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# Trade Unions in ASEAN: Their Status and Role in the Application of CSR Practices with the Example of Cambodia

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ARTICLE INFO	ABSTRACT
<p><b>Article History:</b></p> <p>Received: 28 March 2019</p> <p>Revised: 27 June 2019</p> <p>Accepted: 27 June 2019</p> <p><b>Keywords:</b></p> <p>ASEAN</p> <p>Trade unions</p> <p>CSR</p> <p>Cambodia</p> <p>Labour rights</p>	<p>Trade unions in the Association of Southeast Asian Nations (ASEAN) have historically faced discrimination and intimidation, which has impacted how they operate and to what extent they are able to realise various freedoms and rights. Despite the fact that trade unions can fit in a variety of human rights realms, such as the United Nation Guiding Principles on Business and Human Rights (UNGPs), the author decided to focus on Corporate Social Responsibility (CSR) in recognition of the 2016 initiative of the ASEAN Guidelines for Corporate Social Responsibility on Labour. Thus, this paper entitled '<i>Trade Unions in ASEAN: Their Status and Role in the Application of CSR Practices with the Example of Cambodia</i>' discusses trade unions, and how CSR strategies affect trade union activity and strategies and vice versa. It establishes that countries belonging to the Global South suffer from exploitation at the hands of industrialised countries. While generally, ASEAN has made progress, the remaining lack of convergence of labour laws remains an obstacle for the advancement of labour rights. Moreover, even with national and international human rights frameworks put in place, the region focuses mostly on economic development and growth. A case study of Cambodia's garment sector illustrates that even though collective bargaining rights are formally acknowledged and ratified by the country's government, creating and maintaining a space in which those rights can flourish remains challenging. Abuse and neglect at the hands of states and businesses alike</p>

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have led trade unions to find their own channels to create awareness about abuses, for instance through exercising pressure on buyers and engaging in cross-regional and international collective trade union activities. Lastly, this paper concludes that new key players must be identified to put forward a positive outlook on the respecting and promoting of trade unions. Findings were entirely drawn from secondary data, such as journal articles, reports and news.

## **Introduction**

In our neoliberal world in which the accumulation of capital and the creation of wealth are on the agenda of many individuals, businesses, and governments, the exploitation of people in lesser-developed, labour-abundant countries (also referred to as 'Global South') has been widely accepted for many decades, even centuries.<sup>2</sup> This is not only related to the fact that countries belonging to the Global South are usually cheaper in production costs, including wages. An undeveloped legal framework and a lack of protection of workers have paved the way for widespread workers' rights violations (Salmivaara, 2017). Cambodia and its garment industry are a case in point: Ravaged by the brutality of the Khmer Rouge, the country was soon after exploited by international companies and by some of its own people. Anxious to secure foreign direct investments in a politically stable environment, the newly-established government began oppressing people's rights, which has lasted until this very day.

One of the rights most violated under neoliberalism are trade union rights (Peoples Democracy, 2019), i.e. the rights and freedoms related to expression, association and assembly, collective bargaining, and to form and join a trade union. While the Cambodian government has committed itself to legally binding, international human rights instruments as well as national labour laws, there is a gap between theory and reality. This is especially visible in the garment industry, according to Salmivaara (2017), who simultaneously discusses possible solutions to this dilemma:

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<sup>2</sup> The author acknowledges the variety of countries that are part of the Global South, and the impact that different government systems, histories and cultures have on trade union rights. For example, Chile and Uruguay are often regarded as "social democracies" while Bolivia, Ecuador and Venezuela are referred to as "democratic socialists", and trade unions are mostly very powerful in these countries (Dunkerley & Whitehouse, 1980; Iber, 2016). In the context of this paper, "Global South" refers to developing countries that a.) are specialised in manufacturing, and b.) are governed by authoritarian regimes.

[The] garment industry is an example of how production is organised into global supply chains, at the bottom of which work is precarious and labour rights violations widespread. These problems have been interpreted as consequences of 'governance gaps', which, it is argued, must be filled with new forms of regulation that complement and go beyond the traditional state-centred ones. 'New Governance' is presented as a shift away from top-down models to more participatory settings, where regulatory functions are shared among stakeholders and binding law and treaties give way to softer, more flexible forms of regulation (Ruggie, 2014; Abbott & Snidal, 2009, as cited in Salmivaara, 2017, p. 329).

Simultaneously, Salmivaara (2017) reflects on the impact of CSR:

In the garment industry, this shift ['New Governance'] is reflected in the privatisation of labour rights regulation and the growth of monitoring and audit regimes associated with the discourse of corporate social responsibility (Salmivaara, 2017, p. 329).

Nowadays, buyers are expected to take charge of the human rights discourse in sourcing countries instead of following a strict financial agenda. This is a trend largely thanks to the connecting nature of globalisation, for example through the ease of sharing information worldwide through the internet, in which end-consumers and other members of civil society have become aware of widespread workers' violations, and are demanding more responsibility from companies. As businesses are now being held socially accountable for their abuses, many began implementing CSR into their operations, a concept which will be discussed in detail in this article.

