Protecting the Right to Occupational Health and Safety of Construction Workers in Cambodia: An Examination of International and British Columbia Labour Laws

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Students: Madeline J. Adam; Suzy Flader; Ratana Ly

Supervisor: Victor V. Ramraj

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1. Overview

This document outlines international and British Columbia labour and human rights standards in order to explore ways in which Cambodia can better protect the health and safety of construction workers. First, it provides a brief background of the working conditions for construction workers and the need to have more regulations to govern this sector in Cambodia. Next, relevant conventions and publications from various branches of the United Nations, notably the International Labour Organization, are considered within the Cambodian construction sector context. Finally, there is a discussion of British Columbia construction sector standards. In conclusion, it is found that some international and British Columbia standards may positively influence the health and safety of Cambodian construction workers. However, these standards must be considered with caution and respect for Cambodia’s unique demographic. Note that this document is not providing legal advice—this is merely legal information.
2. **Introduction**

In 2017, approximately 260,000 people worked each day as construction workers in Cambodia. This business contributed 17% to Cambodia’s Gross Domestic Product in 2015. Construction work, however, is considered dangerous in Cambodia; many workers generally work without safety equipment, and often face violations of their rights and benefits without proper redress. Furthermore, the current National Social Security Fund framework does not include construction workers. Although Cambodian Labour Law broadly applies to construction workers, the sector remains poorly regulated.

Given the above context, this paper seeks to explore whether research on the international human rights and labour standards, and on the protection of benefits and rights of construction workers in British Columbia (BC), Canada might offer insights into how to improve the lived experiences of construction workers in Cambodia. This research will first provide a brief overview of both countries’ international legal obligations to workers. It will then discuss article 7 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), as well as the standard of decent work through a discussion of the International Labour Organisation (ILO) framework, and the United Nations Guiding Principles on Business and Human Rights (UNGP). To further illustrate the rights and benefits that affect the workers on a day-to-day basis, this research looks into the experience of BC workers in part by examining the terms of collective agreements negotiated between construction unions and their employers. These agreements help illustrate what is important to construction workers in practice.

While this research contains a discussion on how things are done in BC, it is important to recognize the important differences between the legal landscape in BC and Cambodia. We will aim to ground our analysis in the political and legal realities of the situation of construction workers in Cambodia.

3. **Overview of International Legal Framework**

In Cambodia, laws enacted at the national level apply to the whole Cambodian territory. Canada, however, is a federal state with powers divided between the provinces and the central government. Construction work that occurs within BC falls under provincial jurisdiction. For the most part, federal labour and employment laws do not apply in BC. Courts have recognized that labour relations are presumptively a provincial matter and the federal government has jurisdiction only by way of exception. It is for this reason that we have focused on the legal and regulatory structure of BC, rather than on Canada as a whole.

Both Cambodia and Canada are parties to eight and seven of core human rights treaties respectively. Both are parties to the eight fundamental ILO conventions, and the

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3 Ibid.
5 See Labour Law of the Kingdom of Cambodia (Cambodia), 1997 [Cambodian Labour Law].
6 Cambodia has not ratified International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), whereas Canada has not ratified CMW and International Convention for the Protection of All Persons from Enforced Disappearance.
Employment Policy Convention, 1964 (No. 122). These conventions may prescribe changes within the countries’ construction industry. Conventions are legally binding international treaties that may be ratified by states. Recommendations are non-binding guidelines.

As a general rule, state parties to international treaties have an obligation not only to implement the treaties, but also to submit reports on implementation to the relevant international committee. Cambodia upholds the principles of direct application of the human rights treaties it has ratified. Canada must translate treaties provisions into national laws before implementing them.

3.1 International Covenant on Economic, Social, and Cultural Rights

This section discusses article 7 of the ICESCR because of its direct relevance to the present topic. Within article 7, this section focuses on remuneration, safe and healthy working conditions, and trade union right, which are highly essential for construction workers. Nevertheless, in principle, human rights are inter-dependent and interrelated; thus the realization of article 7, and in particular article 7(b) depends on the implementation of other provisions of the convention.

