics/social-sciences/anthropocentrism>.

6 See the resolution of the UN's Human Rights Council (A/HRC/RES/48/13) and the General Assembly Resolution (A/RES/76/300).

7 Bell DV, *The Role of Government in Advancing Corporate Sustainability. Background Paper*. Toronto: York University (2002) <http://www.g8.utoronto.ca/scholar/2002/bell11062002.pdf>.

8 Morrison, R., *Environmental, Social, and Governance Theory: Defusing a Major Threat to Shareholder Rights* (2021) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3845709](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3845709).

9 UNOHCHR, UNGP 10+ A roadmap for the next decade of business and human rights (2021) <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>.



has been interpreted as a framework to tackle climate change. Net-zero means cutting greenhouse gas emissions to as close to zero as possible, with any remaining emissions re-absorbed from the atmosphere, by oceans and forests, for instance<sup>10</sup>.

Among many carbon disclosure frameworks, the **Carbon Disclosure Project (CDP)**, a not-for-profit charity that, run the global disclosure system for investors, businesses, cities, states and regions to manage their environment reporting, especially carbon emissions. In some countries, such as the United Kingdom and European economic areas, businesses are required to disclose their carbon footprint and commitment to Net-zero.

In response to climate change and environmental degradation, the European Union created “**EU taxonomy**” as part of the EU Green Deal.<sup>11</sup> The EU taxonomy is a categorization of investment and business operations based on their environmental (and social) characteristics. The taxonomy identifies 6 environmental objectives: climate change mitigation, climate adaptation, the sustainable use and protection of water and marine resources, a circular economy, pollution control, and enhancement of biodiversity and ecosystems (see Chapters 10 and 12).

The International Financial Corporation’s (**IFC Sustainability Framework**)<sup>12</sup> defines clients’ responsibilities to manage and mitigate their environmental and social impacts and risks. Measuring based on its eight performance standards, IFC requires all direct investments, including projects or corporate finance, to adhere to the standards in return for the loans. The IFC performance standards are recognized as authoritative and guide voluntary compliance and good practices in many other situations than contracts between the IFC and its clients (see Chapter 3). Of the eight standards, performance standard 1, performance standard 3, performance standard 4 (to a certain degree on environmental safety), and performance standard 6 focus on many aspects of the environment.

In OECD countries, **OECD Guidelines for Multinational Enterprises (MNEs)**<sup>13</sup> is regarded as an influential framework on RBC and guides businesses to act sustainably and responsibly by conducting due diligence on human rights, labour rights, environment, bribery, etc. All businesses, regardless of their size, sector, ownership, or legal status, should contribute positively to the economic, environmental, and social aspects of the countries where the operation occurs and avoid or address any business-related harms in the value chain. The updated version in 2023 strengthen and further clarifies the recommendations on the environment, inter alia, including climate change, biodiversity, technology, and value chain due diligence.

The European Commission adopted a proposal for a **Directive on Corporate Sustainability Due Diligence (CSDD)**.<sup>14</sup> This law on CSDD, expected to be finalized in early 2024, aims to enforce sustainable and responsible corporate behavior, and emphasizes human rights and environmental considerations in companies’ operations. The directive will pressure businesses to address the adverse impacts of their actions, including in their value chains inside and outside Europe (see Chapter 12). The environmental aspects include the commitment to the Paris Agreement on climate change in 2015.

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10 United Nations, *For a liveable climate: Net-zero commitments must be backed by credible action*  
<https://www.un.org/en/climatechange/net-zero-coalition>.

11 EU Taxonomy for sustainable activities (website)

[https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities\\_en](https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en).

12 IFC’s Performance Standards On Environmental And Social Sustainability (2012) [https://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards](https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards).

13 OECD’s Guidelines for MNEs - Organisation for Economic Co-operation and Development - <https://www.oecd-ilibrary.org/docserver/81f92357-en.pdf?expires=1696585663&id=id&accname=guest&checksum=50209A4B08536FD820659F36AE34731C>.

14 See EU’s directive on corporate sustainability due diligence

[https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en).

Right holders (citizens, consumers, or customers of the businesses) can claim their right to a healthy environment, including clean air, water, food, housing, livelihood, and natural resources. This is the human right to a clean environment recognized by the UN in 2022.<sup>15</sup> This UN recognition was preceded by the work of John Knox, the former Special Rapporteur on human rights and the environment, who advocated for environmental rights. He developed the **Principles on Human Rights and the Environment**<sup>16</sup> that set forth three obligations that engage states and businesses: procedural, substantive, and obligations relating to persons in vulnerable situations. The obligations included procedural obligations (such as duties to provide information, facilitate participation and provide access to remedies), substantive obligations (including to regulate private actors) and heightened obligations to protect those in particularly vulnerable situations. 'Procedural obligations' indicate that environmental rights are tools to safeguard substantive rights and could be found in human rights instruments, including UNGP. 'Substantive environmental standards' refer to air quality, climate, freshwater quality, marine pollution, waste, toxic substances, protected areas, conservation and biological diversity.<sup>17</sup>

### 2.3 National Frameworks

Apart from the international framework, Cambodia has a **national framework** that could be enforced to ensure corporate responsibility for environmental protection as well as respect for environmental rights. These include the: Law on Environmental Protection and Natural Resource Management; Sub-Decree on Environment Impact Assessment Process (1999); Sub-Decree on Management of Solid Waste (1999); Sub-Decree on Water Pollution Control (1999); Sub-Decree on Control of Air Pollution and Noise Disturbance (2000); Mineral Resource Management and Exploitation Law (2001); Forestry Law (2002); Fisheries Law (2006); Water Resource Management Law (2007); Seed Management and Plant Breeder's Rights Law (2008); Protected Areas Law (2008); Environment and Natural Resource (ENR) Code (2023); as well as other directives, policies, and guidelines. Although some laws, such as land law, are not explicitly related to environmental protection, they are also relevant. Nevertheless, the environmental laws of Cambodia, both specific and general, are not comprehensive and consistent enough to ensure compliance.<sup>18</sup>

The recently adopted **Environment and Natural Resource (ENR) code**<sup>19</sup> is a testament to RGC's commitment to closing legal gaps and strengthening environmental protection, particularly through making legal persons criminally liable. It also includes provisions for: Environmental Impact Assessment (EIA); sustainable resource management; funding; environmental liability; complaint mechanisms; penal codes; and other vital environmental components.

The RGC has implemented several core **environmental policies**, such as the 'National Environment Strategy and Action Plan' (2016–2023), to demonstrate its commitment to sustainable development. Furthermore, the RGC has also sought to encourage sustainable business practices through initiatives such as 'National Strategic Plan on Green Growth' (2013-2030), the 'Pentagonal Strategy Phase I 2023-2028', and its investment law, which promote the concepts of green investment, green finance, and green economy.

15 See the General Assembly Resolution (A/RES/76/300).

16 J. Knox, *Framework Principles on Human Rights and the Environment* (2018) [www.ohchr.org/en/special-procedures/sr-environment/framework-principles-human-rights-and-environment-2018](https://www.ohchr.org/en/special-procedures/sr-environment/framework-principles-human-rights-and-environment-2018).

17 *Id.*

18 See Client Earth, *Community protected area in Cambodia: Analysis of legal framework practice and recommendations* (2022) [https://www.clientearth.org/media/cbzoeazp/clientearth\\_cpa-report-cambodia\\_en.pdf](https://www.clientearth.org/media/cbzoeazp/clientearth_cpa-report-cambodia_en.pdf).

19 Royal Kram No 0623/007 on environment and natural resources code [https://data.opendatacambodia.net/en/laws\\_record/royal-kram-no-0623-007-on-environment-and-natural-resources-code](https://data.opendatacambodia.net/en/laws_record/royal-kram-no-0623-007-on-environment-and-natural-resources-code).

### 3.1 Policy implementation and institutional aspects

**T**he Royal Government of Cambodia (RGC), particularly the **Ministry of Environment (MoE)**, has adopted a 'command and control' concept to enforce environmental protection regulations and laws, as mentioned in section 2. In 2015, the National Council for Sustainable Development (NCSD)<sup>20</sup> was established, chaired by the Ministry of the Environment (MoE) and joined by 36 ministries, agencies, and 25 capital/provincial governors in order to promote sustainable development. To help businesses in Cambodia incorporate sustainable practices into their operations, the NCSD is responsible for providing guidance and support.

Despite the government's efforts to adopt various environmental regulations and policies in Cambodia, **regulatory enforcement** is still considered weak. Cambodia still faces significant challenges, such as inadequate law enforcement, insufficient state institutional capacities, and a lack of political will. The governmental effectiveness in civil and public service quality, policy quality and implementation, political interference, and credibility on policy enforcement, measured by World Bank, indicated Cambodia with a low score of -0.42 in 2021 (-2.5 weak; 2.5 strong).<sup>21</sup> Many large-scale investment projects authorised by the government through its ELCs strategy, particularly in agribusiness and energy fields, often cause environmental deterioration and aggravate communities. Some consider that development, to some extent, inevitably affects the environment. However, the legal tools such as protected areas (PAs), EIA, or community-based resource management strategies can minimise environmental harms caused by businesses, and thus achieve a better balance between development and environmental protection.

EIA or **environmental social impact assessment (ESIA)** is mandatory for all public and private investment projects, particularly in the agriculture, industry, infrastructure, and tourism fields.<sup>22</sup> EIA is solely focused on assessing environmental impacts, while ESIA pertains to a broader assessment framework covering the potential social, cultural and economic aspects in addition to the environment. EIA/ESIA should be undertaken before commencing any business activities. EIA/ESIA is a filter for any development project to prevent environmental degradation, mitigate environmental and social impacts caused by the project operations, and promote sustainable development. The EIA and ESIA systems in Cambodia have been criticized<sup>23</sup> for their ineffectiveness in forcing businesses to lessen their environmental impacts. The limitations include the quality of the EIA/ESIA report, the limited capacity of consultants, the low quality of EIA/ESIA review by the state and the implementation of the social and environmental plans after the approval of EIA, and political influence in the decision-making process.