The author selected CSR instead of other standards, for instance the United Nations Guiding Principles on Business and Human Rights (UNGPs) or the Environmental, Social, and Governance (ESG) criteria, due to the adoption of the ASEAN Guidelines for Corporate Social Responsibility on Labour in 2016. Despite the guideline's non-binding nature, the ASEAN Services Employees Trade Union Council (ASETUC) supported this initiative, "underlying its importance for the respect of workers' fundamental rights. Its reliance on international

standards and the fact that the guidelines enhance the crucial role of the private sector in social and environmental matters are also recognized" (Cauqui, 2017, paragraph IV).

The structure of the paper is as follows: Part 1 discusses the human rights mandate that trade unions follow, making it more evident what these rights entail and how they could be a perceived threat to governments. This is especially important in the context of ASEAN, which is a region that tends to overrule peoples' dissent on a regular basis. Part 2 focuses on trade unions in ASEAN, and provides a case study on Cambodia's garment sector. Part 3 discusses CSR development, and how it is conducted in ASEAN. This will be followed by a conclusion.

## **PART 1 - Connecting the dots: Trade unions, human rights, and economic development**

Trade union rights are a dimension of many significant rights, the most essential ones in the context of the advancement of trade union rights being *the freedom of expression* (Freedom 1), *the freedom of assembly* (Freedom 2), *the freedom of association* (Freedom 3), *the right to form trade unions* (Right 1), and *the right to collective bargaining* (Right 2). It would not be useful to discuss all rights incorporated by trade unions, e.g. the right to work, as this right is not considered a threat to governments.

The freedom of expression is a right manifested in two of the most important human rights instruments, i.e. the Universal Declaration of Human Rights (UDHR) (U.N.G.A., 1948) and the International Covenant on Civil and Political Rights (ICCPR) (U.N., 1966a). In Article 19, the UDHR states that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers", which is echoed by the ICCPR's Article 19:

Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice [...].

While freedom of expression itself already carries an immense value to every human, being able to share one's opinions in any other social setting is essential for a "free and open society" and plays "a significant role in countries' democratic transformation" (International Labour Organization (ILO), 1998). As Maina Kiai, former UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, described it: "these rights protect peoples' ability to come together and work for the common good." (Kiai, n.d.) Therefore, the freedoms of assembly and association must be included when presenting and analysing the freedom of expression.

Besides the representation of the freedom of expression, assembly and association in the UDHR and the ICCPR, the ILO has created its own internationally recognised set of instruments for the protection of these freedoms. Those conventions are called Convention 87 (*Freedom of Association and Protection of the Right to Organise Convention*) and Convention 98 (*Right to Organise and Collective Bargaining Convention*) (ILO, 1948; ILO 1949). While both Conventions cover the freedoms of assembly, Convention 87 also focuses on the freedom of association. What is significant about Convention 87 is that it not only discusses the freedoms and rights of workers, but also establishes a protection mechanism to secure these rights. While other international human rights instruments often point out the importance of independent monitoring bodies, the ILO is very specific in its phrasing, and even incorporated this in its Convention title.

Furthermore, the right to collective bargaining is essential in the creation and operating of trade unions, and is clearly manifested in important international human rights documents. As ILO Convention No. 154 (ILO, 1981) defines it, collective bargaining refers to "all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other." Mostly, those negotiations take place under or with the support of trade unions. Therefore, many human rights instruments do not mention "collective bargaining" as 'expression' or a right, but rather refer to trade unions. In the UDHR, the right to collective bargaining is very straightforward. For example, Article 23 §4 states that "everyone has the right to form and to join trade unions for the protection of his interests", which is a very clear indication about the role of trade unions. In the ICCPR, Article 22 describes the right to join trade unions as follows: "Everyone shall have the right to freedom of association with others, including the right to

form and join trade unions for the protection of his interests." The use of language in both the UDHR and the ICCPR is very significant to describe the intentions behind the freedom of association: to protect one's interests. This could be used as first indicator why those specific rights rarely thrive in authoritarian governments. The International Covenant on Economic, Social and Cultural Rights (ICESCR) (U.N., 1966b) is very precise in its description of trade union-related rights and freedoms. In Article 8 §1, it provides detailed rights in 4 sub-points, i.e. the right of everyone to form trade unions and join the trade union of his choice, the right of trade unions to establish national federations or confederations, the right of trade unions to function freely, and the right to strike.

### *The relevance of trade unions in the Global South*

So far, this paper established that trade unions incorporate various human rights, which are embodied in important international human rights instruments. Due to the nature of trade unions - bringing together a group of people who demand an improvement of their work lives - they remain challenged by both governments and businesses that operate under oppressive systems inspired by neoliberal structures. This is not only the case in lesser-developed countries but is also visible in countries that are part of the Global North, such as Belgium, France, Italy and the UK (European Trade Union Confederation (ETUC), 2019). At this point, it is noteworthy to mention that this article does not focus on trade unions in terms of their overall success rate to bring about positive change, but rather on the fact that they are a human right defined by legally-binding human rights documents.

