

## **(1) Submitting Organisation**

The International Centre for Trade Union Rights (ICTUR) was founded in 1987 in order to defend, extend, and raise awareness of trade union rights and their violations worldwide. ICTUR has consultative (roster) status with the UN ECOSOC and it is accredited to the ILO Special List of INGOs, since 1993. ICTUR publishes: International Union Rights journal; the World Map of Freedom of Association; the reference book Trade Unions of the World.

## **(2) Our concerns**

Our primary concerns with respect to trade union rights in Cambodia are:

- **widespread criminal prosecutions and civil cases in retaliation for trade union activities**
- **violent dispersal of trade union protests by police**
- **impunity in cases of violations against trade unionists**

We are also concerned by:

- **provisions in the trade union law that interfere with core freedom of association principles**

## **(3) International Human Rights Obligations**

The Universal Declaration of Human Rights makes it clear that “everyone has the right to form and to join trade unions for the protection of his interests” (Article 23(4)). In addition, under various international treaties, Cambodia has accepted further obligations to implement and respect trade union rights. Cambodia is a member of the International Labour Organization (“ILO”), and has ratified all eight ‘fundamental’ international labour Conventions including ILO Convention No. 87 on Freedom of Association (1948) and Convention No. 98 on the Right to Organise and Collective Bargaining (1949).

In 1992, Cambodia ratified both the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and the International Covenant on Civil and Political Rights (“ICCPR”). The ICESCR obliges State parties to ensure the right to form and join trade unions of their own choice, including at national and international level. It further states that trade unions have the right to function freely and to take strike action (Article 8). The ICCPR stipulates that, “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” (Article 22).

## **(4) Previous UPR cycle**

Within the previous UPR cycle:

Eight countries raised concern around respect for freedom of association<sup>1</sup>, calling on Cambodia ‘to ensure that Cambodian legislation enables all political parties, labour unions and other civil society groups to exercise their rights’<sup>2</sup>, to ‘recognize the importance of trade unions’<sup>3</sup> and to ensure ‘full respect, in law and in practice, for the freedom of peaceful assembly and of association, consistent with international law’. All eight of these recommendations were accepted by Cambodia. The Cambodian Labor Confederation (CLC)

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Cambodia, A/HRC/26/16, 128, 118.19, 118.104, 118.106-07, and 118.109-11

<sup>2</sup> Report of the Working Group, 118.19

<sup>3</sup> Report of the Working Group 118.110

called on the Government to 'refrain from any interference in the affairs of trade union organizations and to protect them from any such interference by companies', added that registration of newly formed unions was 'also a problem' that was contrary to labour law and ILO standards<sup>4</sup>.

Five countries called for action to improve the policing of demonstrations<sup>5</sup>, including to ensure 'that peaceful demonstrations can occur safely and without fear of intimidation or excessive use of force on the part of the Cambodian authorities'<sup>6</sup>, to 'put an end to harassment, intimidation, arbitrary arrests and physical attacks, particularly in the context of peaceful demonstrations'<sup>7</sup>, to 'adopt and implement effective measures in order to prevent the use of violence against demonstrators'<sup>8</sup>. Cambodia accepted three of these recommendations. CIVICUS noted that protests 'by trade union activists have been met with increasing violence', that the reaction to 'sometimes violent protests ... have themselves spawned further violence', while Human Rights Watch observed that 'strikes are often broken up violently'<sup>9</sup>.

The CLC complained of 'violence and threats against union leaders and activists' and said that it 'happens regularly that people are hired to attack leaders and members of independent unions'. The CLC also raised concerns around anti-union violence and a failure to sufficiently investigate such cases. CLC recalled that trade unionists Chea Vichea and Ros Sovanareth were murdered in 2004 and Hy Vuthy was murdered in 2007. CLC further complained of 'violence and threats against union leaders and activists' and said that 'intimidation harms the trade union movement in many different ways: workers do not feel like becoming member of the unions, and often leaders are dismissed following legitimate actions'<sup>10</sup>.

Concerning the problem of impunity, Germany called for 'effective measures to combat the culture of violence and impunity'<sup>11</sup>, which Cambodia accepted. The CLC noted that 'due to the serious shortcomings of the Cambodian judicial system ... the actual perpetrators of [the murders of Chea Vichea, Ros Sovanareth and Hy Vuthy] have never been identified'<sup>12</sup>.

## **(5) Issues of concern for the present UPR**

Over a number of years, ICTUR has had serious concerns about freedom of association in Cambodia, including, most recently, a spate of legal actions recently brought against trade unions and individual labour rights activists.

### *Legal actions against trade unionists*

One of the problems currently facing trade unionists in Cambodia is a proliferation of legal proceedings against them, including both criminal and civil cases.

- In December 2017 a criminal complaint was filed to the Phnom Penh Municipal Court against a former president of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC). It is alleged that in a radio interview in December, Mony appealed to the European Union to stop importing clothing from Cambodia to protest the dissolution of the Cambodia National Rescue Party last November. He is charged with incitement, under Art. 495 of the Cambodian Criminal Code.