Conducting a **human rights impact assessment (HRIA)**, which is a systematic process for identifying and analysing all the human rights risks posed by a businesses or project, is not mandatory in Cambodia. even though only few businesses undertake HRIA voluntarily, advocacy organisations find HRIAs a useful tool to analyse and monitor businesses on their human rights-related impacts. For example, an HRIA was done for Economic Land Concessions in Ratanakiri.<sup>24</sup>

20 See more information on the National Council for Sustainable Development <https://ncsd.moe.gov.kh/ncsd/about-ncsd>.

21 World Bank's government effectiveness- Cambodia <https://data.worldbank.org/indicator/GE.EST?locations=KH>.

22 Sub-Decree No.72 on the Environmental Impact Assessment Process - Laws OD Mekong Datahub (opendevdevelopmentcambodia.net). (អនុក្រឹត្យលេខ៧២ស្តីពីកិច្ចដំណើរការវាយតម្លៃហេតុប៉ះពាល់បរិស្ថាន)

23 Baird, M, *Environmental impact assessment in Cambodia-Law and Practice*, in Kong, P, Bin, R, Georgina R, & Hoy R (eds), *The law talks: Contemporary environmental law in Cambodia and Future perspective*,(2020) pp 43-52 <https://www.kas.de/documents/264850/8652138/Contemporary+Environmental+Law+in+Cambodia+and+Future+Perspectives.pdf/1d483f29-615b-f02c-6f1b-48a1411d5452?t=1587641697247>.

24 see human rights impact assessment by Inclusive Development and Equitable Cambodia <https://www.inclusivedevelopment.net/wp-content/uploads/2020/05/rubberhriawebfinalcompressed.pdf>.

### 3.2 Cases

Most of the **economic land concessions** (ELCs) for agroindustry projects are the source of deforestation in not only ELCs per se but also in the adjacent lands and protected areas (PAs), conservative areas for environmental protection. Other new forms of deforestation are involved, such as Social Land Concessions (SLCs) or forest restoration projects. Compared to outside concessions areas, the forest loss within the areas was higher, between 29% and 105%.<sup>25</sup> The illegal logging is questioned whether Cambodia's timber is smuggled from these ELC areas. The report by Global Initiative (GI)<sup>26</sup> encapsulated the activities of some businesses in Cambodia using ELCs for illegal timber, timber laundering, and smuggling from the protected areas in Prey Lang and Prey Preah Roka Wildlife Sanctuary.

One of the critical challenges hampering regulatory enforcement of corporate environmental accountability is **corruption**. Based on NGOs reports, media, and academic sources, the lucrative natural resources and public good extractions on the concession lands are granted to tycoons, elites, or foreign investors having close ties to the ruling party.<sup>27</sup> Corruption will challenge compliance to bring environmental accountability no matter how good Cambodia's laws, including the environment and natural resource code. The corruption in large-scale projects pertains to bribery and the shared interests among businesses and state agencies, which impedes the effectiveness of regulatory enforcement within the command and control context. According to Transparency International,<sup>28</sup> Cambodia was ranked 150th of 180, representing one of the most corrupt countries in 2022. It also weakens the good governance in Cambodia. Under mutual interests, businesses can operate without proper government controls or lax legal standards, leading to environmental mismanagement. The businesses reported in GI were not strictly investigated, nor did they file any lawsuits with the court.

The perplexing relations between business and state actors challenge legal enforcement, such as the effectiveness of ESIA and good governance to promote and foster responsible business conduct in Cambodia. If not correctly addressed, these gaps will enlarge the carbon footprints and demotivate businesses to adopt a corporate environmental approach and respect environmental human rights.

#### Lower Sesan II dam project

The notorious case of the lower Sesan II dam project illustrates the low level of EIA enforcement. The EIA<sup>29</sup> was conducted between 2008 to 2009. The construction of the Sesan II dam in Steung Treng province was expected to cause significant **social and environmental impacts** on tens of thousands of people's livelihoods, loss of access to fisheries and forestry resources, decreased fish stocks, and hydrology and water quality changes.<sup>30</sup> Hundreds of thousands along the Mekong basins, Central Cambodia, Thailand, Laos, and Vietnam were also expectedly impacted due to migratory fish. The project was completed in 2018 but still brings severe environmental and social impacts compared to the revenues generated. A Human Rights Watch report pinpointed the failures of RGC and the company to conduct genuine consultations with those affected and obtain their 'free, prior, and informed consent'.<sup>31</sup>

25 Davis, K. F., Yu, K., Rulli, M. C., Pichdara, L., & D'Odorico, P., Accelerated deforestation driven by large-scale land acquisitions in Cambodia. *Nature Geoscience*, (2015) 8(10), 772-775.

26 Global Initiative *Forest crimes in Cambodia: rings of illegality in Prey Lang Wildlife Sanctuary*, Global Initiative <https://globalinitiative.net/wp-content/uploads/2021/03/Forest-crimes-in-Cambodia-Rings-of-illegality-in-Prey-Lang-Wildlife-Sanctuary-GITOC-2021.pdf>.

27 Young, S., *Strategies of authoritarian survival and dissensus in Southeast Asia: Weak Men versus Strongmen*. Springer Nature. (2021), P. 46-52.

28 Transparency International Cambodia's Country Corruption Index (2023) <https://www.ticambodia.org/cpi2022/>.

29 Open Development Cambodia, *Complete the environmental impact assessment report for the Lower Sesan 2 hydropower project in Stung Treng province, Cambodia* (Final report). (2022) <https://data.opendevdevelopmentmekong.net/agreement/full-environmental-impact-assessment-of-lower-sesan-ii-hydropower-project-in-stung-treng-province-c>.

30 Baird, I. G., *Best Practice in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia*. Phnom Penh: Rivers Coalition in Cambodia (2009).

31 Human Rights Watch, *Cambodia: China's "belt and road" dam is a rights disaster* (2021) <https://www.hrw.org/news/2021/08/10/cambodia-chinas-belt-and-road-dam-rights-disaster>.



The project induced strong **resistance by the affected communities**, especially the indigenous communities, whose land and forests were inundated by the hydropower reserve. While the environmental and social impact assessment was conducted, the quality of the project did not meet international standards, such as the IFC performance standards. The government sees the project as a key contributor to the sustainable economy but the hydropower project did not address the adverse environmental and social impacts. Some affected communities acknowledged that they have settled in a better place (new resettlement), but the project displaced them far from the water resources where they have skills in fishing. This affected their rights to access adequate water, sustainable food, and effective remedies. Two important factors may cause the relative failure of the project's commitment to responsible business conduct. First, it could be due to the weak capacity of regulatory enforcement. Second, the government claimed they had done well according to the national law or standard requirement, but such compliance still needs to meet international standards.

### **The National Solar Park project**

The National Solar Park (NSP) project, owned by Electricite du Cambodge (EDC), is a massive 100-megawatt (MW) solar plant project consisting of two phases (60 MW and 40 MW). The first phase, 60 MW NSP, was tendered out in 2019 and awarded to the private firm Prime Road Alternative Company (PRAC). This project was completed in 2022 with minimal environmental and social impacts.

To measure the project's social and environmental impacts and risks, the project owner and contractor complied with many **national regulations and international standards**, including ADB Safeguard Policy, IFC performance standards, Cambodia's EIA legal frameworks and other relevant environmental laws. Environmental impacts were continuously assessed and monitored in all project phases: design and pre-construction, during construction, and operation. To minimise any potential environmental and social impacts, the company carefully selected the site and route to avoid protected areas, habitats, or intangible and tangible community resources, including households, agricultural lands, or trees, and a non-judicial grievance mechanism (GM) was set up to receive any complaints and resolve any harms.

This case demonstrates RBC in practice and respect for the environment from investors, project owners, contractors, and sub-contractors. IFC and ADB are acknowledged for their concrete environmental policies and standards applied to their clients, such as EDC and PRAC, as part of the conditions to receive loans. PRAC and EDC applied the conditions and complied with many vital environmental principles and regulations.

### **Ameru Rice**

Ameru Rice is a rice producer and exporter in Cambodia. It currently has the capacity to mill and process over 100,000 MT per year, exported to over 45 countries worldwide. Amru Rice was the No. 2 rice exporter in 2013 and 2014 and the No.1 in 2015. Ameru Rice launched contract farming with a hundred farmers to produce organic rice in 2013. With support from the European Union's counterpart and partners, they contracted with over 6,000 households for organic rice farming and 14,000 farmers for sustainable rice farming.

As a key actor in the country's rice sector, Amru is committed to developing not only a successful but also a sustainable business by implementing the highest standard of RBC practices. Driven by the commitment to make a difference, ESG advancement will thus remain core to the company in its next phase of growth<sup>32</sup>. Ameru Rice has been recognised for its practices that do not harm the environment.

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<sup>32</sup> Kiripost, *Amru Receives EMIA Investment to expand into global markets*  
<https://kiripost.com/stories/cambodia-amru-receives-emia-investment-to-expand-into-global-markets>.

Importantly, the company **collaborated** with international investors/partners, including IFC and EU, who have supported Ameru Rice financially and technically. That ensured Ameru Rice's ability to export rice to EU markets and meet the due diligence requirements of the buyer companies in the EU.

### 3.3 Civil society activism

In Cambodia, civil society organisations (CSOs), including local and international non-governmental organisations (NGOs), advocate for environmental protection and accountability by the government and businesses. NGOs and environmental networks raise awareness of responsible business practices and environmental issues, promote environmental sustainability, and push for policy change. LICADHO, Equitable Cambodia, and other international networks collaborate to address business-related human rights abuses and remedies, encouraging both the Royal Government of Cambodia (RGC) and businesses to adhere to national and international laws, including the OECD Guidelines. Mother Nature Cambodia, a former NGO and a highly esteemed environmental activist group, are regarded as environmental human rights defenders (EHRDs) (See Chapter 9), contributing to environmental justice.

The NGOs in Cambodia and other environmental networks typically utilise **two methods** to promote environmental accountability: advocating for RGC to regulate businesses directly or targeting businesses directly.<sup>33</sup> Affected communities and NGOs are a major driving force in mobilising environmental movements to hold the RGC and businesses accountable for their environmental impact. In Cambodia, the government is in charge of issuing permits for projects, granting commercial licenses, or providing ELCs for business operations. When businesses cause environmental adversity and harm communities, environmental networks are formed to advocate for governments to alter their decisions and enforce environmental regulations.

To some extent, communities, NGOs, and other environmental networks have **impacted** RGC's response to the social and environmental issues caused by large businesses. It has been demonstrated through the moratorium (temporary bans) on new ELCs in 2012 and sand dredging licenses in 2013, the requirements to conduct EIAs, granting and revocation of commercial licenses. Some projects, such as the Areng Valley hydropower dam project and the Phnom Tamao development project, are also suspended. Furthermore, the sugar companies having land disputes with communities in Koh Kong, Odar Meanchey, and Kampong Speu have proactively addressed social and environmental concerns and adopted environmental policies.<sup>34</sup> This has been evidenced by a shift in corporate environmental behaviour beyond mere compliance with national laws, driven by increased pressure from environmental networks.<sup>35</sup>

Despite some successes, communities, NGOs and other EHRDs are frequently **suppressed** and restricted by governments. These environmental defenders have experienced different risks in terms of judicial harassment, threats, and other attacks, particularly amid this pandemic context.<sup>36</sup> In 2021, at least 24 EHRDs (12 females) were detained.<sup>37</sup> CSO groups argue that the government uses legal tools to assault environmental defenders and shield corporations.

