

ITUC submission to the UPR on Cambodia

January 2008

CAMBODIA

Restrictions on the trade union rights of civil servants remain in place, and private sector workers continue to be confronted with a whole battery of anti-union measures when they attempt to defend their rights, for example at the Angkor temple complex. The Cambodian judiciary finally released the two innocent parties accused of murdering Chea Vichea.

TRADE UNION RIGHTS IN LAW

Freedom of association - civil servants excluded: Workers are free to form and join trade unions under the 1997 Labour Law. However, this law does not apply to domestic staff or civil servants, including teachers, judges and military personnel. Personnel working in air and maritime transportation are not fully subject to the law but are free to form unions.

The Labour Law requires unions and employers' organisations to file a charter and list of officials with the Ministry of Labour and Vocational Training (MOLVT). The Bureau of Labour Relations is responsible for facilitating union registration and the application for "most representative" status.

Excessive eligibility criteria: Article 269 of the Labour Code provides that union leaders must have been engaged in the occupation their union represents for at least one year. This restricts a union's right to choose their own representatives and deprives it of the skills or experience it may not have within its own ranks. The law also requires that union leaders be at least 25 years of age, must be able to read and write, and have no criminal record.

Restrictions on the right to strike: The law guarantees the right to strike but limits that right by imposing a minimum service requirement in all enterprises, regardless of whether they are public utilities or not, and regardless of whether they exceed the need to comply with statutory safety requirements. Workers who are required to provide a minimum service but stay out on strike are considered guilty of serious misconduct.

The requirements that must be fulfilled for a strike to be considered legal are also quite cumbersome; therefore, they are frequently ignored by workers. Disputes must be first subjected to labour conciliation conducted by an inspector of the MOLVT, who has 15 days to seek a settlement. If there is no mutually satisfactory result, the dispute must be submitted to the tripartite Arbitration Council for investigation and a decision, which also must come within 15 days of the dispute being referred to the Council. During the period when the MOLVT is conciliating, or the Council is considering the case, it is illegal to strike.

For a strike to be legal, the union must obtain a majority in a secret ballot of its members and give seven days advance notice to the employer and the MOLVT. If the enterprise is engaged in what the government considers an "essential service", then the law stipulates the waiting period must be a minimum of 15 days.

Collective bargaining: The law obliges the employer to negotiate collective bargaining agreements with unions that have been granted "most representative" status, and bargain with minority unions on issues covering members of that union. The employer must meet with representatives designated by the union. Negotiators are protected by law and are entitled to full pay during the negotiations.

A Ministerial regulation promulgated at the end of 2004 has caused significant problems for unions. The regulation allows third parties (such as employers or another union) to challenge the majority union's petition for "most representative" status. By filing these challenges, management/employer groups or pro-management unions can tie up a majority union's time and resources, and prevent it from negotiating a collective bargaining agreement.

Another major problem in law is caused by confusion between the role of shop stewards and labour union leaders. Each workplace with over eight employees must have a shop steward. Shop steward elections are held at the factory, and the law provides that employers are the ones who must organise them. It gives representative unions the right to nominate the shop stewards to stand for election but, often, stewards are elected before a union is organised in a factory. Article 284 gives shop stewards the duty to present employers with issues related to grievances and wages, and to enforce the labour law and collective agreements. These are functions that rightfully belong in the hands of elected trade union leaders. In a number of cases, employers have used factory representatives (who are elected for two years and cannot be forced out) to block the path of unions to the bargaining table, because shop stewards are the only worker representatives with legally enforceable bargaining rights. Labour law fails to provide a similarly enforceable right for trade union leaders.

The Ministry of Labour and Vocational Training has recently proposed an amendment to Article 67 of the Cambodian Labour Law that could further weaken the position of trade union leaders. The amendment would effectively allow for an unlimited use of fixed duration contracts, as long as no single contract is longer than two years. It will open up the possibility of abusing short term contracts by allowing employers to arbitrarily dismiss trade union leaders, simply by not renewing their contracts. Non-renewal of short-term contracts of trade union leaders and activists is currently one of the leading causes of disputes and strikes; these are likely to increase substantially if the amendment is adopted. The ILO has already warned the government about the need to withdraw the amendment.

TRADE UNION RIGHTS IN PRACTICE AND VIOLATIONS IN 2008

Background: Prime Minister Hun Sen's Cambodian People's Party (CPP) consolidated its power following the July 2008 elections, but these did not meet international probity criteria, notably due to the ruling party's virtual monopoly of the media. Trade unionists, human rights defenders, journalists and opposition supporters continue to face many forms of repression, including murder. As a result, only a small proportion of the total labour force is unionised, and outside the garment and tourism/hospitality sectors, the trade union movement remains very weak. Most workers have little or no knowledge of trade unions, or of their labour rights.

