



case these contracts have been made before the new law and are more favorable than required under the new Labor Code.

- Article 392 I 2 Labor Code stipulates that organizations of workers and employers can sign collective labor agreements during the transitional period even when they have not yet been fully recognized according to the new law. But the validity of these agreement ends after one year and any new agreement can only be made according to the provisions of the new law.

Both articles ensure that workers do not suffer a financial loss by the enactment of the new law and do not lose their bargain power facing the employers during a transitional period.

3) Unclear Abrogation Clauses³⁰:

Very unclear are the usual provisions at the end of many Cambodian law texts which in general declare “all incompatible other law regulations null and void”. This leaves it unclear to the reader and the addressees of these other law regulations which law is still in effect and which is not. To avoid this it takes a clear description which exact articles of which law shall be abrogated.

Example:

Article 29 of the NGO Draft Law only says in general: "All provisions contrary to this law shall be hereby repealed". Such a clause obviously does not give any answer to the question: Which articles of which laws shall be null and void now? The same unclear clause can be found in Article 395 Labor Code: “All provisions contrary to this law shall be abrogated”.

D) General Requirements For All Parts of the Law:

I) Understandable Language:

To choose the correct wording of the law text is one of the biggest difficulties. The text should be understandable for every Khmer citizen who can read and write. Short and clear sentences should be the rule. Repetitions and too many technical terms should be avoided. Further guidelines and rules have been published and can not be discussed here in detail³¹.

II) Logical Use of Terms: No Inconsistent or Conflicting Terminology:

The terms in the law always should be used in the same way. Similar but nevertheless different terms should not be used for the same regulation.

Example: It creates confusion to use the terms “fishing”, “fishery”, “protected fishing boundaries”, “fishing domains” and “protected fishing domains” in the same law (like in the Fishery Draft Law).

³⁰ for further reading on this topic see Patricia Baars, “Legislative Drafting”, page 71

³¹ See Konrad Adenauer Foundation, “Handbook on Law Drafting”, pages 68 – 71 and Patricia Baars, “Legislative Drafting”, pages 83 – 90



A glossary or a definition of terms can at least help to reduce confusion. If the same thing is meant by the lawmaker they should use the same word.

Example:

They should not use the words “salary” and “employee wages” in the same text if they do not want to distinct between these terms. Otherwise the reader gets the impression that the law means something different.

III) Logical Organization of the Law Chapters and Parts:

Official headlines above each paragraph or section make it easier to read the law text. A numbering of the different sections also helps to quote precisely. A law text should not be divided into parts unless there is a logical reason for it. General clauses should be put at the beginning, detailed parts at the end of a chapter³².

The general rule should precede the particular one. The main principle should be positioned before the administrative provisions. The permanent should appear before the temporary and the more important before the less important³³.

IV) Avoidance of Contradictions and Inconsistencies:

The law itself shall solve a conflict and provide a rule for conflict solution. It must be clear what is prohibited and what is allowed. Therefore two sections of the same law shall not stipulate contradicting regulations.

Example:

Art.15 of the Fishery Draft Law permits family-scale fishing for subsistence purposes in inland fishing lots but Art.15 of the same draft law provides that inland fishing lots are reserved for “only” industrial fishing exploitation.

The law regulation itself should not be in conflict with other laws or international conventions.

Example:

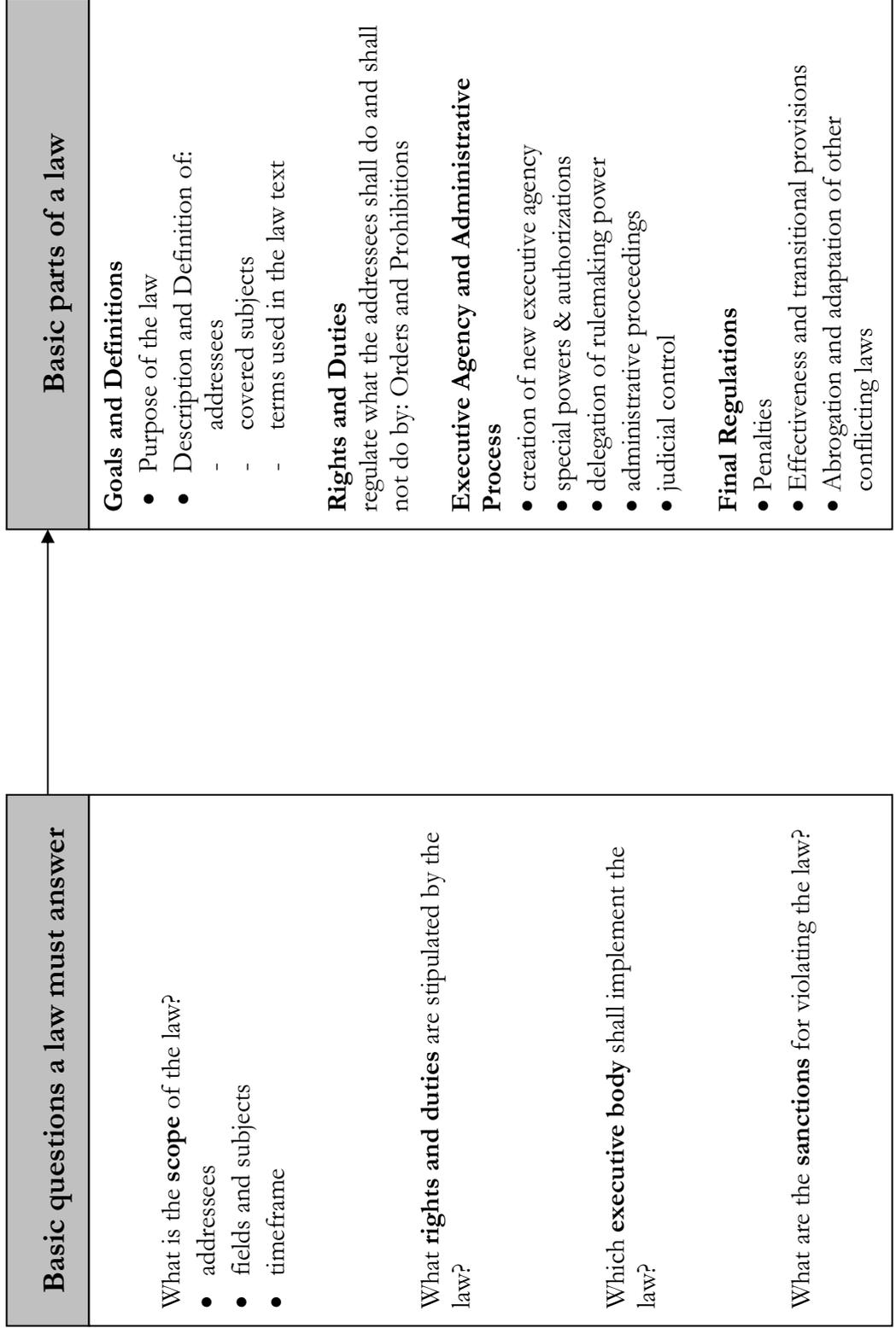
If Cambodia has signed an international treaty with the United Nations about setting up a Khmer Rouge Tribunal it must make sure that an already existing law or a draft law on this matter does not stipulate provisions that are not compatible with the binding obligation under the signed treaty. For example it must make sure by special law amendments that foreign lawyers can represent the accused persons as this is stipulated in the treaty but probably not allowed by the current Law on the Bar or the Criminal Procedure Code.

³² see Patricia Baars, “Legislative Drafting”, page 60

³³ See Konrad Adenauer Foundation, “Handbook on Law Drafting”, pages 66 and 67



Law Drafting





Checklist Law Drafting

<p>Part I: Goals and Definitions</p>	<ul style="list-style-type: none"> • Purpose of the law: unconstitutional? • Definitions: unprecise or missing? • Personal scope of the law: Are exceptions compatible with right of equality?
<p>Part II: Rights and Duties</p>	<ul style="list-style-type: none"> • Description of rights: too narrow? • Protection of rights: Insufficient? • Restriction purpose: Unconstitutional? • Restriction: disproportionate? <ul style="list-style-type: none"> - General prohibition - Prohibition with exceptional permission - Duty to obtain permission - Duty to inform authority - Authorization of authority for intervention in case of abuse

<p>Part III: Executive Agency and Administrative Proceedings</p>	<ul style="list-style-type: none"> • Competencies: Unclear/overlapping? • Granting of extreme powers? <ul style="list-style-type: none"> - unconstitutional/unnecessary power - judicial powers / or exclusion of judicial review? - delegation of too much rule making power?
<p>Part IV: Final Provisions</p>	<ul style="list-style-type: none"> • penalties: unconstitutional/disproportionate? • timeframe or transitional provisions: insufficient? • abrogation clause: unclear?

<p>General Requirements for all parts of the law</p>	<ul style="list-style-type: none"> • language: understandable? • terminology: inconsistent/conflicting? • organization of law chapters / sections: logical? • internal inconsistencies? • external inconsistency: contradictions to other laws?
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