33 Young, S. Protests, regulations, and environmental accountability in Cambodia. *Journal of Current Southeast Asian Affairs*, (2019) 38(1), 33-54.

34 Id.

35 Gunningham, N., Kagan, R. A., & Thornton, D., Social license and environmental protection: why businesses go beyond compliance. *Law & Social Inquiry*, (2004) 29(2), 307-341. <https://www.jstor.org/stable/4092687>.

36 Global Witness, *Threats Against Cambodian Forest Defenders Escalate Amid COVID-19* (2020) <https://www.globalwitness.org/en/blog/threats-against-cambodian-forest-defenders-escalate-amid-covid-19/#:~:text=Today%20Cambodia%20continues%20to%20be,environmental%20defenders%20around%20the%20world>.

37 OHCHR's news release <https://bangkok.ohchr.org/ehrd-cambodia/>.



**T**his chapter clarified the **relation** between environmental protection and the human rights responsibility of businesses within the notion of RBC. Historically, businesses have over-emphasised either the human rights or the environmental angles of their responsibility. In ESG, human rights are considered to belong to the 'social' while environmental human rights are not explicitly covered by either the 'S' or the 'E' in the ESG framework. The recent recognition in the UN of environmental human rights, especially the human right to a healthy environment, is yet to be developed further into a practical framework that businesses can apply.

In Cambodia, some human rights aspects remain sensitive, and the requirements for businesses to undertake RBC are indirectly addressed or interpreted in various regulations. Sub-decree on EIA, for instance, does not cover human rights impact assessments, but the rights of the affected communities are claimed to have been covered by the state and companies' efforts to compensate for the loss of properties or livelihoods. The integration between environmental rights and human rights in Cambodia's legal framework appears not to be clearly mapped out.

## 5. Conclusions

**I**n a developing country like Cambodia, the government is more open to foreign direct investment (FDI) and economic activities that prioritise economy and poverty reduction over environmental protection. Although the RGC endeavours to balance environmental and economic interests in its legal frameworks, the environmental impacts caused by corporate activities are still apparently neglected. Large-scale loggings, deforestation on the concession lands for agro-industrial purposes, hydropower projects, resource extractions including mining and sand dredging, and other development projects occur throughout the country. The command-and-control approach is not sufficient to deliver corporate environmental accountability because of weak legal enforcement and poor institutional governance. As in other countries confronting the same challenges, civil society organisations play crucial roles in monitoring business impacts, corporate performance and the effective enforcement of regulations.

The application of RBC concepts and environmental accountability in the practice of businesses can be driven in many ways. As in the case of Ameru Rice, the requirements by the international actors advanced the company's commitments to apply ESG concepts, whereas both local and international requirements drove the case of National Solar Park. These are the byproducts of compliance with national regulations, contractual clauses with business partners and investors, and voluntary commitments by businesses.

## 6. Further readings

1. Donald Anton, *Is the Environment a Human Rights Issue?* (2008) <https://ssrn.com/abstract=1126470>.
2. Council of Europe, *Manual on Human Rights and the Environment* (2012) [https://www.echr.coe.int/documents/d/echr/dh\\_dev\\_manual\\_environment\\_eng](https://www.echr.coe.int/documents/d/echr/dh_dev_manual_environment_eng). Amnesty International, *Cambodia: Harassment of Forest Defenders Undermines Struggle Against Climate Change*, Amnesty International Public Statement (2020) <https://www.amnesty.org/en/documents/asa23/2004/2020/en/>.
3. United Nations Children's Fund (UNICEF), *Escazú Agreement for young people* (2020) <https://www.unicef.org/lac/media/19326/file/escazu-agreement.pdf>.
4. Tara J. Melish, *Putting 'Human Rights' Back into the UN Guiding Principles on Business and Human Rights: Shifting Frames and Embedding Participation Rights* (2014) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2475629](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2475629).

# **CHAPTER 20**

## **Human Rights Revisited from Cambodian and Southeast Asian Perspectives**



**Rhona Smith and Ratana Ly**

**T**his final chapter will broaden the consideration of Responsible Business Conduct (RBC) and Human Rights in Cambodia by considering the **regional and international context** in which Cambodia operates. The frameworks for RBC discussed in this textbook are grounded in international human rights, and RBC implementation is influenced by overall economic and political trends and developments. Indeed, the Royal Government of Cambodia (Royal Government) regularly engages with the United Nations (UN) machinery on international human rights, is active within the Association of Southeast Asian Nations (ASEAN), and is part of several development and trade agreements and initiatives (not least with the People's Republic of China). Reflecting on some of the international and regional dynamics relevant to RBC, and human rights more broadly, allows a broader and nuanced perspective on RBC topics covered in this textbook and how they fit with Cambodia's path to development.

To explain this broader context of RBC, this **chapter** will first outline trends and debates related to human rights, both internationally and in the region, to show how ideas of human rights are evolving (Framework). The next section will provide a more detailed and applied analysis of international institutions, regional developments, and economic changes that bear on RBC and Cambodia's approach to development (Applications). A final substantive section offers reflections on the role of education in promoting RBC and human rights (Further Discussion).

## 2. Frameworks

**A** complex web of international and regional relationships and agreements offer a context within which RBC is supported and, indeed, evaluated. Business, and its success, is integral to the development of countries and, at least in principle, the increased prosperity and wellbeing of their populations. The legal and institutional frameworks outlined in the previous chapters work within **different contexts**. This section begins with a review of the principal contexts relevant to Cambodia: i.e. the geopolitical, historical, economic, international institutional, and the broader international context.

The focus in this section will be on human rights, and offers aspects of an historical understanding of, and current debates on, human rights.

### Historical and ASEAN regional context

Human rights are often cited as being **western/Christian** focused, with a foundation document, the Universal Declaration of Human Rights, adopted in 1948 by a UN with only 59 member states (including from Southeast Asia, the Philippines Republic, Siam (Thailand) and Burma (Myanmar)). Nevertheless, the drafters included representatives from China, Lebanon and elsewhere. Moreover, the ASEAN Human Rights Declaration of 2012 does not exclude any of the rights or freedoms found in the Universal Declaration, indicating that all rights and freedoms were considered relevant to the modern Southeast Asian states, including Cambodia.

Modern human rights should be understood in light of their **historical and regional context**. ASEAN is a key regional organization relevant to Cambodia. Countries in the region have explored their common views on human rights and also adopted their own regional ASEAN Human Rights Declaration (see also Chapter 3).

By 1993, with Southeast Asian nations amongst the fastest developing economies and growing in international prominence, a distinct ideology of **Asian values** was proposed. The discussions were led by the Singapore and Malaysian premiers. This culminated with the 1993 Bangkok Declaration<sup>1</sup> adopted by

<sup>1</sup> *Report of the Regional Meeting for Asia of the World Conference on Human Rights, Bangkok, (29 March-2 April 1993)*, A/CONF.157/ASRM/8 and A/CONF.157/PC/59, page 3 <https://digitallibrary.un.org/record/167021>.

Asian leaders prior to the 1993 World Conference on Human Rights in Vienna. In apparent contrast to the claimed ‘western’ ideals of universalism of individual rights and freedoms, the preamble of the Bangkok Declaration highlighted elements of the agreed Asian approach: respect for national sovereignty; territorial integrity and non-interference in the internal affairs of States; the need to avoid the application of double standards in the implementation of human rights and its politicization; and that human rights should not be promoted through confrontation and the imposition of ‘incompatible’ values.

Whilst Asian values decreased in political prominence in the wake of the 1997 economic crisis, which particularly impacted the region (not least Malaysia and Singapore), some of the elements were reflected in the regional human rights declaration, the **ASEAN Human Rights Declaration of 2012**.<sup>2</sup> Principle 7 indicates ‘the realisation of human rights must be considered in the regional and national context, bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds’ and Principle 6 notes that ‘[t]he enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives’. Of course, the ASEAN itself is always keen to reiterate its commitment to national sovereignty and non-interference in the internal affairs of states. These are common refrains in ASEAN political discourse, but can prove a difficult approach when States in the region violate international standards. Quiet diplomacy, with consultations, compromise as necessary, and consensus the goal, remains the ASEAN way of conducting regional business.

Beyond southeast Asia, **China** is also a strong advocate of the inviolability of sovereignty and non-interference in national affairs, with a similar approach to ASEAN. China has a specific approach to human rights<sup>3</sup> and development,<sup>4</sup> and deploys specific language on human rights monitoring and implementation, language which is increasingly echoed in the comments of the Royal Government. China’s close relationship with Cambodia can be visible when it comes to formal international human rights monitoring and enforcing, not least as regards calling for understanding of the Cambodian context and stage of development.<sup>5</sup> This resonates with the ASEAN approach of non-confrontation. China and Cambodia’s leaders have mutually supported each other’s consolidation of government power,<sup>6</sup> with consequences for civil and political human rights.

### **Debate about the impacts and the ‘future’ of human rights**

There are thus different views on the origin of human rights and their relation with development. These are part of a much **broader international debate about human rights**, what they have achieved and what challenges lie ahead, as well as informed by a number of theories and approaches to international human rights and international law more broadly.

Arguably the end of the twentieth century marked a **high point for international human rights**, with the 1993 World Conference bringing together states and civil society and agreeing on the Vienna Declaration and Programme of Action.<sup>7</sup> It marked the end of the divisive ‘Cold War’, which negatively impacted

2 ASEAN, *ASEAN Human Rights Declaration* (2012) [https://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20\(7.%20Jul\)%20-%20ASEAN%20Human%20Rights%20Declaration%20\(AHRD\)%20and%20Its%20Translation.pdf](https://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20(7.%20Jul)%20-%20ASEAN%20Human%20Rights%20Declaration%20(AHRD)%20and%20Its%20Translation.pdf).