Focusing on the Global South, the author notes a common oppression of trade unions and trade union-related rights. This is mostly related to state priorities in terms of economic growth and development, oftentimes not exclusively but strongly related to investor confidence and the resulting flow of Foreign Direct Investment (FDIs). The right to protest and voice worker concerns, criticism of the government itself as well as foreign investors is often met with violent response on behalf of the state, as it is regarded a threat to a stable environment which creates or furthers economic growth and wealth. Therefore, countries that are part of the Global South often do not embrace trade unions and their rights, and oftentimes even prohibit them.

### ***Human rights realisation under neoliberal agendas***

Neoliberalism, an important ideology characterising the perspective of the government and factories, focuses on creating unregulated markets and privatisation to the highest extent, which oftentimes leads to the creation of political elites. Therefore,

neoliberalism, as the de facto only available political and economic option has had catastrophic effects on society and the environment. When only that which produces more wealth and power is sought working people and the environment end up becoming mere resources and sources of wealth and are mercilessly plundered accordingly (McCann, 2016, paragraph IV).

Literature discussing the adverse impacts of neoliberalism mostly surrounds the exploitative nature of its policies, citing authoritarianism as the most common feature of neoliberal power to "remove key decision-making arenas from democratic control" (Bruff, 2014, as cited in Clua-Losada & Ribera-Almandoz, 2017, p. 29). Harvey (2005) writes:

In response to the financial crisis of the 1970s, the Wall Street–Treasury nexus in concert with the World Bank and the International Monetary Fund (IMF) sought to reconstruct the global power (im)balance by attempting to eliminate any inklings of collectivism in the global South through the imposition of brutal forms of economic discipline. For some this represents the heart of neoliberalism, which has been considered as a class reaction (Harvey, 2005, as cited in Springer, 2017, p. 235).

This shows that neoliberalism has been at the forefront of human rights violations, especially trade union rights, for decades.

### **Part 2 - Trade unions in ASEAN**

As mentioned earlier, documents such as the International Covenant on Civil and Political Rights are main defenders of rights related to trade unionism. In this region, the ASEAN Human Rights Declaration (AHRD) recognises the freedoms of expression and assembly as well as the right to form trade unions. Besides those international documents, also national constitutions, labour laws and specific trade union laws exist. However, many ASEAN countries not only ignore people's rights but actively diminish, deny, and even erase human rights in

the region. Already 26 years ago the Asian Cultural Forum on Development (1993) found the "violation of civil and political rights of the people is being justified in the name of economic development. The issue of development is being presented as an option, which is incompatible with the rights of people" (Asian Cultural Forum on Development, 1993). This is confirmed by Petcharamesree (2013) who writes: "ASEAN claims that political rights and civil liberties could be a hindrance to economic development and social or public order. There has always been a trade-off in which economic, social and cultural rights have been given priority over political and civil rights" (Petcharamesree, 2013, p.56). Thus, ASEAN governments' negative perception of trade unions finds its roots in what those unions stand for: the people's right to associate, assemble and express themselves. This is in direct relation to national economic development agendas under neoliberal policies, and the overwhelming power of businesses.

While Kuruvilla, Das, Kwon, & Kwon (2002, p.5) describes trade unions in this region as heterogeneous due to different definitions and meanings in the various member states, a common pattern of discrimination remains visible throughout the region. For example, Cambodia's new *Law on Trade Unions*, implemented in 2016, gives the government an increased control over trade unions. Through a more challenging union registration process, it has become more difficult for people to form and register unions, which gives the government the power to continuously push down trade union activity (Yon & Chen, 2017). This is similar to Malaysia, where union registration may be refused by ministries at any time without the need to provide any justification. In Vietnam, the emerging of an independent trade union movement in the years 2006 and 2007 was met by aggressive government response, with supporters being arrested and detained, while others faced severe intimidation (Human Rights Watch, 2009). Lastly, in Laos, the state holds the right to define the status, rights and obligations as well as the system, structure and financial management of trade unions, thus failing to accord to unions the right to determine their own structure, rules, administration or activities. Moreover, employers are legally not obliged to enter into bargaining talks with unions, adding further conflict to trade union effectiveness (Serrano, 2017).



### *Trade unions in Cambodia, and the impact of national legislations on freedoms and rights*

Since the garment sector is one of Cambodia's flagship sectors assuring economic stability and growth for decades, it is also the most vulnerable and exploited. This has a negative impact on the implementation, respecting and promoting of garment workers' rights (Smith, 2015). Neoliberal ideologies implemented by the government as well as international brands illustrate the nature of human rights in the country: While there is the theoretical legal framework guaranteeing workers' rights, Cambodia's government behaves differently in practice. By erasing workers' rights as much as possible, the government manages to maintain investor confidence and, hence, economic growth in one of its main sectors.