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<sup>4</sup> Stakeholder Report for the Universal Periodic Review of Cambodia, 2014, Cambodian Labor Confederation

<sup>5</sup> Report of the Working Group 118.19, 118.29, 118.104, 118.109, and 119.21

<sup>6</sup> Report of the Working Group 118.19

<sup>7</sup> Report of the Working Group 118.104

<sup>8</sup> Report of the Working Group 118.109

<sup>9</sup> Stakeholder Report for the Universal Periodic Review of Cambodia, 2014, Human Rights Watch

<sup>10</sup> Stakeholder Report, CLC

<sup>11</sup> Report of the Working Group 118.13

<sup>12</sup> Stakeholder Report, CLC

- In January 2018 the company began legal action against the Coalition of Cambodian Apparel Workers' Democratic Union (CCAWDU) accusing the union of incitement and threatening workers, which the union denied, arising from strike actions at the Gawon Apparel factory in Kandal province's Takhmao city, in 2017-18.
- On 15 January 2018 a footwear factory worker was summonsed for questioning, further to charges of incitement, destruction of property and obstructing traffic further to strike action at the Meng Da footwear factory in Phnom Penh's Por Senchey district, where workers were demanding annual bonuses, unpaid since 2010. Fifteen other workers were later summonsed.
- On 18 January 2018, prosecutors brought criminal charges and an order for pre-trial detention against a leader of the Center for the Alliance of Labor and Human Rights (CENTRAL), and two other civil society activists, on charges for breach of trust over their handling of funeral funds. The arrested NGO activists denied these charges.
- On 12 and 13 February 2018, four trade union leaders from the Cosmo Textile factory in Snuol district, Kandal province, members of the Workers' Friendship Union, were arrested after the company claimed they had led an illegal strike. The four were questioned by the Phnom Penh Municipal Court on 22 February, without their lawyer being present.

Workers representatives at the 2017 International Labour Conference argued that Cambodia's courts lack independence and that criminal charges against union leaders have remained pending indefinitely to harass and intimidate union leaders. Once charges are lodged, the Workers noted, union leaders are required to 'continuously report to the court and were thus restricted in their freedom of movement'<sup>13</sup>.

The ILO's Committee on Freedom of Association has declared that, it is "incumbent upon the government" to show that the arrest, detention and sentencing of a trade union official are "in no way occasioned by the trade union activities of the individual concerned" and "no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike"<sup>14</sup>.

The charges brought against Chea Mony are a complex example. The prosecution was initiated by lawyers representing 120 different unions and federations, including the Cambodian Union Federation (CUF). While ICTUR supports the principle that all trade unions must have recourse to their respective countries' legal systems, we are concerned by the other instances of harassment directed against him and his family, evidenced elsewhere in this report.

#### *Cases of violence against trade unionists*

Cambodia has an on-going problem with violence against trade unionists. While the most high profile of these cases, the assassinations of union leaders Chea Vichea, Ros Sovanareth and Hy Vuthy, occurred more than a decade ago, there have been numerous cases of the violent dispersal of trade union demonstrations, which in one instance resulted in the deaths of five protestors.

- On 18 December 2017, a group of unidentified men broke into former union leader Chea Mony's house and attempted to kidnap him. The attack occurred on the same day a legal case was filed against him (see above). Mony has reported that officials from the Ministry of Interior and from the court warned him that unless he leaves Cambodia, he will face the same fate as his brother, Chea Vichea, the founder of the

<sup>13</sup> Individual Case (CAS) - Discussion: 2017, Publication: 106th ILC session (2017) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia, at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3330983](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3330983)

<sup>14</sup> ILO Digest, para. 94 and 672

FTUWKC, who was assassinated in 2004. Vichea's murder remains in total impunity 14 years after the event.

- On 6 February 2016, workers protesting the dismissal of 45 bus drivers, who had been attempting to form a union at the Capitol Bus Company in Phnom Penh, were violently attacked, leaving several injured. The rights group Licadho reported that several police officers in riot gear participated in the attack.
- On 4 April 2016 several protestors outside parliament protesting against the adoption of the new Trade Union Law were seriously injured in clashes with police.
- On 1 February 2016, some 600 workers from the Star Light Apparel garment factory in the special economic zone (SEZ) in Kandal province were preparing to depart for Phnom Penh, to protest the dismissal of one of the leaders of the Cambodian Labor Solidarity Union, Try Set-ra. These workers were reportedly attacked by dozens of men (including SEZ security guards) armed with steel pipes and meat cleavers. One union member was reportedly hospitalised due to injuries sustained, and several of the protesters' vehicles were damaged.
- In January 2014 there were serious incidents in which major garment sector protests were violently put down by the police, resulting in the deaths of at least 5 workers, with many more receiving serious injuries, and 26 demonstrators arrested

According to the ILO's Committee on Freedom of Association, the rights of workers can only be "exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected"<sup>15</sup>. The use of force by the authorities should only be resorted to in due proportion to the danger to law and order that the authorities are attempting to control. During trade union demonstrations, this should be limited to cases of genuine necessity<sup>16</sup>.