3 *Decoding China*, [https://rwi.lu.se/wp-content/uploads/2021/03/Decoding-China-Publication\\_FINAL.pdf](https://rwi.lu.se/wp-content/uploads/2021/03/Decoding-China-Publication_FINAL.pdf)

4 State Council Information Office of the People’s Republic of China, *China’s International Development Cooperation in the New Era* (2021) <http://regional.chinadaily.com.cn/pdf/FulltextChina'sInternationalDevelopmentCooperationintheNewEra.docx>; Jingdong Yuan, Fei Su and Xuwan Ouyang, *China’s Evolving Approach to Foreign Aid*, SIPRI, (2022) <https://doi.org/10.55163/WTNJ4163>

5 Sovinda Po & Kearnin Sims, ‘The Myth of Non-interference: Chinese Foreign Policy in Cambodia’, *Asian Studies Review* (2022) 46(1), pp 36-54.

6 Neil Loughlin, ‘Chinese Linkage, Leverage, and Cambodia’s Transition to Hegemonic Authoritarianism’, *Democratization* 28(4), pp 840-857, (2021).

7 Declaration and Plan of Action, <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>.

much of the work of the UN and the final stages of decolonization. The preamble recognized that ‘the promotion and protection of human rights [wa]s a matter of priority for the international community’ and the document emphasized the indivisibility, interdependence and interrelatedness of all universal rights (para 5). Of course, in Cambodia, 1993 marked the beginning of the modern era, following its tragic period of colonisation, occupation, Democratic Kampuchea with genocide and mass displacement, famine and civil conflict. All UN member States accepted some international human rights treaties and there was a palpable sense that the twenty-first century would bring greater solidarity, prosperity and peace.

However, the twenty-first century brought **challenges** in terms of the failure of so many countries to fully realise the rights and freedoms accepted in international treaties which has led to claims of the endtimes of human rights,<sup>8</sup> the twilight of human rights law,<sup>9</sup> whilst other commentators suggest that the age of human rights may be over<sup>10</sup> and we are in the post-human rights era.<sup>11</sup> A populist challenge<sup>12</sup> to human rights, as well as overlegalizing and politicising rights and freedoms, have been identified as factors in the democratic backsliding<sup>13</sup> which has characterised many states in the late 2010s into the 2020s.

There are also theoretical analyses of the role of human rights in transitional democracies and autocratic /authoritarian states.<sup>14</sup> More generally, there are **post-colonial critiques** reflecting some of the third world approaches to international law (TWAAIL) which emerged at the turn of the century.<sup>15</sup> Thus many theorists are focusing on explaining challenges with the protection of human rights experienced in countries through various critical lenses. What is clear is that more can be done throughout the world to ensure that the ideals of human rights accepted voluntarily by states around the world, are transformed into a tangible reality for all people, everywhere.

### Evolution of human rights and relation with development

Human rights are **not static**. As shown in Chapter 19, one of the most recently recognized human rights is the right to a clean and healthy environment, as declared by the UN General Assembly in 2022. Furthermore, the precise content of human rights and fundamental freedoms continue to evolve, as state practice develops and understanding of human rights advances.

Human rights frameworks also interact with other international frameworks for advancing wellbeing. In 2015, the UN member states adopted a **trilogy of policy documents** which are highly influential in shaping the work of the organization: Agenda 2030<sup>16</sup> and the UN SDGs;<sup>17</sup> the Sendai Framework for Disaster Risk Reduction;<sup>18</sup> and the UN Framework Convention on Climate Change (Paris Agreement) of the UN Climate Change Conference.<sup>19</sup> Human-centred approaches to business ensure not only respect

8 Stephen Hopgood, *The Endtimes of Human Rights*, Ithaca: Cornell University Press, (2013).

9 Eric Posner, *The Twilight of Human Rights Law*, Oxford: Oxford University Press, (2014).

10 Makau W. Mutua, ‘Is the Age of Human Rights Over?’ in Sophia A. McClennen and Alexandra Schultheis Moore (eds) *Routledge Companion to Literature and Human Rights*, London and New York: Routledge, (2016).pp 450-458.

11 Ingrid Wuerth, ‘International Law in the Post-Human Rights Era’, *Texas Law Review* 96, 279 (2017).

12 Philip Alston, ‘The Populist Challenge to Human Rights’ 9 *Journal of Human Rights Practice* 9:1 (2017).

13 Natasha Wunsch and Philippe Blanchard, ‘Patterns of Democratic Backsliding in Third-Wave Democracies: A Sequence Analysis Perspective’, *Democratization* (2023) 30(2) pp 278-301

14 See, for examples, Mégret, Frédéric and Vagliano, Raphael, *Transitional Justice and Human Rights* (March 22, 2016). Dov Jacobs & Luke Moffett, *Research handbook on Transitional Justice* (Edward Elgar, 2016), Available at SSRN: <https://ssrn.com/abstract=2753191> or <http://dx.doi.org/10.2139/ssrn.2753191>; and Ginsburg, Tom, *Democracies and International Law* (Dec 2, 2021). *Democracies and International Law*, Cambridge University Press 2021, Available at SSRN: <https://ssrn.com/abstract=4086997>.

15 For example, see Makau Mutua, ‘What is TWAAIL?’ (2000) Proceedings of the 94th Annual Meeting of the American Society of International Law, pp.31-40, <https://doi.org/10.1017/S0272503700054896>.

16 General Assembly, Transforming Our World: the 2030 Agenda for Sustainable Development, A/RES/70/1, (25 September 2015) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>.

17 UN Sustainable Development Goals portal <https://sdgs.un.org/goals>.

18 United Nations, *Sendai Framework for Disaster Risk Reduction 2015-2030*, (18 March 2015)

<https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>.

19 UNFCCC, *Paris Agreement on Climate Change*, (2015) <https://unfccc.int/process-and-meetings/the-paris-agreement>.

for the international human rights obligations of the Royal Government, but also progress towards these UN Sustainable Development Goals (SDGs) and reduction of emissions leading to climate change.

It is well established that the **SDGs** map onto preexisting international human rights standards.<sup>20</sup> Many, if not all, of the SDGs are relevant in terms of responsible business practice, as well as the impact on people: SDG 8 on decent work and economic growth; SDG 9 on inclusive, sustainable industrialization and innovation; SDG 5 on gender equality; SDG 1 on ending poverty, and SDG 7 on affordable energy.

Cambodia submits **voluntary reports** on its progress towards the sustainable development goals to the UN High Level Political Forum (twice so far, in 2019 and 2023),<sup>21</sup> and highlighting the link with its overarching rectangular strategy, being replaced by a new National Strategy (guiding the Seventh Legislature). Cambodia's localization plan has a number of gaps in terms of addressing all SDGs as the relevant chapters have highlighted (especially on SDG 16), though Cambodia does accept an additional voluntary goal on ending the negative impact of mines/ERW and promoting victim assistance.<sup>22</sup> The empirical data available (and collected) within Cambodia is not necessarily disaggregated sufficiently to ensure identification of groups/persons likely to be left behind in the country's fast development. In comparison to its more defensive engagement with UN human rights monitoring, The Royal Government engages positively with the development-focused SDGs.. This is perhaps as the SDGs are approached in a less legalistic manner within the UN and the progress is to an extent self-defined by states.

The Sendai Framework provides seven clear targets and four priorities for action to prevent new and reduce existing **disaster risks**. These also shape business practices. Cambodia's Report<sup>23</sup> highlights a number of ways in which business is engaged in work on building resilience and supporting risk reduction within the Kingdom. Meanwhile, the Paris Agreement requires national climate action plans from each contracting party on their Nationally Determined Contributions (NDCs) on reducing greenhouse gas emissions. The current NDCs were submitted in 2020, with Cambodia including a detailed analysis of the overlap between Cambodia's NDCs and the SDGs.<sup>24</sup>

In sum, whilst much of this book has focused on RBC and human rights, international human rights are not the sole international framework of relevance.

**A human rights-based approach to development** emerged at the start of this century, alongside the movement of some development cooperation from donations without conditions, to a more evaluative form of programming.<sup>25</sup> In this way, foreign aid became intertwined with the aims of human rights, rule of law and democracy.

Given Cambodia is a post-colonial state and due to its tragic past, , many states have worked with the Royal Government throughout the **modern era**. The UN itself, in its largest mobilization ever, was mandated to operate a transitional authority until the first modern elections were completed in 1993. Thereafter, Cambodia accepted overseas development assistance from a number of wealthier countries.

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20 See the database prepared by the Danish Institute for Human Rights <https://sdg.humanrights.dk/>.

21 See Cambodia, *Voluntary National Reviews* (website) <https://hlpf.un.org/countries/cambodia>.

22 Royal Government of the Kingdom of Cambodia, "Cambodian sustainable development goals framework (2016-2030)", (19 November 2018) <https://data.opendatacambodia.net/dataset/cambodian-sustainable-development-goals-framework-2016-2030>.

23 Asian Disaster Preparedness Center United Nations Office for Disaster Risk Reduction - Regional Office for Asia and Pacific, *Disaster risk reduction in Cambodia (2019)* <https://www.undrr.org/publication/disaster-risk-reduction-cambodia>.

24 General Secretariat of the National Council for Sustainable Development/Ministry of Environment, *Cambodia's Updated Nationally Determined Contribution (NDC) 2020, Phnom Penh (2020)* [https://unfccc.int/sites/default/files/NDC/2022-06/20201231\\_NDC\\_Update\\_Cambodia.pdf](https://unfccc.int/sites/default/files/NDC/2022-06/20201231_NDC_Update_Cambodia.pdf) at section 8.

25 Ou Sivhuoch, 'A Rights-Based Approach to Development: A Cambodian Perspective', CDRI (1 April 2015) <https://cdri.org.kh/publication/a-rights-based-approach-to-development-a-cambodian-perspective>.



The country has seen very rapid economic development with the country securing lower middle-income status in 2015 and aiming for upper middle-income status by 2023.<sup>26</sup> Over the years, Cambodia's relations with its **development partners** have evolved, often reflecting geopolitical shifts as well as evolving developmental needs. Japan, the USA and Australia were prominent in the early modern period. Their support was often focused on establishing a legal and institutional framework (rule of law, democracy, human rights) to support economic developments. The EU and its member states increased in prominence, especially as that bloc became a major importer of Cambodian textiles. Japan remained an engaged partner as have other regional powers.

What changed is the **approach to development partnerships**. The EU's partial withdrawal of trade preferences in 2020 is an example. The EU determined, after a prescribed process of discussions, that aspects of Cambodia's civil and political human rights performance were unsatisfactory (see Chapter 12). The withdrawal happened during the COVID-19 pandemic when much global trade was affected by lockdowns and travel restrictions. Cambodia's former Prime Minister concluded that the loss of EU trade preferences had not harmed the country's exports.<sup>27</sup>

### 3. Applications

**T**his section further explains the broader international context for RBC and human rights in Cambodia. It begins with some details on Cambodia's approach to its development, and continues with three contexts: the international human rights context, regional economic integration, and the international economic context.