Besides the country's ratification of international human rights documents, Cambodia has included the freedom of expression, association, and assembly in its Constitution of 1993, and various labour- and trade union- related laws. The Constitution's Article 41 says: "Khmer citizens shall have freedom of expression of their idea, freedom of information, freedom of publication and freedom of assembly" while Article 42 mentions the right of people to "establish associations and political parties." Regarding collective bargaining and trade union formation rights, the Constitution's Article 36 states that "Khmer citizens of either sex shall have the right to form and to be members of trade unions." Besides the country's constitution, recent years have seen further legal implementation of workers' freedoms and rights, for example its labour law formulated in 1997. While there is no mentioning of the freedom of expression and assembly specifically, the Cambodian Labour Law has dedicated a whole chapter to the freedom of association and collective bargaining rights. For example, Article 266 states people's right to "form professional organizations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, collectively and individually, of the persons covered by the organization's statutes." Further, Article 267 goes on to define the rights of unions in terms of administration, self-determination, and autonomy (Cambodian Labour Law, 1997).

In addition to the country's labour law, the National Assembly adopted a Law on Trade Unions in 2016 (Ministry of Labour and Vocational Training (MLVT), 2016), which was criticised by civil society organisations and human rights advocates. Under this new law, at least 20 percent of the workforce is required in order to form a union, making it virtually impossible

for workers in smaller garment factories to meet this requirement (Palatino, 2016). Moreover, the inclusion of age and literacy - among other requirements - for union leaders "can be read as restrictions on the right of workers" (ibid). This is echoed by the International Trade Union Confederation (ITUC) (2016), stating that this new union law "would among other things impose new limits on the right to strike, facilitate government intervention in internal union affairs and permit third parties to seek the dissolution of trade unions" (ITUC, 2016). The Labor and Human Rights' Defenders Alliance (HALDA) openly declared the new trade law as unconstitutional: "The new Trade Union law should align with the Cambodian Constitution, UN's International Covenant on Economic, Social and Cultural Rights, and ILO Conventions 87 and 98 which it currently does not" (HALDA, as cited in Demetrianova, 2016, paragraph III), illustrating how even national laws interfere with each other.

While the MLVT and the government-friendly Garment Manufacturers Association in Cambodia (GMAC) stated in a 2015 report that 90% of the country's 3,000+ labour unions represented garment workers (Garment Manufacturers Association in Cambodia (GMAC), 2018), the mere existence of trade unions is no indicator for the respecting of workers' rights. Firstly, many of those unions are so-called yellow unions, which are controlled by factories and the government itself (Rollet & Baliga, 2015). Secondly, independent trade unions and their members frequently suffer from discrimination by their employers. A 2015-report by Human Rights Watch (HRW) found that factories regularly tried to break up unions. Several union representatives reported that "as soon as workers initiated union-formation procedures, factory management would dismiss union officer-bearers or coerce or bribe them to resign, thwarting union formation" (Human Rights Watch, 2015, paragraph XXIV). This so-called 'union busting' often leads to workers deciding not to join a union in fear of losing their jobs, making them even more vulnerable to mistreatment at the hands of their employers.

Simultaneously, the role of independent unions, the rights of workers as well as the gap between theory and practice is also visible when it comes to international brands. While Cambodia is one of the main producers of many buyers - all who have adopted and published various CSR strategies in the past - human rights violations are often met with limited or no protest from the buyers' side. This is eventually very critical to the understanding of trade unions in the present and future, raising the question how trade unions will ever effectively operate without discrimination at the hands of governments, employers, and international

brands. Thus, it was surprising when, in mid-January 2014, 30 brands and unions together sent a letter to Cambodia's Prime Minister Hun Sen in mid-January 2014, asking to "immediately engage employers and unions to negotiate a resolution to this crisis and to lay the foundation for credible and regular dialogue between workers, employers and government" (IndustriALL, 2014, p. 1) after garment workers clashed with security forces. In terms of trade union rights, they demanded "the introduction of a legal framework that is consistent with ILO Conventions 87 and 98 as the foundation for effective industrial relations" (ibid). Also noteworthy is the 2018- creation of a tripartite National Council on Minimum Wage (NCMW) in 2018 (GMAC, 2018) portrayed the collective power of workers under authoritarian rule to make use of their freedom of expression, assembly and association as well as their right to collective bargaining.

### **PART 3 - CSR practices in ASEAN**

In the past and present, businesses operating in ASEAN were actively involved in human rights violations - partially due to the negligent nature of ASEAN governments, which were focusing more on pleasing foreign investors rather than putting pressure on them. This is also evident by looking at the ASEAN Socio-Cultural Community Blueprint 2009-2015, which was the only of three blueprints incorporating CSR. Pushing CSR into the socio-cultural sphere demonstrates a misinterpretation of economic and political responsibilities of ASEAN governments towards their workforces, but also shows regional fear to see CSR as an important tool to be implemented and considered. While now both the Economic and Political-Security Blueprints incorporate CSR in their works, preferred CSR practices in the region remain purely philanthropic, lacking a focus on social responsibility and stakeholder responsibility. Instead, companies tend to donate parts of their profits or support educational infrastructure projects, for instance in rural areas which lack schools. Additionally, a 2014-Thematic Study on CSR and Human Rights in ASEAN conducted by the ASEAN Intergovernmental Commission on Human Rights (AICHR) showed an "unfortunate lack of consensus on the definition of CSR has led experts and practitioners to define and interpret the term freely as best fits their purpose, resulting in definitions and interpretations that are often biased by underlying value-judgements and ideologies" (Thomas & Chandra, 2014, p.3). Moreover, as the study found, the weak points of CSR in the region mainly revolved around the perceived voluntariness of CSR practices. Thirdly, another issue was the common top-bottom approach used by companies,

in which CEOs made decisions without understanding or knowing basic human needs. Fourth, CSR activity heavily depended on ASEAN countries' economic statuses, and mostly covered anti-corruption and transparency.