The Committee on Economic, Social, and Cultural Rights (CESRC) stated that the right to work does not mean only the availability and accessibility of employment, but also the acceptability and quality of the employment, which includes both safe and healthy working conditions and environment. Article 7 of ICESCR provides:

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

(a) Remuneration which provides all workers, as a minimum, with:
   (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
   (ii) A decent living for themselves and their families in accordance with the provisions of the present Convention;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

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3 See e.g. the Committee on Economic Social and Cultural Rights, and the Human Rights Committee.
3.1.1 Remuneration

The ICESCR requires that all workers receive “fair wage and equal remuneration” for work of equal value without discrimination.\(^{13}\) Fair wages go beyond minimum wage and include supplements to wages where workers are engaged in “precarious contracts”\(^{14}\) such as construction work. Equal value can only be determined through “ongoing objective evaluation” factors such as “skills, responsibilities and efforts required by workers, as well as working conditions” within one company or across companies rather than comparing whether the type of work are exactly the same.\(^{15}\)

Remuneration does not only include fair wages, but other allowances such as contributions to “health insurance, housing and food allowances, and on-site affordable childcare facilities.”\(^{16}\) The remuneration must be sufficient for workers to afford social security, health care and an adequate standard of living,\(^{17}\) which affect occupational health and safety of workers.

3.1.2 Safe and Healthy Working Conditions

The CESCR noted the importance to prevent occupational accidents and disease beforehand.\(^{18}\) Rest, leisure, limitation of hours of work, and paid holidays help reduce “work-related stress, accidents and disease”, and it must be ensured.\(^{19}\)

The right to health is closely linked to safe and healthy working conditions.\(^{20}\) Article 12 of the ICESCR provides that everyone is entitled to the “highest attainable standard of physical and mental health.”\(^{21}\) At the working sites, the convention requires companies to ensure good environmental and industrial hygiene, by adopting measures to prevent occupational accidents and diseases, minimizing the harmful chemicals and substance on workers’ health, and the providing of clean water and basic sanitation to workers.\(^{22}\) The convention also requires there be a limit on harmful impact to the environment,\(^{23}\) which is important for construction workers living at the sites. The CESCR also takes the view that to prevent occupational disease, training is required on “behaviour-related health concerns” and an establishment of “urgent medical care” at the working sites to deal with accidents among others.\(^{24}\) Construction workers can access available, acceptable, and quality health outside the construction sites, only when they have economic resource to afford such healthcare.\(^{25}\) Workers must also have social security, especially when they are injured while working, regardless of the length of their employment.\(^{26}\)

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\(^{13}\) Ibid, article 7(a)(i).

\(^{14}\) CESCR, General Comment No. 23: The Right to Just and Favorable Conditions of Works (Art. 7 of the Covenant), E/C.12/GC/23 (27 April 2016) [GC No. 23] at para 10.

\(^{15}\) Ibid at paras 12-13, 18.

\(^{16}\) Ibid at paras 7, 10.

\(^{17}\) Ibid at para 18.

\(^{18}\) Ibid at para 25.

\(^{19}\) Ibid at para 34.


\(^{21}\) ICESCR, supra note 12.

\(^{22}\) GC No. 14, supra note 20 at para 15.

\(^{23}\) Ibid.

\(^{24}\) Ibid at para 16.

\(^{25}\) Ibid at para 12.

3.1.3 Trade Union

Article 8 of ICESCR explicitly provides that workers enjoy the rights to form and join trade union of their choice, and that trade union must function freely in accordance with the law.27 Trade union helps ensuring the respect for the right to work at both local and national levels.28 It plays an important role to introduce, maintain and defend the conditions of work.29 Workers may also resort to strike in response to perceived unfair treatment or injustice.30

3.2 ILO Conventions and Construction Standards

The ECSCR encouraged states parties to incorporate the ILO conventions into domestic laws in order to strengthen the “effectiveness of measures taken to guarantee the right to work.”31 The purpose of this section is to suggest how international labour standards might positively impact the working conditions of construction workers. The ILO’s fundamental conventions and other construction worker-related recommendations will be the primary guiding materials.

The ILO lists some of the benefits of national compliance with international labour standards. These benefits include the creation of paths to decent work, improving country-specific economic performance, enhancing the global economy, and poverty reduction.32 The implementation of international labour standards can be especially useful to countries that lack certain labour laws of their own. Cambodia does not currently have sufficient laws protecting the human rights of construction workers. It is possible that the application of international labour standards could help to protect potentially vulnerable workers.