#### Cambodia's path to development

The Royal Government carved out a very specific approach to its economic development, building its **'Win-Win' policy** throughout the modern era with a mantra advocating peace and political stability as essential for the economic development in the country.<sup>28</sup> There have been many arguments promulgated on the necessity of prioritizing peace and stability over human rights, especially certain civil and political rights and freedoms. Can they not co-exist? After all, as the Vienna Declaration confirmed, all international human rights the government has accepted are universal, indivisible, interrelated and interdependent.

For some in Cambodia, their right to development, particularly economic development, and the benefits which follow, are considered more important than **civil and political rights** such as freedoms of expression and association. Others would challenge this view, advocating for increased compliance with all human rights. Political decisions on the balance to be struck between potentially conflicting human rights is often challenging.<sup>29</sup> Inevitably there may have to be some compromises. According to human rights principles, however, securing all human rights to the greatest extent possible, only limiting selected rights when absolutely necessary, should be the priority for all states. Not all rights can be limited. Any limitation of rights should be carefully evaluated in advance: is it absolutely necessary; can the result be achieved by a different approach; is a particularly marginalized group disproportionately impacted?

26 World Bank, *The World Bank in Cambodia, Country overview (2023)* <https://www.worldbank.org/en/country/cambodia/overview>.

27 Nov Sivutha, 'EBA Loss Won't Hurt Kingdom's Exports: PM' *The Phnom Penh Post*, 22 May 2022 <https://www.phnompenhpost.com/business/eba-loss-wont-hurt-kingdoms-exports-pm>.

28 On transitioning power to his son, the former Prime Minister, reiterated the centrality of peace and political stability to economic growth, see Ry Sochan and Van Socheata, 'Hun Sen Bids Farewell, Sets Out Vision', *The Phnom Penh Post*, 22 August 2023 <https://www.phnompenhpost.com/national-politics/hun-sen-bids-farewell-sets-out-vision>.

29 For example, balancing freedom of assembly and association with public order.

It is not only civil and political rights which are relevant to any discussion on development; during periods of rapid development, **socio-economic and cultural rights** are often at risk. As has been demonstrated in previous chapters, balancing development with rights and freedoms can prove challenging. Decisions to exploit water for energy with hydro dams, e.g., Lower Sesan II (see Chapter 19), supported the needs of Cambodia as a developing country seeking to limit its reliance on the importation of energy, but came at a cost of infringing rights of indigenous peoples, who lost their spiritual forests as well as their traditional means of livelihood. They had to be displaced and relocated. There were environmental costs too (impacting flora, fauna and the river flow) as an Environmental Impact Assessment (unpublished) indicated. Rapid development and inward investment can also threaten cultural traditions, though most cultural rights should be able to be respected by businesses.

Around the world, elements of civil society are increasingly under threat., the so-called 'shrinking civil society space',<sup>30</sup> with evidence of repression of civil society activities and invocation of laws prosecuting actors.<sup>31</sup> There are those (civil society and other states) who would question whether Cambodia can achieve compliance with RBC in an environment increasingly hostile to sectors of **civil society** (see Chapters 8-9). Civil society groups, media, and NGOs play an important role to monitor the actions of businesses as regards their level of compliance with human and labour rights, and to hold businesses accountable.<sup>32</sup> However, as noted earlier, UN Human Rights experts have raised concerns about restrictions on freedom of expression and urged the government to guarantee space for independent media and civil society.<sup>33</sup> Indeed the EU withdrew some trade preferences in part due to this. Such decisions are difficult and often problematic as they may have side-effects and unintended consequences that must very carefully be considered. The EU withdrawal of trade preferences (see Chapter 12) was designed to pressure Cambodia to strengthen protection of civil and political rights, but was also likely to have negative consequences on the enjoyment of socio-economic rights.<sup>34</sup> Hundreds of women, primarily from rural areas, were at risk of losing employment. Many others earning money from offering housing, transport, food and other services for those working in factories were also at risk of losing precious income.

In 2020, in wake of the dramatic shifts in trade due to the **COVID-19 pandemic**, the Special Rapporteur urged the government 'to remind all businesses trading with Cambodia of their responsibilities in terms of the Guiding Principles on Business and Human Rights, in particular respecting international labour standards and the rights of employees and contractors [...including the need for] businesses [to] honour agreed contracts of sale and supply'.<sup>35</sup> Whilst encouraging business investment is central to development in Cambodia, it is vulnerable to global shocks and shifts. All those trading with the country should ensure they comply with the UNGP in order to sustainably support development growth in the country.

30 See, for example, Anna Júlia Donáth, *Report on the shrinking space for civil society in Europe*, European Parliament, 22.2.2022 - (2021/2103(INI)); Volker Turk, 'Opening Remarks by UN High Commissioner for Human Rights Volker Türk at His Press Conference at the UN in Geneva', (22 May 2023) <https://www.ohchr.org/en/statements/2023/05/turk-there-should-be-un-human-rights-office-everywhere>.

31 See, for example on Cambodia, 'Cambodia: Voluntary National Review 2023', *High Level Political Forum on Sustainable Development* (webportal) <https://hlpf.un.org/countries/cambodia/voluntary-national-reviews-2023>.

32 Shaun Breslin & Helen Neadurai, 'Who Governs and How? Non-State Actors and Transnational Governance in Southeast Asia', *Journal of Contemporary Asia* (2018) 48(2).

33 Office of the United Nations High Commissioner for Human Rights 'Cambodia: UN Experts Call for Reinstatement of Voice of Democracy, Say Free Media Critical Ahead of Election', 20 February 2023 <https://www.ohchr.org/en/press-releases/2023/02/cambodia-un-experts-call-reinstatement-voice-democracy-say-free-media#:~:text=Irene%20Khan%2C%20Special%20Rapporteur%20on%20freedom%20of%20opinion%20and%20expression>.

34 See GMAC (now TAFTAC) 'The Garment Manufacturers Association in Cambodia (GMAC) Expresses Its Dissatisfaction with the European Union Following the Partial Suspension of the "Everything But Arms" (EBA) Trade Program', 17 February 2020 <https://www.prnewswire.com/news-releases/the-garment-manufacturers-association-in-cambodia-gmac-expresses-its-dissatisfaction-with-the-european-union-following-the-partial-suspension-of-the-everything-but-arms-eba-trade-program-301005717.html>.

35 Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, (24 August 2020), A/HRC/45/51 at para 76.

### International institutional context: UN mechanisms for human rights

The international human rights framework was developed by states and requires all states that have chosen to ratify treaties to promote, protect and respect human rights as discussed in depth in Chapter 3. That requires the paper commitments to be transformed into real rights and freedoms protected in law, necessitating positive action on the part of the state. Those treaty obligations are elaborated on and contextualised by the **international monitoring bodies**. Their work (reports, communications, general comments and recommendations) offers a more detailed understanding of the commitments accepted by states.

In Cambodia, as is outlined in Chapters 3 and 4, the Constitution and various national laws give effect to aspects of the country's treaty obligations. The Royal Government regularly reports to the UN on the progress it has made towards its human rights obligations. All documentation, **Cambodian government reports**, civil society reports and the recommendations of UN member states (for Universal Periodic Review) are available online.<sup>36</sup>

Cambodia often finds itself at the centre of discussions on its **compliance** with human rights obligations in the UN. As noted in Chapter 3, the country has accepted numerous human rights-related conventions and there are several expert-driven and state peer review processes at the UN that assess the country's human rights situation. Each undertakes dialogue with the Cambodian government, before publishing statements, recommendations, and reports about the human rights situation. Cambodia regularly highlights it has made progress in several areas, including substantial economic improvement and reductions in extreme poverty.<sup>37</sup> It also submits updates on the progresses it has made towards SDGs through the Voluntary National Reviews. The observance of human rights in practice, however, is lacking the necessary comprehensive domestic laws; the existing ones are themselves often found to be inadequate insofar as the application of some of those laws does not fully protect all rights and freedoms of everyone in the country.

**Criticism** on human rights by the UN bodies or the concerned people are robustly refuted by the Royal Government, at both domestic and international levels.<sup>38</sup> By way of example, rights defenders often put themselves at risk of intimidation, arrest, or prosecution. If such actions are criticized publicly in the UN bodies and forums, not least the UN Human Rights Council, the Royal Government not only presents counter-arguments, highlighting aspects of other human rights on which it has progress, and arguing that the internal laws of the country were applied (and so the situation cannot be questioned).<sup>39</sup>

In terms of RBC, the **UN Working Group** on Business and Human Rights<sup>40</sup> is part of Special Procedures so comprises independent experts. They undertake visits to countries and issue thematic reports on diverse issues including development finance institutions and human rights, the extractive sector, just transition

<sup>36</sup> These can be found on the Cambodia country page, <https://www.ohchr.org/en/countries/cambodia>.

<sup>37</sup> See, for examples, the comments of Meas Soksensan, Secretary of State Ministry of Economics and Finance, reported in Lay Samean 'Gov't Eyes 7% Poverty Rate', The Phnom Penh Post, (2 August 2022), <https://www.phnompenhpost.com/national/govt-eyes-7-poverty-rate>; See also the supporting analysis by World Bank, 'Cambodia Poverty Assessment 2022: Toward a More Inclusive and Resilient Cambodia', The World Bank, (28 November 2022) <https://www.worldbank.org/en/country/cambodia/publication/cambodia-poverty-assessment-2022-toward-a-more-inclusive-and-resilient-cambodia>.

<sup>38</sup> See, for example, Dara Voun, 'Cambodia Rebuffs Human Rights Infringement Reports', The Phnom Penh Post, (07 October 2021) <https://www.phnompenhpost.com/national-politics/cambodia-rebuffs-human-rights-infringement-reports>.

<sup>39</sup> See, for example, Cambodia Ambassador to the UN Geneva, 'Press Statement in Response to the Misleading, Irresponsible and Unfounded Remarks of Four Special Rapporteurs as to Health and Legal Measures Against an Unlawful Month-long Strike', (17 February 2022) [http://www.cambodiaembassy.ch/PressRelease/220217\\_Reply\\_to\\_SRs\\_Covid\\_Testing\\_of\\_Naga\\_World\\_Strikers\\_Kh\\_En.pdf](http://www.cambodiaembassy.ch/PressRelease/220217_Reply_to_SRs_Covid_Testing_of_Naga_World_Strikers_Kh_En.pdf); See also, 'Special Rapporteur's Report is Erroneous, Selective and Biased States Cambodian Mission', (4 August 2023) <https://www.facebook.com/photo/?fbid=619081653732029&set=pcb.619075433732651>.