#### *Impunity in anti-union cases*

Cambodia has emphatically failed to investigate a series of three high profile murders of trade union leaders, which cases remain in total impunity since 2004 and 2007, respectively. Under pressure to act following the murder of Chea Vichea in 2004 the authorities originally quickly arrested and tried two innocent men, who were subsequently acquitted in 2013. Similar doubts were raised over the conviction (which was overturned, but sent for retrial) of the alleged murderer of trade union leader Ros Sovannareth<sup>17</sup>. The ILO's CEACR expressed "deep concern with the lack of concrete results" concerning investigations into the three murders and urged "the competent authorities to take all necessary measures to expedite the process of investigation"<sup>18</sup>.

There has been a similar failure to properly investigate violence against protestors and threats against trade unionists, with no instances of those responsible for anti-union violence being identified, arrested or charged. No-one has been held to account for the death of five workers during the violent dispersal of protesting garment workers in 2014, further to the attempted kidnapping of Chea Mony in 2017, or in relation to any of the violent dispersal of workers' protests in 2016.

An ILO Direct Contacts Mission in 2008 observed that the judiciary was 'plagued by serious problems of capacity and a lack of independence'<sup>19</sup>. In the light of the mission the CEACR called for inquiries into the murders, the review of convictions and steps to ensure the independence and effectiveness of the judicial system<sup>20</sup>. In 2018, following a further ILO

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<sup>15</sup> ILO Digest, paras. 42-45

<sup>16</sup> ILO Digest, paras. 140, 150 and 644

<sup>17</sup> CEACR 2011 and 2013

<sup>18</sup> CEACR 2017

<sup>19</sup> CEACR 2010

<sup>20</sup> CEACR 2010

mission, the CEACR continued to express concerns around the "lack of independence of the judiciary and its use to criminalize and curtail legitimate trade union activities", and it has urged the Government "to ensure the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' freedom of association rights during labour disputes, as well as to address the serious concerns raised on the independence of the judiciary and its impact on the application of [Convention 87 on Freedom of Association and Protection of the Right to Organise]"<sup>21</sup>.

### *Legislation*

The new Trade Union Law approved in April 2016 has been adopted in spite of objections from sections of the Cambodian labour movement and from the international trade union community. The law includes many problematic areas, including the following:

- Onerous reporting and compliance obligations for registration
- Ongoing reporting and compliance obligations
- Criminalisation of activities of non-registered trade unions
- Mandated dissolution of unions in certain circumstances, including workplace closure
- Limits to the rights of minority unions, including potentially criminal penalties for attempting to influence the bargaining agenda
- Trade unionists are limited to working only with their mandated 'scope' (placing geographical, professional and sectoral limited on the activities of trade unionists)
- Restrictions on strike action, including potential criminalisation of picketing activities

Fundamentally the law restricts the formation of trade unions, by mandating registration, imposing onerous reporting and compliance obligations which leave unions vulnerable to dissolution. Engaging in the activities of unregistered unions is criminalized<sup>22</sup>, and there are potentially problematic requirements for employers to maintain lists of workers and to share these with the authorities in relation to trade union recognition<sup>23</sup>. Activities associated with peaceful picketing, including blocking workplace entrances and persuading non-strikers to join industrial action attract criminal penalties<sup>24</sup>. Fines are also anticipated for minority unions who attempt to influence the bargaining agenda, for trade unionists operating outside their mandated 'scope' (geographic, professional or sectoral)<sup>25</sup>, and for failing to comply with onerous reporting requirements. Reports indicate that at least eighty trade unions have been blocked from registering with the Labour Ministry.

Public sector organising deal with under separate legislation: trade union rights for teachers and civil servants are regulated by a number of other laws. In its 2018 report the ILO's CEACR said that it 'must once again urge the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly'.

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<sup>21</sup> *General Report and observations concerning particular countries*, International Labour Conference, 107th Session, Report III (Part A), First Ed. 2018

<sup>22</sup> Law on Trade Unions, 2016, Articles 14 and 80

<sup>23</sup> Law on Trade Unions, Article 52

<sup>24</sup> Law on Trade Unions, Articles 65(g) and 89

<sup>25</sup> Law on Trade Unions, Article 81

## **(6) Recommendations**

ICTUR urges the authorities to:

- ensure that the cases against labour activists are dropped and that any individuals still in detention are immediately released;
- refrain from suspending or dissolving any trade union by the exercise of administrative authority;
- take measures to ensure that concerns identified by the CEACR about the judiciary are addressed, that trade unionists are not subjected to unwarranted legal harassment, and that freedom of association is underpinned by appropriate judicial safeguards;
- facilitate the investigations into the murders of Chea Vichea and Ros Sovannareth and Hy Vuthy;
- and take all further measures necessary to protect the fundamental freedoms of workers to join and form unions and take action in defence of their interests.

## **(7) Consultation**

to plan and implement the above reforms in full consultation with Cambodian trade union centres of all political tendencies.