That being said, the use of international labour standards has limitations. It can be difficult to force governments to uphold international standards—even those they have ratified. While international standards can help to shape national laws, they can sometimes act more as guidelines for social policy. However, there are countries in which international labour standards apply to cases on which national law is silent.33

It is also important to keep in mind that international labour standards will not apply exactly as written to every country. Countries have unique legal frameworks, which means that when trying to apply international standards they may need to amend certain aspects. Likewise, international standards may need to be amended to better adhere to the diverse needs of a country’s citizenry. While it is possible that international labour standards could positively impact the lives of Cambodian construction workers, it is important to be cautious when recommending that any government adopt standardized recommendations. Cambodia has a unique political climate and Cambodian construction workers also have diverse needs. It would be impractical to assume that every international standard related to construction work that is applied in Canada could feasibly be implemented in Cambodia. The ILO recognizes

27 ICESCR, supra note 12, art 8(1)(a) & (c).
28 GC No. 18, supra note 11 at para 54.
29 GC No. 23, supra note 14 at para 1.
30 ICESCR, supra note 12, art 8(1)(d).
31 GC No. 18, supra note 11 at para 49.
that international labour standards must be treated flexibly, in order to translate into varying national laws and practices.\textsuperscript{34}

It is possible that international labour standards could play an important role in upholding the human rights of construction workers. But if the government, businesses, and other employers are willing to apply these standards, they would need to be amended. There will also need to be some way of enforcing them.

The ILO has listed some benefits of international labour standards. These benefits are listed below.

\begin{enumerate}
\item A path to decent work, which involves economic development that supports the creation of jobs and working conditions in which people can work in freedom, safety, and dignity.
\item An international legal framework for fair and stable globalization that supports the notion of decent work.
\item A level playing field in the global economy that helps governments and employers to avoid lowering labour standards in exchange for greater comparative advantages in international trade.
\item A means of improving economic performance. A growing body of research indicates that compliance with international labour standards often leads to improvements in productivity and economic performance. For example, safety standards can reduce costly accidents and health care fees. Higher wages and working time standards can also allow for more efficient and satisfied workers and lower turnover of staff.
\item A safety net in times of economic crisis. For example, during the 1997 Asian financial crisis, the lack of social protection systems exacerbated the disastrous effects on the many workers who became unemployed.
\item A strategy for reducing poverty guided by fair labour practices that are able to ensure an efficient and stable labour market for both workers and employers. Labour standards such as freedom of association, social protection, and occupational safety and health have proved to be effective strategies to bring impoverished workers into the formal economy.
\item The sum of international experience and knowledge, given that international labour standards are the result of discussions among governments, employers, and workers from around the world.\textsuperscript{35}
\end{enumerate}

\subsection*{3.2.1 The ILO Fundamental Conventions}

The ILO has identified eight fundamental conventions, which cover subjects deemed to be fundamental principles and rights at work. These principles are also covered in the ILO’s Declaration on Fundamental Principles and Rights at Work (1998). The eight fundamental conventions are:

\begin{enumerate}
\item Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
\item Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
\item Forced Labour Convention, 1930 (No. 29)
\end{enumerate}


\textsuperscript{35} ILO, supra note 32.
4. Abolition of Forced Labour Convention, 1957 (No. 105)
5. Minimum Age Convention, 1973 (No. 138)
6. Worst Forms of Child Labour Convention, 1999 (No. 182)
7. Equal Remuneration Convention, 1951 (No. 100)
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The ILO has also designated another four conventions as priority instruments, called governance conventions, and has encouraged member states to ratify them because of their importance within the international labour standards system. These four governance conventions are:

1. Labour Inspection Convention, 1947 (No. 81)
2. Employment Policy Convention, 1964 (No. 122)
3. Labour Inspection (Agriculture) Convention, 1969 (No. 129)
4. Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Cambodia’s and Canada’s ratification of core ILO conventions seems to provide for the country’s application of further labour standards and recommendations—including those specifically related to the construction industry. These are explored below.

3.2.2 Other Labour Standards and Recommendations

A. The Decent Work Agenda

Decent work has been defined as being productive work for women and men in conditions of freedom, equity, security, and human dignity. During the United Nations (UN) General Assembly in September 2015, decent work became an element of the 2030 Agenda for Sustainable Development. There are four pillars of the Decent Work Agenda—employment creation, social protection, rights at work, and social dialogue. Decent work includes the creation of productive and fairly compensated jobs, rights at work, social protection, social dialogue, and gender equality. The ILO has published several decent work-related resources, including some that are country and industry-specific.