<sup>40</sup> Most recent mandate renewal in 2023, UN Human Rights Council resolution A/HRC/RES/53/3; the website of the Working Group offers links to their recommendations and guidance, see <https://www.ohchr.org/en/special-procedures/wg-business>.

and human rights and corporate political engagement and responsible business conduct.<sup>41</sup> Sometimes the Working Group joins the UN Special Rapporteur on the situation of human rights in Cambodia raising concern on specific issues. An example is the 2023 joint allegation letter on information concerning ‘trafficking of persons for the purposes of forced labour, forced criminality and sexual exploitation in casinos, hotels and other places’.<sup>42</sup> The Government offered a detailed response on its efforts in this area and successes in both prosecuting those involved in illegal activities, and supporting victims.<sup>43</sup>

Whilst Cambodia recognises human rights, it is not uncommon for the government to argue it is being held to a **higher standard** of those human rights treaties than other countries. Certainly, being the beneficiary of extensive capacity building and development support, there are a lot more international stakeholders reviewing Cambodia’s human rights compliance than is the case in other states.

### **Regional economic integration context: especially ASEAN and China**

**Regional economic integration** initiatives in ASEAN and the wider Asia Pacific is highly influential on RBC (and human rights) in Cambodia. Crucial to regional economic integration is obviously the ASEAN community, as the earlier chapters discussed. ASEAN functions through a consensual-based process, with states working together on areas of concern.

The Royal Government engages across **ASEAN** activities and is supportive of the association’s general principles including non-interference in internal affairs of states. Cambodia regularly cites arguments on inviolable sovereignty and non-interference in internal affairs in responses to human rights critiques by other states (and within the UN). This is especially so when the issues being criticized are politicized in Cambodia. As the preceding chapters demonstrate, human rights issues are often politically sensitive.

ASEAN, under its Economic Community, supports a **corporate social responsibility network**. That web of business networks in the region encourages business to share information, build capacity and social responsibility in a collaborative manner.<sup>44</sup> No Cambodian organization is currently a member, though all have access to the resources (and some funding) to support CSR development.

**China’s Belt and Road Initiative** is the strategic vision of president Xi Jinping for advancing China’s rapid expansion of development and infrastructure arrangements over the last decade.<sup>45</sup> This has had a major impact on global business and continues to be highly relevant to economic development in the region (and beyond). China is certainly a preferred development partner for Cambodia: the Royal Government regularly announces new partnerships and agreements between the two countries. Recently concluded bilateral treaties include a free trade agreement.<sup>46</sup> These agreements aim at furthering Cambodia’s economic development.

Examples of **Chinese-funded projects** include the Huadian Preah Sihanouk coal-fired power plant, the new expressway to Viet Nam, some fast rail projects and large scale building projects in Sihanoukville,

41 See A/HRC/53/24/Add.4 (2023): Development finance institutions and human rights; A/78/155 (2023): Extractive sector, just transition and human rights; and A/77/201 (2022): Report on corporate political engagement and responsible business conduct.

42 KHM 2/2022, sent by Special Rapporteur on trafficking in persons, especially women and children; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the rights of indigenous peoples and Special Rapporteur on contemporary forms of slavery, including its causes and consequences.

43 Letters sent by the Permanent Representative of the Kingdom of Cambodia, Geneva, 2022/11/657 and 2022/11/674.

44 The ASEAN CSR Network webportal offers further details, see <https://www.asean-csr-network.org/c/>.

45 China’s State Council Information Office, *The Belt and Road Initiative: A Key Pillar of the Global Community of Shared Future*, (10 October 2023) [http://www.scio.gov.cn/zfbps/zfbps\\_2279/202310/t20231010\\_773734.html](http://www.scio.gov.cn/zfbps/zfbps_2279/202310/t20231010_773734.html).

46 See *The China-Cambodia Free Trade Agreement 12 October 2020*, entered into force on (1 January 2022) <http://fta.mofcom.gov.cn/topic/encambodia.shtml>. See also, *Agreement Between The Government Of The Kingdom Of Cambodia And The Government Of The People’s Republic Of China For The Promotion And Protection Of Investment* (19 July 1996) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/571/download>.

Diamond Island Phnom Penh and Ream City in the south.<sup>47</sup> Chinese investment and partnerships are evident across numerous agribusinesses and factories: garments, textiles, and bicycles. Moreover, the Chinese tourist market is a major source of income for Cambodia as well as other Southeast Asian states, with visitor numbers increasing again since January 2023, when China's COVID-19 travel restrictions were removed and its citizens could freely travel overseas.

China plays an important **role in Southeast Asia**, and indeed, globally, as regards value chains. China is both a mass exporter and a significant importer, a major contributor of components to production processes around the world. Indeed, China's importance and place in many global value chains has been recognized with reference to China being the 'world's factory' and the world's biggest manufacturer.<sup>48</sup> China's political and economic power is important. Alignments amongst groups of states internationally is important. Cambodia, however, is not currently associated with any of the main ideological groups in the UN. Nevertheless, the Cambodian government have a long history of good relations and friendship with China and this can manifest in mutual support within the UN, especially when human rights are criticised.<sup>49</sup>

Cambodia engages with **intergovernmental financial organisations** focused on supporting development in the country. Their activities are highly relevant to RBC as they call on their clients (governments or businesses) to observe social and environmental standards. The impact is direct and indirect – through providing funding to the government which then appoints business to carry out the construction, agribusiness, etc. Three examples of these organisations are the World Bank, the Asian Development Bank and the Asian Infrastructure Investment Bank.

The **Asian Development Bank** (ADB) comprises states from across Asia-Pacific, along with western European and North American countries. Its aim is to eliminate poverty and promote a prosperous, inclusive, resilient and sustainable region across Asia and the Pacific. ADB averaged annual lending to Cambodia of \$368.3 million in 2018–2022.<sup>50</sup> Projects include economic cooperation across the greater Mekong Subregion.

The **Asian Infrastructure Investment Bank** also operates across Asia and the Pacific, offering support for sovereign and non-sovereign projects with themes on the green economy, sustainability, peace, prosperity and development. Projects in Cambodia include work on the fibre optic communication network, emergency rural road reconstruction, climate adaptive irrigation and resilient, sustainable agriculture and financial support for Cambodia's rapid, effective COVID-19 vaccination programme.<sup>51</sup>

The **World Bank** has the most global membership, with a focus on people, peace, prosperity and resilience against shocks and threats. On people, its Human Capital Project aims at ending 'extreme poverty and create more inclusive societies by developing human capital [through...] investing in people

47 *People's Map of Global China* (database), <https://thepeoplesmap.net/country/cambodia/>.

48 Prableen Bajpai, *Why China Is "The World's Factory" - The 5 reasons why China is the world's biggest manufacturer* (June 18, 2022) <https://www.investopedia.com/articles/investing/102214/why-china-worlds-factory.asp>.

49 For example, when China was being criticised for alleged egregious violations of rights in Xinjiang, Cambodia joined a statement calling for human rights to be depoliticised – Joint statement of 69 countries at the Interactive Dialogue on High Commissioner's annual report at the 47th session of the Human Rights Council, (22 June 2021) [http://geneva.china-mission.gov.cn/eng/dbdt/202106/t20210624\\_9103595.htm](http://geneva.china-mission.gov.cn/eng/dbdt/202106/t20210624_9103595.htm); see also China's comments (available on UN webtv) supporting Cambodia's human rights record – also reported, , Jack Lau, 'China's UN envoy defends Cambodian human rights record in Geneva', *South China Morning Post*, (6 October 2022) <https://www.scmp.com/news/china/diplomacy/article/3195063/chinas-un-envoy-defends-cambodian-human-rights-record-geneva>.

50 *Asian Development Bank Member Factsheet*, Cambodia, (2023) <https://www.adb.org/sites/default/files/publication/27757/cam-2022.pdf>.

51 Asian Infrastructure Investment bank web portal offers overviews of the projects in Cambodia, as well as general information on the organisations, see <https://www.aiib.org/en>



through nutrition, health care, quality education, jobs and skills.<sup>52</sup> In Cambodia, it has worked across many areas, providing financial and technical support. Current focal points include the Blue Economy and support for the government on sustainably developing Cambodia's rich water resources.<sup>53</sup>

### International economic context: global trade

For many **international businesses** working in Cambodia, the lack of awareness (or a claimed lack of awareness) of the UN Guiding Principles can mean both that businesses are not respecting the range of rights and freedoms at the national level and, accordingly, that the Royal Government is found in breach of its human rights obligations under international treaties. A practical example may be the impact on indigenous groups of the multiple sugar concessions granted to Chinese businesses in the north of the country.

Enhancing the protection of human (labour) rights can increase costs of doing business, and highly mobile value chains can **relocate production** to cheaper and more advantageous countries, and thus have reduced economic opportunities for workers who benefited initially. Such competition between states to attract businesses by sacrificing human rights protection is a lasting problem that was recognised even in the ILO Constitution of 1919.<sup>54</sup> There is evidence in some sectors in Cambodia of increasing salaries and thereby product sale points leading to some international businesses deciding to source goods elsewhere. Cambodia, taking an example from the garment sector, benefitted from moves away from production in China (when Chinese labour rights were strengthened and production costs therefore increased), though that trade has also in part moved to Myanmar and further away, to countries in Africa and Eastern Europe (e.g. Moldova).

**Global trade** rules also offer opportunities for strengthening human rights protection. The EU's Generalised Scheme of Preferences (see Chapter 12) for example, aims to incentivize countries towards more human rights compliant actions. Of course, changing trading partners can allow exporting countries to avoid such modalities which are intended shape state behaviour. So, for example, Cambodia could choose to build trade relations with countries which do not impose human rights conditions in trade agreements.

Increased profits may come at a heavy price for workers and the environment. The shareholders' and stakeholders' interests, however, can also be aligned, with businesses increasingly conscious of their reputation and the commercial advantage offered should they be able to promote themselves as **ethical producers**. That appeals to certain consumers and business partners and so offers some trade advantages. More businesses including some operating in Cambodia seek to comply not only with the state laws but also with RBC standards for fairtrade.<sup>55</sup> Initiatives like the ILO's Better Factories Programme<sup>56</sup> also offer trade opportunities on the basis of proving support for improved working conditions. That programme was successfully rolled out elsewhere in the region, though not without its critics.<sup>57</sup> Economic advantages

52 World Bank, *Human Capital Project portal with documentation, the human capital index and reports*, <https://www.worldbank.org/en/publication/human-capital>.