Nevertheless, in 2016, ASEAN adopted the ASEAN Guidelines for Corporate Social Responsibility on Labour. While participants criticised the guidelines, for instance, for "the non-binding nature of the guidelines and the weak incentive for implementation" as well as "the non-assignment of responsibilities for the actors and the weaknesses of the text on some issues such as wages and social security", they were nevertheless a noteworthy step towards the recognition of rights inherent to trade unions (Cauqui, 2017, paragraph II). Also, Cauqui (2017) found that "the guidelines remain a useful tool for trade unions to improve working conditions in the region" (Cauqui, 2017, paragraph X). This portrays the challenges but also opportunities that ASEAN member states have opened up to in their effort to recognising labour rights and business duties.

Despite a number of companies committing themselves to the greater cause of CSR in Cambodia, the absence of CSR-specific laws and inadequate definitions of CSR lead to obstacles in meaningfully implementing CSR. Ith (2017) writes: "Misconceptions and a lack of regulation for CSR in Cambodia are the main challenges facing ethical business practices in the country. Cambodian business leaders ... rarely see the potential benefits and importance of incorporating CSR practices into company policy" (Ith, 2017, paragraphs I-IV). The legally non-binding nature of CSR strategies as well as a companies' own interpretations of CSR-related duties pose a threat to trade union rights and freedoms.

### ***The relationship between CSR and trade unions***

Since neoliberalism leads to the oppression of workers' rights and hence trade unions in the Global South, the author of this paper considers modern CSR as a direct response to civil society's concerns over workers' violations. Hossain & Semenza (2017) note that "union leaders have acknowledged buyers' pressure as the best alternative to enforce labour standards at the factory". At the same time,

tripartite industrial relation systems are not too instrumental to bring changes in labour practices due to unequal power relations among the actors. Consumers and citizens' movements can exert extreme force on the global

buyers and state respectively to maintain labour standards at workplace (Hossain & Semenza, 2017, pp. 552-554).

At the same time many governments are corrupt and give leverage to employers when they should not, making trade unions less powerful. Thus, trade unions mainly face the challenge of competing against governmental economic agendas as well as businesses' profit margins. As such, multinationals operating in the region have greater power to undermine trade union rights (Marginson, 2016).

Therefore, unions have created two types of response to business activities, which are *defensive* (through strikes) and *proactive* (proposing strategies for collaboration). In this respect, both responses can play on either a local, national or transnational ground. The transnational ground applies mostly when local strategies do not work any longer, and they usually come in the shape of global unions supporting each other, the exchange of information to coordinate claims made, or the harmonising of work conditions. Additionally, many unions have not integrated CSR in their agenda due to existing mistrust in businesses and other numerous factors, for example whether unions are operating within a coordinated or liberal market economy, the ideological stance of unions (left-wing unions are historically less interested in CSR), and the history of their country. Hence, trade unions often use transnational action as a last resort (European Trade Union Institute, 2015).

One example is the case of Swedish clothing company H&M: After various protests against H&M-producing factories in Cambodia, Bangladesh, Turkey, Italy and other countries, trade unions publicly directed their frustrations towards H&M. As a result, the reputation of H&M suffered, leading the company to sign a permanent agreement for trade union and collective bargaining rights in 2016. Moreover, the company also collaborated with IndustriALL Global Union to jointly train its direct suppliers and their workers in how to improve relations and dialogue between social partners (Hennes & Mauritz (H&M), 2016). In a specific case related to Cambodia, the American chemical company DuPont failed to respect its own CSR commitments regarding garment workers producing the company's medical and industrial coveralls. As the Community Legal Education Center (CLEC) (2015) reported:

DuPont suppliers have consistently engaged in union discrimination in violation of the Cambodian Labour Law. In the last two years, at least 115 union leaders

and members have been terminated from DuPont suppliers in Cambodia. Further, workers at peaceful strikes have been brutalised, including pregnant women. ... DuPont reported \$7.5 billion in 2014 third quarter net revenue yet their Cambodian supply chain workers are denied their most basic right to freedom of association (CLEC, 2015).

This example illustrates corporate power in a country, which is governed by a corrupted government operating under neoliberal structures. While the concerned company had in fact put CSR strategies in place, it nonetheless ignored trade unions. Hence, trade union rights seem to be regarded as incompatible for many businesses.