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

The ILO’s Asia-Pacific Decent Work agenda includes Regional Model Competency Standards: Construction (2015). These standards include skills and knowledge related to construction throughout the Association of Southeast Asian Nations member states. There is emphasis placed on labour mobility and the need for skills recognition, and training systems and the need for improvement in the construction industry. These standards were developed to help identify skills needed in construction workplaces so that training resources can be developed.

The standards are also said to be a reference material that can be used for processes such as recruitment and the development of job descriptions. It is recognized that individuals will have varying needs according to personal and cultural standards, and so these

standards can be flexible. While the standards define a general construction framework, they are not considered to be all-encompassing. The standards include both generic competencies and vocational and technical competencies.

The ILO has published Cambodia-specific decent work documents. These include the Decent Work Cambodia Profile (2012) and the Cambodia Decent Work Programme (2016). Cambodia’s Decent Work Programme focuses on three priorities: (1) improving industrial relations and rights at work; (2) promoting and enabling environment for decent employment growth and sustainable enterprises, with a particular focus on young people; and (3) improving and expanding social protection and Occupational Safety and Health. All of these goals can relate directly to the Cambodian construction industry, and may help to promote the rights of construction workers.

In Decent Work for All (2007), MacNaughton and Frey examine the ways in which the ILO Conventions and Decent Work Agenda can work in tandem. The article explores the potential of using a holistic human rights approach to achieve decent work for all. This approach reframes decent work as a set of specific legal obligations under both international and human rights laws in an effort to move beyond political commitments in the ILO’s Decent Work Agenda. Three key principles from the human rights framework embraced by the Universal Declaration of Human Rights and the ICESCR are notably embraced: universality, interdependence, and equality of all human rights. Applying these three principles to work rights would arguably serve to integrate the ILO Conventions and Decent Work pillars into a holistic framework. Such a framework could potentially be of use to countries such as Cambodia.

B. Safety and Health in Construction: A Code of Practice

In Safety and Health in Construction (1992), the ILO provides recommendations that both the private and public sectors can use to help ensure safety and health in construction work. It is recognized that local circumstances and technical possibilities will determine how far it is practical to follow these guidelines. The guidelines include general duties and specific duties relating to a variety of construction activities. The ILO also provides a free, comprehensive, international, and digital training package in occupational safety and health for the construction industry titled ILO Construction OS&H.

C. Guiding Principles on Business and Human Rights

The UN Human Rights Council endorsed the UNGP in 2011. This document contains foundational and operational principles related to: (1) the state duty to protect human rights; (2) the corporate responsibility to respect human rights; and (3) access to remedy. The guiding principles are grounded in recognition both states and businesses having duties to comply with applicable laws and respect for human rights.

The state duty to protect human rights includes the following foundational principles:

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38 Ibid.
39 Ibid.
1. 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.

2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.\textsuperscript{43}

These principles are dependent both on the countries in which human rights abuses are taking place and the countries that are exporting businesses. Foreign companies have much share in the Cambodian construction industry. Thus, it is arguably up to both Cambodia and foreign governments to ensure that the human rights of Cambodian construction workers are upheld. While international law does not typically regulate the extraterritorial activities of businesses within their territories or jurisdictions, there are strong policy reasons for home States to set clear expectations that businesses respect human rights abroad.\textsuperscript{44} Reasons include ensuring predictability for business enterprises and preserving the state’s own reputation.\textsuperscript{45} States have adopted a variety of approaches to regulating extraterritorial businesses. Some are domestic measures with extraterritorial implications, and others include direct extraterritorial legislation and enforcement.\textsuperscript{46}

D. Working Together to Promote a Safe and Healthy Working Environment

The Working Together to Promote a Safe and Healthy Working Environment, 2017, was published as a result of the 106\textsuperscript{th} session of the International Labour Conference.\textsuperscript{47} It is considered to be a general survey on the occupational safety and health instruments concerning the promotional framework, construction, mines, and agriculture. It provides an overview of the Safety and Health in Construction Convention, 1988 (No. 167) and the corresponding Recommendation No. 175. The Convention calls for a series of measures to be taken to ensure that construction workplaces are safe and requires that the most representative organizations of employers and workers concerned be consulted on the measures giving effect to the Convention’s provisions. Convention No. 167 does not include the development of a national policy on safety and health in the construction sector, and this issue does not appear to have been considered in-depth during the preparatory work.\textsuperscript{48} Still, the Committee encourages that governments engage in cross-sectorial social dialogue in order to improve occupational safety and health in their construction sectors.\textsuperscript{49} Note that Cambodia has not ratified Convention No. 167.