Trade union rights violated with impunity: ILO projects such as the Better Factories initiative have contributed to improving working conditions and respect for freedom of association in Cambodia's main industry, the garment sector. In spite of such initiatives and the efforts of certain international buyers, much still remains to be done before employers will widely accept unions as partners to be engaged with as equals.

In many factories, trade unionists continue to face repression of all kinds, including beatings, death threats, blacklisting, false accusations to bring them before the courts, wage deductions and exclusion from promotion, etc. The government very rarely prosecutes or takes measures against an employer for anti-union practices. In many instances, the Ministry of Labour's advice is for workers to take their case to court –which is costly and ineffective– or to accept cash settlements from employers. Labour inspectors are poorly trained and, given their low pay, open to bribery. In cases where

the MOLVT does rule in favour of the workers, it rarely uses its legal authority to penalise employers who fail to follow its orders.

Violence and death threats against trade unionists: The hiring of thugs is a tactic regularly used to scare workers fighting for trade union rights. On 28 February, for example, Keo Sokun, branch President of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) at the New Mingda Co. Garment factory, was attacked by four men. Two of his attackers were arrested, then released. According to the FTUWKC, the two assailants admitted they had been paid to assassinate Keo Sokun. The FTUWKC points out that Keo Sokun had received a death threat from a member of a rival, pro-government union, the CUF, which for its part claims the attack was the result of a private dispute.

At least two other trade union leaders revealed they had received death threats in 2008.

Yellow unions: The establishment of yellow unions is another tactic deployed by some Cambodian companies to prevent the emergence of bona fide workers' representatives. Several unions genuinely fighting for the workers have condemned the Khmer Youth Trade Union (KYTU) for its conduct in this respect.

Shorter employment contracts for unionists: Several free trade unions reported that their members were frequently being hired on short-term employment contracts to discourage any kind of trade union activity. A rise in the attempts to bribe shop stewards was also reported.

Trade unionists dismissed: In the absence of a government that offers any real protection for trade union rights, some employers summarily dismiss workers identified as trade union activists. The FTUWKC reported the dismissal or suspension of its union representatives in following factories: Seratex Co., Eayuan (Cambodia) Garment Co., Shoe Premier Factory, Va Prim and Harta Packing Industries (Cambodia) Limited, because of anti-union discrimination. In the Harta Packing case, the FTUWKC explains that when its branch president at the factory, Mr. Chea Bunthoeun, was suspended, another 100 workers left the union for fear of losing their jobs.

Another case linked to the clothing industry was reported by the ITGLWF. At the Generation International Co. Ltd, 21 leaders and members of the Cambodian Labour Union Federation (CLUF) were dismissed.

Management at the «Phnom Penh Garment Factory» imposed a lock-out the day following a legal strike organised by the FTUWKC on 25 January and won a court ruling to dismiss 11 trade union leaders for "damages to factory property", even though the charges were groundless. On 6 March, the factory closed its doors, and the management left Cambodia without paying the compensation due to its workers.

According to UNI and the Cambodian Tourism and Service Workers' Federation (CTSWF), MPA Security, the country's biggest security company, refused to recognise the union created by its workers and transferred 17 of them from Siem Reap to Phnom Penh airport after they contacted their employer with a set of grievances.

Release of two innocent men in Chea Vichea murder case: On 31 December, the Supreme Court of Cambodia finally ordered the release (on bail) of Born Samnang and Sok Sam Oeun, who had spent nearly five years behind bars, falsely charged with murdering the trade union leader Chea Vichea, and sent the case back to the Court of Appeal to be retried (see previous editions of the Annual Survey). Chea Vichea, founder and President of the FTUWKC, was killed on 22 January 2004. Two other FTUWKC leaders were assassinated after that: Ros Sovannareth in 2004 and Hy Vuthy, President of the Suntex garment factory branch, in 2007. As in the Chea Vichea case, the Cambodian

justice system proved incapable of carrying out genuine inquiries to discover the real authors of these murders. In September 2008, the judicial authorities announced the closure of the inquiry into the murder of Hy Vuthy.

Still no labour courts: The Cambodia Labour Code of 1997 provides in Articles 387, 388, and 389 that a system of Labour Courts shall be created to rule on "individual disputes occurring between workers and employers regarding the execution of the labour contract or the apprenticeship contract". There were continued worker appeals to the government to set up the Labour Court, but these petitions were disregarded.