53 World Bank, *'Building a Blue Economy Roadmap for Cambodia'* Washington, D.C: World Bank Group, (2023) <http://documents.worldbank.org/curated/en/099556207032341413/IDU00eec67aa0872b04096088cd02fda633553f1>.

54 Constitution of the International Labour Organization, *Preamble* (1919)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO).

55 See Forest Stewardship Standards (FSS), *'Interim National Standards for The Kingdom of Cambodia'* (2020) <https://connect.fsc.org/document-centre/documents/resource/451>.

56 See International Labour Organization, *Better Factories Cambodia* [https://www.ilo.org/asia/projects/WCMS\\_099340/lang--en/index.htm](https://www.ilo.org/asia/projects/WCMS_099340/lang--en/index.htm).

57 See Chikako Oka, 'Evaluating a Promising Model of Non-State Labor Regulation: The Case of Cambodia's Apparel Sector' in Deirdre McCann et al, eds, *Creative Labour Regulation: Indeterminacy and Protection in an Uncertain World*, Basingstoke: Palgrave Macmillan, *Advances in Labour Studies* 7(1), 2014. See also, Drusilla Brown, Rajeev Dehejia & Raymond Robertson, 'Regulations, Monitoring and Working Conditions: Evidence from Better Factories Cambodia and Better Work Vietnam' in Deirdre McCann et al, eds, *Creative Labour Regulation: Indeterminacy and Protection in an Uncertain World*, *Advances in Labour Studies* 7(1), Basingstoke: Palgrave Macmillan, (2014).



for businesses can flow from increased protection of human rights and evidenced RBC; economic benefits can also accrue for the workers (higher wages), and the country (increased investment).

The requirement to comply with human rights highlights a **challenge for businesses**. The UNGPs require businesses to 'seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements'.<sup>58</sup> For some enterprises doing business in Cambodia, there can be tensions when national laws are interpreted and applied in a manner inconsistent with international human rights. It requires businesses to have the will to adopt policies and practices which protect human rights beyond the requirements in the country. That may negatively impact the profitability of the business and so have economic consequences. Corporate will to act and, of course, knowledge of human rights is required.

## 4. Further discussion

**T**his section considers how to strengthen RBC in Cambodia, with a focus on the importance of human rights education and awareness-raising. Inevitably the **future of human rights** cannot be solely left in the hands of governments. Whilst governments are the primary duty bearer, having accepted the international legal obligations on behalf of the country, all nations are found lacking in terms of fully realizing human rights and freedoms. Human rights are regarded as our birthright and so each of us has a responsibility, and a right, to learn about our rights and freedoms and claim them.

**Education** and awareness-raising, on matters such as RBC and sustainable finance, are increasingly relevant, whether they be in law schools or business schools. Understanding a rights perspective on sustainability and business matters can offer guidance on decision making and policy pathways. RBC is not solely the expertise of lawyers, or business leaders, rather it is multidisciplinary. As this book has shown, there may be economic considerations for businesses analysing how to improve their RBC. Understanding national and international laws, a government's development strategy, the views of civil society and numerous private actors ('stakeholders'), the regional power play and economic alignments are important, not least to inform businesses of the context in which they are operating.

RBC is a fast-moving field, with many new regulations adopted in industrialized countries (discussed in Chapter 12), some examples of good RBC practice and collaborative approaches, and still numerous abuses that trigger mobilization of civil society and rightsholders seeking justice. There are **opportunities** in Cambodia for business advisers, lawyers, and government to implement strategies to support businesses wishing to meet RBC requirements. Universities are a key companion to practical work in RBC; they can explain and critically evaluate advances and shortcomings in RBC and place them in a wider societal context. Accurate materials are important. This book offers an overview of the issues and can be built on with case studies and a multidisciplinary understanding of national laws, development strategies, government imperatives and the international and regional context.

## 5. Conclusions

**C**ambodia is active on the international and regional stages with regard to human rights. It increasingly engages with international human rights monitoring mechanisms, deploying the language of human rights when explaining its actions and omissions. Consequences of perceived negative human rights performance, however, are also becoming more significant in terms of state trade sanctions such as the EBA as well as business sanctions as multinational enterprises can relocate their global value

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<sup>58</sup> Principle 23b.

chains and do business elsewhere. Embedding human rights compliance in trade agreements and development support is increasingly common a requirement of agreements with ‘western’ countries. This can be a factor in RGC decisions on which countries to conclude trade and development agreements with.

Within ASEAN, the RGC exerts influence in a number of spheres and is vocal in supporting the ASEAN approach to development, which, in theory, means that a state must not interfere in the internal affairs of another state, even when the latter state does not live up to its human rights obligations. China is emerging a significant external partner of choice for Cambodia for mega infrastructure projects as well as for inward business and tourist investment. Like ASEAN, China embraces the Asian values of non-interference. The Chinese political influences on Cambodia and some countries in Southeast Asia can be seen. Likewise, China’s allies, like Cambodia, sides with China at regional and international levels to protect shared interests.<sup>59</sup>

Global trade is thus inherently complex, ebbing and flowing from one country to another in response to a multitude of factors, including geopolitics, production costs and ethical concerns. As this book has demonstrated there is scope for strengthening RBC practices, not least through engagement with a wide range of stakeholders. Many actors have a role in awareness raising as to responsible business conduct and human rights education. Consumers can make choices offering support to responsible businesses. Businesses can revise their policies and procedures to meet the UNGPs. Regulators around the world can be more active, and in the case of the EU, have begun to impose legal obligations of due diligence and restrict access to their markets for problematic goods. The Royal Government, like other countries around the world, can continuously strive to build the legal and policy framework for RBC and human rights, supported by adequate regulations and policies, monitoring and enforcement.

## 6. Further readings

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2. Jones Lee, “ASEAN’s unchanged melody? The theory and practice of ‘non-interference’ in Southeast Asia” (2010) 23:4 *The Pacific Review* 479–502.
3. Anna Salmivaara, “New governance of labour rights: the perspective of Cambodian garment workers’ struggles” (2018) 15:3 *Globalizations* 329–346.
4. Shihlun Allen Chen, “The Development of Cambodia–China Relation and Its Transition Under the OBOR Initiative” (2018) 51:4 *The Chinese Economy* 370–382.
5. Wayne Sandholtz, ‘Authoritarianism, International Human Rights, and Legal Change’ in David Sloss, (ed) *Is the International Legal Order Unraveling?* (2022) Oxford University Press, DOI: 10.1093/oso/9780197652800.003.0013.

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<sup>59</sup> Sovinda Po & Christopher B Primiano, ‘An “Ironclad Friend”: Explaining Cambodia’s Bandwagoning Policy towards China’, *Journal of Current Southeast Asian Affairs* 39(3) pp 444–464, 2020.

No	Laws in English	Laws in Khmer	Chapter
1	Law on Commercial Enterprise	ច្បាប់ស្តីពីសហគ្រាសពាណិជ្ជកម្ម	2
2	Cambodian Constitution	រដ្ឋធម្មនុញ្ញនៃព្រះរាជាណាចក្រកម្ពុជា	3,4,5,7
3	Cambodia-China FTA	កិច្ចព្រមព្រៀងពាណិជ្ជកម្មសេរី ចិន-កម្ពុជា	3
4	Land Law	ច្បាប់ភូមិបាល	4
5	Code of Environment and Natural Resources	ក្រមបរិស្ថាន និងធនធានធម្មជាតិ	4
6	Law on Association and Non-Governmental Organization	ច្បាប់ស្តីពីសមាគម និងអង្គការមិនមែនរដ្ឋាភិបាល	4,7,9
7	Criminal Code	ក្រមព្រហ្មទណ្ឌ	4
8	Civil Code	ក្រមរដ្ឋប្បវេណី	4
9	Law on Investment	ច្បាប់ស្តីពីវិនិយោគនៃព្រះរាជាណាចក្រកម្ពុជា	4
10	Law on Administrative Management of the Capital, Provinces, Municipalities, Districts, and Khans	ច្បាប់ស្តីពីការគ្រប់គ្រងរដ្ឋបាលរាជធានី ខេត្ត ក្រុង ស្រុក ខណ្ឌ	4
11	Prakas on the Arbitration Council, No. 99	ប្រកាស ០៩៩/០៤ ស្តីពី ក្រុមប្រឹក្សាអាជ្ញាភិបាល	4
12	Sub-decree no.47 on Organization and Functioning of the Cadastral Commission	អនុក្រឹត្យលេខ ៤៧ អនក្រ.បក ស្តីពី ការរៀបចំ និងការប្រព្រឹត្តទៅនៃគណៈកម្មការសុរិយោដី	4,5
13	Labor Law	ច្បាប់ស្តីពីការងារ	4, 6, 8,15
14	Cambodia-Turkey Agreement	កិច្ចព្រមព្រៀងតួកគី-កម្ពុជា	4
15	Sub-decree No.183 on District/Khan Administrative Functions and Structure	អនុក្រឹត្យលេខ ១៨៣ ស្តីពីមុខងារ និង រចនាសម្ព័ន្ធរដ្ឋបាលខណ្ឌនៃរាជធានីភ្នំពេញ	4,5
16	Law on the General Statute of Public Enterprise	ច្បាប់ស្តីពី លក្ខន្តិកៈទូទៅនៃសហគ្រាសសាធារណៈ	6
17	Law on the Issuance and Trading of Non-Government Securities	ច្បាប់ស្តីពី ការបោះផ្សាយ និងការជួញដូរមូលបត្រមហាជន	6
18	Law on Environmental Protection and Natural Resources Management	ច្បាប់ស្តីពី កិច្ចការពារបរិស្ថាន និងការគ្រប់គ្រងធនធានធម្មជាតិ	6