Additionally, this survey includes frameworks, policies, and rights that governments and employers can uphold to maintain safe construction sites, and measures that can be taken to ensure compliance with national laws. There is also mention of other ILO instruments related to safety and health in construction, which include: the Asbestos Convention, 1986 (No. 162); the Radiation Protection Convention, 1960 (No. 115); the Occupational Cancer Convention, 1974 (No 139); and the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148).\textsuperscript{50}

\textsuperscript{43} Ibid at 3.
\textsuperscript{44} Ibid at 3-4.
\textsuperscript{45} Ibid at 4.
\textsuperscript{46} Ibid.
\textsuperscript{48} Ibid at 41.
\textsuperscript{49} Ibid at 42.
\textsuperscript{50} Ibid at 20.
4. The British Columbia Framework

The purpose of this portion of the document is to provide preliminary comments on the legal and regulatory structure governing construction work in BC. There are three main pieces of legislation protecting the rights and interests of BC workers: (1) the Employment Standards Act; (2) WorkSafeBC’s Occupational Health and Safety Regulations; and (3) the Labour Relations Code. A short analysis of these pieces of legislation is contained below, as well as a short discussion of protection against discrimination in employment on the basis of gender.

4.1 The Employment Standards Act

The Employment Standards Act (“the Act”) applies across sectors. The Act provides minimum standards relative to hours of work, vacation days, the minimum wage and other matters of general importance in the workplace. The Act may be generally informative of the basic employment conditions guaranteed to BC workers.

Of note, according to s. 3, if a collective agreement contains provisions on a few specified areas (for example, hours of work), then the provisions of the Act will not apply to employees covered by that collective agreement. Collective agreements will generally provide for benefits beyond those guaranteed by the Act.

4.2 WorkSafeBC’s Occupational Health and Safety Regulations

WorkSafeBC is an organization dedicated to: (1) promoting the prevention of workplace injury, illness, and disease; (2) rehabilitating those who are injured, and providing timely return to work; (3) providing fair compensation to replace workers’ loss of wages while recovering from injuries; and (4) ensuring sound financial management for a viable workers’ compensation system.

WorkSafeBC’s Occupational Health and Safety Regulation (“the OHS Regulation”) sets out the legal requirements to be met by all workplaces under the inspectional jurisdiction of WorkSafeBC. This includes almost all workplaces in BC, except for those that are federally regulated. Construction worksites fall under the jurisdiction of WorkSafeBC.

Employers, supervisors and workers may be liable if they contravene the requirements set out in the OHS Regulation (s. 2.8):

Contravention

2.8 (1) A contravention of this Regulation will be deemed to be a contravention by the employer and will make that employer liable for any penalty prescribed by the Workers Compensation Act. (2) A contravention of this Regulation by a supervisor or a worker will be deemed to be a contravention by the supervisor and will make that supervisor liable for any penalty prescribed by the Workers Compensation Act. (3) A contravention of this Regulation by a worker will make that worker liable

51 Employment Standards Act, RSBC 1996, c 113 (Appendix 1).
53 Occupational Health and Safety Regulation, BC Reg. 296/97(Appendix 2).
for any penalty prescribed by the Workers Compensation Act.

(4) A contravention of this Regulation by a person working in or contributing to the production of an industry within the scope of the Workers Compensation Act will make that person liable for any penalty prescribed by the Act.

Parts 1 to 4 of the OHS Regulation contain core requirements. Parts 20 to 32 contain industry specific requirements. Part 20 governs Construction, Excavation and Demolition. Part 20 is generally organized according to the type of construction activity performed. Certain types of activities require specific safety precautions. For example, s. 20.75 requires the following when labourers are working on steep roofs:

**Steep roof requirements**

20.75 If a worker is employed on a roof having a slope ratio of 8 vertical to 12 horizontal or greater, the worker must use a personal fall protection system or personnel safety nets must be used, and 38 mm x 140 mm (2 in x 6 in nominal) toe-holds must be used if the roofing material allows for it.

The OHS Regulation safety requirements are extremely thorough and detailed. (Note: The OHS Regulations is in the Appendix - to provide with examples of the specific safety standards required in BC).