#### **PART 4 - Conclusion**

This paper looked at how trade unions operate within ASEAN, and how CSR strategies influence trade union activity in this region. It was established that countries belonging to the Global South suffer from exploitation at the hands of industrialised countries, which is especially visible in the manufacturing sector. While ASEAN has made progress, for example through participating in the ASETUC Initiative, the 2016 ASEAN Guidelines for CSR on Labour, the new 2025-ASEAN Community Blueprint, the ASEAN CSR Network, and the ASEAN Action Plan for CSR, a general lack of convergence of labour laws in ASEAN can be largely explained by the diverse historical, geographical, political, cultural and socio-economic contexts. Moreover, even with national and international legal frameworks in place recognising and acknowledging union rights, the region's emphasis is mostly put on economic development and growth. Many ASEAN member states struggle to see human rights as an important factor in the development of their countries, especially in terms of political and civil rights, which are often regarded a barrier toward greater economic development (Petcharamesree, 2013). Thus, human rights-related conflict has widely been regarded as result of ASEAN's path to greater economic success.

Trade unions remain immensely challenged in two realms, i.e. the economic and the political one. The vulnerability of labour rights, and therefore also trade union rights, was firstly found to be related to neoliberal structures (Blanton & Peksen, 2016). While governments seek to assure economic development and maintain investor confidence at the expense of

human rights, neoliberalism also has negative effects on local politics, reflected in authoritarianism and corruption while focusing on creating unregulated markets and privatisation to the highest extent, which bears a notion of political elite creation within a society (Cassinerio, 2019). The total control over elections, corrupt state institutions, repression, and legitimisation of abuse have created a well-oiled machine that works against the realisation of trade union rights, and the respecting of national and international labour rights laws and their effective implementation. Lastly, the impact of neoliberal politics and a corrupt environment has also paved the way for employers to get away with workers' abuse (ibid).

By looking at the failures of governments to protect, promote and respect human rights, CSR strategies were also discussed. CSR is an important part of trade union rights due to the impact of buyers and brands on labour rights, and eventually trade unions. While many businesses promote workers' rights in theory to keep a clean image in the Western world, oftentimes the realisation of such commitments as well as a general lack of legal accountability imposed by Global South governments do not pose a strong enough incentive for businesses to comply to human rights standards. Therefore, the gap between theory and practice is not only visible in government attitudes but also in those of international buyers. Salmivaara (2017) finds: "In the case of Cambodia, the interests of global elites - international brands and retailers - seem to coincide with those of the local ones - government and employers" (Salmivaara, 2017, p. 342). This is an important finding: Where a corrupt government and abusive employers have the same interests as international brands, trade union rights will face significantly stronger backlash from powerful opponents who oftentimes face limited accountability and repercussions.

Besides the obvious need for both governments, employers, brands and buyers to be more accountable in facilitating trade union-related rights, trade unions themselves must find other channels to create awareness of their abuses. For example, Hossain & Semenza (2017) writes that "union leaders have also acknowledged buyers' pressure as the best alternative to enforce labour standards at the factory... Consumers and citizens' movements can exert extreme force on the global buyers and state respectively to maintain labour standards at workplace" (Hossain & Semenza, 2017, pp.552-554). Furthermore, cross-regional as well as

international collective trade union activities can serve as powerful tool to raise awareness of trade union abuses.

To sum up, the emergence of non-traditional actors results in employers and governments alike facing pressures from globalisation processes. At the same time, regional and global comradery of trade unions provides them with more leverage in defending their rights. Hence, not only trade unions themselves but also CSOs in general should seize this momentum for the benefit of trade union rights globally.

## References

- Asian Cultural Forum on Development. (1993). *Our voice: Bangkok NGOs' declaration on human rights: Reports of the Asia Pacific NGO Conference on Human Rights and NGOs' statements to the Asian regional meeting*. Bangkok: Asian Cultural Forum on Development.
- Blanton, R. & Peksen, D. (2016). The dark side of economic freedom: Neoliberalism has deleterious effects on labor rights. [Web log post]. Retrieved from <http://blogs.lse.ac.uk/usappblog/2016/08/20/the-dark-side-of-economic-freedom-neoliberalism-has-deleterious-effects-on-labour-rights>
- Cambodian Labour Law. (1997). Labour Code For Kingdom of Cambodia, dated 10 January 1997. (Kram 13 March 1997). Retrieved from [http://sogi.sithi.org/temp.php?url=media\\_view2.php&mid=121](http://sogi.sithi.org/temp.php?url=media_view2.php&mid=121)
- Cassinerio, J. (2019). *Assessing human rights in Cambodia's garment sector: A study of existing labour rights laws, workers' needs, and the reality of rights inside factories*. (Unpublished doctoral research proposal). Mahidol University, Thailand.
- Cauqui, R. (2017, September 19). Trade unions welcome ASEAN guidelines on CSR, call for strong enforcement mechanism. Retrieved from <https://www.fes-asia.org/news/asean-trade-unions-welcome-new-guidelines-call-for-stronger-implementation-measures/>
- Clua-Losada, M. & Ribera-Almandoz, O. (2017). Authoritarian neoliberalism and the disciplining of labour. In C. B. Tansel (Ed.), *States of discipline: Authoritarian neoliberalism and the contested reproduction of capitalist order* (pp. 29-46). Retrieved from <https://www.researchgate.net/publication/309592362>
- Community Legal Education Center (CLEC). (2015, January 15). Community Legal Education Center says American chemical company DuPont fails to regulate supply chain in Cambodia. Retrieved from <https://www.business-humanrights.org/en/cambodia-workers-ngos-demand-reinstatement-of-union-leaders-sacked-by-manhattan-textile-supplying-american-company-dupont-companies-do-not-respond>
- Demetrianova, A. (2016, April 14). Cambodia's new trade union law violates workers' rights, activists say. *Asian Correspondent*. Retrieved from <https://asiancorrespondent.com/2016/04/cambodia-trade-union-law/#XtyQsSOTsQZJvWhg.99>