No	Laws in English	Laws in Khmer	Chapter
19	Sub-Decree No. 76 on the Implementation of the Environmental Impact Assessment (EIA)	អនុក្រឹត្យលេខ ៧៦ អនក្រ.បក ស្តីពីការអនុវត្តការវាយតម្លៃផលប៉ះពាល់បរិស្ថាន (EIA)	6
20	Sub-Decree No. 146 on Economic Land Concessions	អនុក្រឹត្យ លេខ ១៤៦ អនក្រ.បក ស្តីពីសម្បទានដីសេដ្ឋកិច្ច (២០០៥)	6
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26	Law on Measures to Prevent the Spread of COVID-19 and other Serious, Dangerous and Contagious Diseases (2021)	ច្បាប់ស្តីពី វិធានការទប់ស្កាត់ការឆ្លងរាលដាលនៃជំងឺកូវីដ-១៩ និងជំងឺកាចសាហាវ និងប្រកបដោយគ្រោះថ្នាក់ធ្ងន់ធ្ងរផ្សេងទៀត	9
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28	Prakas No. 007/18 K.M.K/BB.K	ប្រកាសលេខ ០០៧/១៨ គ.ម.ក/ ប្រ.ក. ស្តីពីការបង្ហាញព័ត៌មានសាជីវកម្ម	10
29	Law on Expropriation	ច្បាប់ស្តីពីអស្សាមិករណ៍	10
30	Law on Competition	ច្បាប់ស្តីពី ការប្រកួតប្រជែង	10
31	Law on the Organization and Conduct of the National Bank of Cambodia	ច្បាប់ស្តីពី ការរៀបចំនិងការប្រព្រឹត្តទៅនៃធនាគារជាតិនៃកម្ពុជា( ១៩៩៦ )	10
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33	Prakas No. B7-011-243 on Transparency in Granting Credit Facilities of Banks and Financial Institutions	ប្រកាសលេខ B7-011-243 ស្តីពីតម្លាភាពក្នុងការផ្តល់សេវាឥណទានរបស់គ្រឹះស្ថានធនាគារនិងហិរញ្ញវត្ថុ	10

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34	Prakas No. B7-05-054 Proka on Loan Policies, Procedures and Lending Authority	ប្រកាសលេខ៧-០៥-០៥៤ ប្រកាសស្តីពីគោលនយោបាយបាយឥណទាន នីតិវិធី និងសិទ្ធិអំណាចផ្តល់ឥណទាន	10
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43	Anukret 86 ANK/BK on Construction Permit	អនុក្រឹត្យ លេខ ៨៦ អនក្រ.បក ស្តីពីលិខិតអនុញ្ញាតសាងសង់	15
44	Sub-Decree No. 224 on Construction Permit	អនុក្រឹត្យ លេខ ២២៤ អនក្រ.បក ស្តីពីលិខិតអនុញ្ញាតសាងសង់	15
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47	Cambodia Digital Economy and Society Policy Framework 2021 – 2035	ក្របខណ្ឌគោលនយោបាយសេដ្ឋកិច្ចនិងសង្គមឌីជីថលកម្ពុជា ឆ្នាំ២០២១-២០៣៥	18
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No	Laws in English	Laws in Khmer	Chapter
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*The definitions below are quotes and adaptations from several sources. Such sources are indicated in brackets and listed at the end of the Glossary.*

**Accountability**

A process which requires government to show, explain and justify how it has fulfilled its obligations to the people. (COE)

**Adverse human rights impact**

“Adverse human rights impact” shall mean a harm which corresponds to a reduction in or removal of a person’s ability to enjoy an internationally recognized human right. (UN treaty)

**Advocacy**

To publicly support or suggest an idea, a development or way of doing something. (COE)

**Appropriate measure**

‘Appropriate measure’ means a measure that is capable of achieving the objectives of due diligence, commensurate with the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including characteristics of the economic sector and of the specific business relationship and the company’s influence thereof, and the need to ensure prioritisation of action. (CSDDD)

**Board of directors**

‘board of directors’ means the administrative or supervisory body responsible for supervising the executive management of the company (CSDDD)

**Business activities**

“Business activities” means any economic or other activity, including but not limited to the manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services, undertaken by a natural or legal person, including State-owned enterprises, financial institutions and investment funds, transnational corporations, other business enterprises, joint ventures, and any other business relationship undertaken by a natural or legal person. This includes activities undertaken by electronic means. (UN treaty)

**Business relationships**

“Business relationship” refers to any relationship between natural or legal persons, including State and non-State entities, to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship, or any other structure or relationship, including throughout their value chains, as provided under the domestic law of the State, including activities undertaken by electronic means. (UN treaty)

**Civil society**

It refers collectively to voluntary civic and social organizations, associations and institutions, for example registered charities, non-governmental organizations, community groups, women’s organizations, faith-based organizations, professional associations, trade unions, self-help groups and advocacy groups that form the basis of a functioning democratic society. Civil society is seen as distinct from the state and commercial institutions of the market. (COE)

**Civil society organizations (CSOs)**

Non-State, not-for-profit, voluntary entities formed by people in the social sphere that are separate from the State and the market. CSOs represent a wide range of interests and ties. They can include community-based organizations as well as non-governmental organizations (NGOs). CSOs do not include business or for-profit associations. (UNGP reporting framework)

**Complicity**

The standard is “knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime”. (OHCHR)

**Consultation**

Consultation refers here to an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches. (OHCHR)

**Disclosure**

All information released by a company for the purpose of informing shareholders or other stakeholders. (UNGP reporting framework)

**Gender**

The economic, social and cultural attributes and opportunities associated with being male or female in a particular point in time. Also refers to the socially constructed relationship between women and men and the attributes, behavior and activities to which each is expected to adhere. Gender differences are determined and reinforced by cultural, historical, ethnic, religious and economic factors. Gender roles differ over time and between cultures but may be changed. Gender is often wrongly conflated with “sex”, which refers to the biological differences between women and men. (amfori)

**Grievance Mechanism**

A non-judicial procedure that offers formalised means through which individuals or groups can raise concerns about the impact a business enterprise has on them – including, but not exclusively, on their human rights – and can seek remedy. A grievance refers to an expression of dissatisfaction or allegation that the expectations raised by a system, a business organisation or an individual were not satisfactory or fulfilled. (amfori)

**Human Rights**

Basic international standards aimed at securing dignity and equality for all. Every human being is entitled to enjoy them without discrimination. They include the rights contained in the International Bill of Human Rights – meaning the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. (UNGP reporting framework)

**Human rights due diligence**

“Human rights due diligence” shall mean the processes by which business enterprises identify, prevent, mitigate and account for how they address their adverse human rights impacts. (UN treaty)

**Human rights impact assessment**

A human rights impact assessment is a process for systematically identifying, predicting and responding to the potential human rights impacts of a business operation or project. (Monash)

**Human rights risks**

A business enterprise's human rights risks are any risks that its operations may lead to adverse human rights impacts. Risks are also referred to as potential human rights impacts. (OHCHR)

**Independent third-party verification**

Verification ... by an auditor which is independent from the company, free from any conflicts of interests, has experience and competence in environmental and human rights matters and is accountable for the quality and reliability of the audit (CSDDD)

**Leverage**

Leverage is an advantage that gives power to influence. Leverage refers to the ability of a business enterprise to effect change in the wrongful practices of another party. (OHCHR)

**Living Wage**

The remuneration received for a standard workweek by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transportation, clothing, and other essential needs including provision for unexpected events. (amfori)

**Mitigation**

The mitigation of adverse human rights impact refers to actions taken to reduce its extent, with any residual impact then requiring remediation. (OHCHR)

**Multinational enterprises (transnational corporations)**

They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of other entities in a group, their degree of autonomy within the group may vary widely from one multinational enterprise to another. Ownership may be private, State, or mixed. (OECD Guidelines)

**Remediation/remedy**

"Remedy" shall mean the restoration of a victim of a human rights abuse to the position they would have been had the abuse not occurred, or as nearly as is possible in the circumstances. Remediation may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. (OHCHR) (UN treaty)

**Salient human rights**

The most salient human rights for a business enterprise are those that stand out as being most at risk. This will typically vary according to its sector and operating context. (OHCHR)

**Severe human rights impact**

A negative human rights impact that is severe by virtue of one or more of the following characteristics: its scale, scope or irremediability. Scale means the gravity of the impact on the human rights. Scope means the number of individuals that are or could be affected. Irremediability means the ease or otherwise with which those impacted could be restored to their prior enjoyment of the rights. (UNGP reporting framework)

**Sustainable development**

“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. (the 1987 World Commission on Environment and Development (the Brundtland Commission)) (OECD Guidelines)

**Sustainability Report**

A generic term for a company report that provides information about a company’s performance on a number of sustainability dimensions such as economic, social, environmental and corporate governance issues, including human rights. (UNGP reporting framework)

**Stakeholder**

A stakeholder refers to any individual who may affect or be affected by an organization’s activities. Affected ‘stakeholders’ means the employees and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships. (OHCHR) (CSDDD)

**Stakeholder engagement**

Meaningful stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides. It is also responsive and on-going, and includes in many cases engaging with relevant stakeholders before decisions have been made. (OECD Glossary)

**Value chain (supply chain)**

‘Value chain’ means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company. (CSDDD)

**Victim**

“Victim” shall mean any person or group of persons who suffered a human rights abuse in the context of business activities, irrespective of the nationality or domicile of the victim. The term “victim” may also include the immediate family members or dependents of the direct victim. (UN treaty)

**Worker**

An individual performing work for a company, regardless of the existence or nature of any contractual relationship with that company. (UNGP reporting framework)

**Transnational business activities**

“Business activities of a transnational character” means any business activity described in Article 1.4. above, when: (a) It is undertaken in more than one jurisdiction or State; or (b) It is undertaken in one State but a significant part of its preparation, planning, direction, control, design, processing, manufacturing, storage or distribution, takes place through any business relationship in another State or jurisdiction; or (c) It is undertaken in one State but has significant effect in another State or jurisdiction. (UN treaty)



## Sources

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The textbook was designed as an introduction to RBC at a basic to intermediary level given the novelty of the topic for most readers. Our overriding aim was to offer a concise, but thoughtful and informative presentation of RBC and human rights issues in the Cambodian context. A key consideration was the intended audience: teachers, researchers and students at university level in Cambodia. We also aimed to make the textbook accessible for practitioners and others seeking an authoritative introduction to RBC and human rights in the Cambodian context. The primary targets of the textbook are law schools and business schools though it might prove relevant also to political science, sociology, and media faculties.

The textbook is divided into five parts. Part One provides an introduction to RBC, which is still a new topic in Cambodia and many other countries. It explains the essential aspects of RBC and provide examples of how business impacts on human rights. Part Two explains the principles and standards for RBC and focuses on international and national frameworks that apply to businesses and states. Part Three focuses on actors – private and public ones – that work with and promote RBC. Part Four provides more in-depth applications of RBC in a few industries and for selected human rights. Lastly, Part Five offers insights into the broader context of RBC and some cross-cutting issues that will affect RBC in coming years.