### 4.3 The Labour Relations Code

The Labour Relations Code sets out the law governing the structure of unions, employer-union relations, collective bargaining, strikes, and other labour relations matters in BC. Every employee is free to be a member of a trade union and to participate in its lawful activities and every employer is free to be a member of an employers’ organization and to participate in its lawful activities (s. 4). Collective agreements are negotiated under the umbrella of this act.

Employment in the construction industry differs from the typical employment relationship because of the mobility of workers, and the lack of a set worksite. In addition, because workers are often specialized to different crafts, there are both craft unions, which represent employees who perform only a specific trade, and all employee bargaining units. A thorough discussion of the status of craft unions versus all employee unions in BC construction labour relations can be found in Vertex Construction Services Ltd v IUOE, Local 115 (Re). Both craft-units and all-employee bargaining units have been accepted.

The BC Labour Relations Board’s website contains a list of the collective agreements reached between BC employers and unions. A sample collective agreement is attached. The agreement covers general labour matters such as holiday and overtime pay. While the OHS Regulations automatically apply, parties may negotiate an agreement that specifically provides which party will provide the safety equipment and tools. For example, in the sample

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54 Labour Relations Code, RSBC 1996, c 244 (Appendix 3).
56 Ibid.
58 Ibid.
59 BC Labour Relations Board, “All Collective Agreements Listed By Employer Name” (n.d.), online: <www.irb.bc.ca/cas/cafull.htm>.
60 Agreement between Ames Construction Canada ULC and Construction and Allied Workers Union, CLAC Local 68 (Appendix 4).
collective agreement attached, the union and employer have negotiated specific requirements for safety and protective wear.  

61 Article 22 requires the employer provide protective equipment, including safety vests and hats (22.01), appropriate safety seasonal footwear (22.02), and safety glasses (22.03).

4.4 Gender as a Protection Ground

The BC Human Rights Code prohibits discrimination in employment. 62 Employers can neither refuse to employ a person, or discriminate against a person regarding employment, or any term or condition of employment, on the basis of gender identity. 63

To demonstrate a condition of employment, or a hiring practice is prima facie discriminatory, the employee must establish it is (1) based on grounds relating to personal characteristics of the individual or group; and (2) that it has the effect of imposing burdens, obligations or disadvantages on said individual or group not imposed upon others; or which (3) withholds or limits access to opportunities, benefits and advantages available to other members of society. 64

Once it is established that a standard of employment is prima facie discriminatory, the onus shifts to the employer to demonstrate it is a bona fide occupational requirement. The test for a bona fide occupational requirement is set out in British Columbia (Public Service Employee Relations Commission) v BCGEU (“Meiorin”). 65 The employer must establish the following, on a balance of probabilities 66:

(1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;
(2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose; and
(3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

This approach is based on the goal of developing standards that accommodate the potential contributions of all employees. 67 As a result, an employer cannot implement a standard of employment that may be discriminatory towards women (for example, requiring all employees be 6 feet or taller) unless they have met the test above. Generally, employers can easily establish the first two elements of the test. However, at the third part, employers must show that without the standard their operation would be unduly hindered. 68

61 Ibid.
63 Ibid.
65 British Columbia (Public Service Employee Relations Commission) v BCGEU, [1999] SCR 4, SCJ No. 46.
66 Ibid, para 54.
67 Ibid.
68 Ibid.
5. Conclusion

This document has examined international and BC labour and human rights standards in order to examine some ways in which the health and safety of Cambodian construction workers may be more adequately upheld. There is a range of options that the government could take, from regulating foreign businesses and other employers to helping promote employee unionization. It is also possible that there is more than just a need for the Cambodian government to take action. Workers, unions, governments, and businesses may all need to come together to help implement for productive health and safety standards within the Cambodian construction sector.

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

1. Commentaries, Guideline, and Treaty


2. Agreement and Legislation

Agreement between Ames Construction Canada ULC and Construction and Allied Workers Union, CLAC Local 68.

*Employment Standards Act*, RSBC 1996, c 113

*Human Rights Code*, RSBC 1996, c 210

*Labour Law of the Kingdom of Cambodia* (Cambodia), 1997.

*Labour Relations Code*, RSBC 1996, c 244.

*Occupational Health and Safety Regulation, BC Reg.* 296/97.

3. Jurisprudence


*British Columbia (Public Service Employee Relations Commission) v BCGEU*, [1999] SCR 4, SCJ No. 46.

4. Articles, Books, Documents, and Reports


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5. Others

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