- Dunkerley, J. & Whitehouse, C. (1980). *Unity is strength: Trade unions in Latin America - a case for solidarity*. London: Latin American Bureau. Retrieved from <http://www.jstor.org/stable/j.ctt1hj54g0>
- European Trade Union Confederation (ETUC). (2019). Trade union rights. Retrieved from <https://www.etuc.org/en/theme/trade-union-rights>
- European Trade Union Institute. (2015, February 26). Trade unions and corporate social responsibility: pragmatism wins out against mistrust. Retrieved from <https://www.etui.org/News/Trade-unions-and-corporate-social-responsibility-pragmatism-wins-out-against-mistrust>
- Garment Manufacturers Association in Cambodia (GMAC). (2018). Notification on schedule of minimum wage negotiations in the textile, garment and footwear sector for 2019. Retrieved from [https://www.gmac-cambodia.org/regulation\\_pdf\\_en/1534304041.pdf](https://www.gmac-cambodia.org/regulation_pdf_en/1534304041.pdf)
- Hennes & Mauritz (H&M). (2016, September 29). H&M makes its Global Framework Agreement with IndustriALL and IF Metall permanent. Retrieved from [https://about.hm.com/sv\\_se/news/general-2016/hm-permanently-collaborates-with-industriall-and-ifmetall.html](https://about.hm.com/sv_se/news/general-2016/hm-permanently-collaborates-with-industriall-and-ifmetall.html)
- Hossain, I., & Semenza, R. (2017). Labor justice in global manufacturing: New actors for revitalizing industrial relations. *Indian Journal of Industrial Relations*, 52(4), 543-557. Retrieved from [https://www.researchgate.net/publication/316275072\\_Ensuring\\_Labour\\_Justice\\_in\\_Global\\_Manufacturing\\_New\\_Actors\\_for\\_Revitalizing\\_Industrial\\_Relations](https://www.researchgate.net/publication/316275072_Ensuring_Labour_Justice_in_Global_Manufacturing_New_Actors_for_Revitalizing_Industrial_Relations)
- Human Rights Watch. (2009, May 4). *Not yet a workers' paradise - Vietnam's suppression of the independent workers' movement*. Retrieved from <https://www.hrw.org/sites/default/files/reports/vietnam0509webwcover.pdf>
- Human Rights Watch. (2015, Mar 11). *Work faster or get out: Labor rights abuses in Cambodia's garment industry*. Retrieved from [https://www.hrw.org/sites/default/files/reports/cambodia0315\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/cambodia0315_ForUpload.pdf)
- Iber, P. (2016). The path to democratic socialism: Lessons from Latin America. *Dissent Magazine*. Retrieved from <https://www.dissentmagazine.org/article/path-democratic-socialism-lessons-latin-america>
- IndustriALL. (2014). Joint letter from global unions and global brands to Cambodian Prime Minister. *IndustriALL*. Retrieved from [http://www.industriall-union.org/sites/default/files/uploads/documents/Cambodia/joint\\_letter\\_from\\_global\\_unions\\_and\\_global\\_brands\\_to\\_the\\_cambodian\\_prime\\_minister.pdf](http://www.industriall-union.org/sites/default/files/uploads/documents/Cambodia/joint_letter_from_global_unions_and_global_brands_to_the_cambodian_prime_minister.pdf)
- International Labour Organization (ILO). (1948). C87 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Retrieved from [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232)
- International Labour Organization (ILO). (1949). C98 - Right to organise and collective bargaining convention, 1949 (No. 98). Retrieved from [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312243:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO)