The Arbitration Council, a tripartite body established under labour law, has effectively substituted the Labour Courts. The council is widely respected for its even-handed and impartial investigations and rulings. However, its decisions are not final, and employers found to have engaged in anti-union discrimination usually appeal against the council's decisions in the provincial courts.

Strikes repressed: The government generally tolerates strikes, but the police do not hesitate to use violence and make arrests, especially when protests are held outside the workplace. Company security guards are also responsible for violently repressing strikes. Furthermore, the connivance between some employers and the police can be enough to dissuade workers from going on strike. Van Sou Ieng, President of the Garment Manufacturers Association of Cambodia (GMAC), said at the beginning of August that he considered strikes by Cambodian unions as "the garment industry's HIV".

Collective bargaining: Collective bargaining is difficult, and only a few unions have achieved an enforceable agreement.

Teachers' association activity obstructed: The Cambodian Independent Teachers Association (CITA) is registered by the Ministry of the Interior as a civic association, but is not recognised by the MOLVT as a trade union, and is not therefore deemed eligible to represent teachers in collective bargaining procedures. Its meetings and seminars are often disrupted by the authorities, and the demonstrations and other protests it has organised have often been prohibited. It only represents 10% of Cambodian teachers, as many fear that joining it would hinder their prospects of a promotion.

Civil servants' association not recognised for bargaining: Like CITA, the Cambodian Independent Civil Service Association (CICSA) is registered as a civic association, but it is not recognised by the government as a union and does not enjoy collective bargaining rights.

Anti-union repression at Kingsland: After the company ignored requests by the newly-formed branch of the Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU), affiliated to the International Textile, Garment and Leather Workers' Federation (ITGLWF), to engage in dialogue regarding labour issues and to comply with the decision of the Arbitration Council to reinstate five dismissed workers, workers at the Kingsland garment factory organised a strike on 11 January 2008. Management persisted in its refusal to enter into dialogue and hired replacement workers (in breach of Cambodian law). At the beginning of February, at least ten members of the C.CAWDU were injured while protesting outside the factory gates. Kingsland refused to meet either the C.CAWDU or the ITGLWF, despite attempts at mediation by some of its clients, as well as the Garment Exporters Association (GMAC) and the ILO's Better Factories Programme. After growing pressure from the ITGLWF, an agreement was reached in August. Kingsland promised to reinstate 17 dismissed workers, cover the medical costs of the injured workers and no longer discriminate against trade unions. The implementation of the agreement was conditional upon another agreement, however, to be reached by the three unions at the factory (C.CAWDU, Cambodian Labour Federation, Khmer Youth Federation) who would promise notably to avoid any disputes within the factory.

According to Kingsland, the Khmer Youth Federation refused to sign the agreement, and the situation had still not been resolved by the end of 2008. Wal-Mart and Carter's Watch the Wear are among Kingsland's clients.

A supplier for Puma demands 550.000 dollars from a union: Despite an agreement signed in 2007 with the union linked to C.CAWDU at a factory due to be relocated and a decision by the Arbitration Council, the Hytex clothing company stopped paying its workers in mid-August 2008. Fearing that the employer would close the existing factory without respecting its commitments, workers maintained a presence outside the building during the suspension period to prevent equipment being removed. Hytex then sued the union for 550,000 dollars (the equivalent of 820 years' salary!) as compensation for the union's action. The ITGLWF called on one of Hytex's biggest clients, the German sports shoe brand Puma, to intervene to resolve the dispute.

Trade union rights ignored at Angkor Wat sites: Several trade unions affiliated to the Cambodian Construction Workers Trade Union Federation (CCTUF) and representing the workers involved in projects to restore the Angkor temple complex remain deprived of recognition. These projects are implemented by the Japanese government team for safeguarding Angkor (JSA) from Sophia University in Tokyo, the French School of the Far East (l'Ecole française d'Extrême Orient EFEO) and the Chinese government team for safeguarding Angkor (CSA). A union was also formed to represent the workers employed to conserve the environment around Angkor Wat by ASPARA, an authority set up by the government and which already stood out in 2006 for its anti-union dismissals. All the unions were registered with the Ministry of Labour, but only the EFEO recognised the CCTUF after two years of negotiations. The other unions faced continued discrimination and repression. The CCTUF union, affiliated to the BWI, filed complaints with the Ministry of Labour, citing violations of labour law at the restoration sites, but so far without result. The BWI has therefore lodged a complaint with the ILO's Committee on Freedom of Association on behalf of the CCTUF.