- International Labour Organization (ILO). (1981). C154 - Collective Bargaining Convention, 1981 (No. 154). Retrieved from [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312299](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312299)
- International Labour Organization (ILO). (1998). ILO Declaration on fundamental rights at work, 86<sup>th</sup> Sess. (June, 1998). Retrieved from <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm>
- International Trade Union Confederation (ITUC). (2016, April 6). Cambodia: ITUC deplores new anti-union law. Retrieved from <https://www.ituc-csi.org/cambodia-ituc-deplores-new-anti>
- lth, Sothoeuth (2017, May 4). Cambodian companies falling short of CSR goals: Businesswoman. *Voice of America*. Retrieved from <https://www.voacambodia.com/a/cambodian-companies-falling-short-of-csr-goals-businesswoman/3836215.html>
- Kiai, M. (n.d.). What are the rights to freedom of peaceful assembly and of association. *Former UN Special Rapporteur*. Retrieved from <http://freeassembly.net/about/freedoms/>
- Kingdom of Cambodia (1993). *Constitution of the Kingdom of Cambodia*. Phnom Penh. Retrieved from <https://www.wipo.int/edocs/lexdocs/laws/en/kh/kh009en.pdf>
- Kuruvilla, S., Das, S., Kwon, H., & Kwon, S. (2002). Union growth, decline and revitalization in Asia. *British Journal of Industrial Relations*, 40(3), 431-463. doi:10.1111/1467-8543.00242
- Marginson, P. (2016). Trade unions and multinational companies: A multi-level challenge. *Warwick Papers in Industrial Relations*. Retrieved from [https://warwick.ac.uk/fac/soc/wbs/research/irru/wpir/wpir\\_103.pdf](https://warwick.ac.uk/fac/soc/wbs/research/irru/wpir/wpir_103.pdf)
- McCann, J. (2016, April 25). Capitalism and neoliberalism: What's the difference? [Web log post]. Retrieved from <https://randompublicjournal.com/2016/04/25/capitalism-and-neoliberalism-whats-the-difference/>
- Ministry of Labour and Vocational Training (MLVT). (2016). Law on trade unions. Retrieved from <http://ilo.org/dyn/natlex/docs/ELECTRONIC/103389/125600/F1146872348/KHM103389%20Eng.pdf>
- Palatino, M. (2016, Apr 18). The trouble with Cambodia's new Law on Trade Unions: A new law fails to address old concerns. *The Diplomat*. Retrieved from <https://thediplomat.com/2016/04/the-trouble-with-cambodias-new-law-on-trade-unions/>
- Peoples Democracy. (2019, Feb 24). Neoliberalism and trade unions - I. *Peoples Democracy*. Retrieved from [https://peoplesdemocracy.in/2017/0528\\_pd/neoliberalism-and-trade-unions-i](https://peoplesdemocracy.in/2017/0528_pd/neoliberalism-and-trade-unions-i)
- Petcharamesree, S. (2013). The ASEAN human rights architecture: Its development and challenges. *The Equal Rights Review*, 11, 46-60. Retrieved from <https://www.equalrightstrust.org/ertdocumentbank/Sriprapha%20Petcharamesree%20ERR11.pdf>
- Rollet, C. & Baliga, A. (2015, Sep 3). Too many unions: owners. *The Phnom Penh Post*. Retrieved from <http://www.phnompenhpost.com/business/too-many-unions-owners>
- Salmivaara, A. (2017, Nov 2). New governance of labour rights: The perspective of Cambodian garment workers' struggles. *Globalizations*, 15(3), 329-346. doi:10.1080/14747731.2017.1394069

- Serrano, M. R. (2017). *Trade unions in transformation: Institutionalizing labour's voice in ASEAN: The ASETUC initiative*. Retrieved from <https://library.fes.de/pdf-files/iez/13753.pdf>
- Smith, C. (2015, May-June). Cambodia: Worker rights abuses in garment industry. Retrieved from <https://maryknollogc.org/article/cambodia-worker-rights-abuses-garment-industry>
- Springer, S. (2017). Klepto-neoliberalism: Authoritarianism and patronage in Cambodia. In C. B. Tansel (Ed.), *States of discipline: Authoritarian neoliberalism and the contested reproduction of capitalist order* (pp. 235-254). Retrieved from <https://www.researchgate.net/publication/310770178>
- Thomas, T., & Chandra, A. (2014). *Business & Human Rights of the ASEAN Intergovernmental Commission on Human Rights (AICHR)*. AICHR. Retrieved from [http://aichr.org/?dl\\_name=AICHRs\\_Thematic\\_Study\\_on\\_CSR\\_and\\_Human\\_Rights\\_in\\_ASEAN.pdf](http://aichr.org/?dl_name=AICHRs_Thematic_Study_on_CSR_and_Human_Rights_in_ASEAN.pdf)
- United Nations (U.N.). (1966). International Covenant on Civil and Political Rights. Dec. 16, 1966, No. 14668 U.N.T.S. Vol. 999 Retrieved from [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en)
- United Nations (U.N.). (1966). International Covenant on Economic, Social and Cultural Rights. Dec. 16, 1966, No. 14531 U.N.T.S. Vol. 993 Retrieved from [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en)
- United Nations General Assembly (U.N.G.A.). (1948). Universal Declaration of Human Rights. Dec. 10, 1948, U.N. Res. 217 A (III). Retrieved from [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)
- Yon, S., & Chen, D. (2017, December 15). Controversial Trade Union Law having desired effect? *The Phnom Penh Post*. Retrieved from <https://www.phnompenhpost.com/national-politics/controversial-trade-union>