

### ➤ **Summary**

This submission examines the state of fundamental rights, including the right to form and join unions, freedom of speech and assembly and the right to strike, in particular in the context of the workplace. Workers are deprived of their right to freedom of association and expression in practice due to systematic judicial harassment and intimidation. Regressive legislative reforms have further tightened the government's grip on trade unions. Weak enforcement measures and the absence of independent, accountable and transparent institutions have been key factors in the lack of progress since Cambodia's last Universal Period Review. In addition, we examine the expose of children to the worst forms of child labour remains, which remains an area of critical concern.

### ➤ **International Obligations**

Cambodia has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on the Protection of All Migrant Workers and Members of their Families, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child among others.

In addition, Cambodia has ratified the Fundamental Conventions of the International Labour Organization (ILO), including the:

- Forced Labour Convention, 1930 (No. 29)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

### ➤ **Murder and violent attacks on trade unionists and human rights defenders**

The climate of violence and insecurity for trade unionists and other human rights defenders has been reinforced by the absence of effective investigations and judgments against guilty parties creating a situation of impunity, which is extremely damaging to the exercise of fundamental rights in Cambodia.

Kem Ley, a prominent social and political commentator, was murdered in Phnom Penh in July 2016 after he made critical comments during a radio interview about the wealth of Cambodia's political elite. While the government claims to have resolved the case after Oeuth Ang confessed to killing Kem Ley, there remain serious doubts about the independence and impartiality of the investigation. Oeuth Ang claimed to have killed Kem Ley over an unpaid debt of 3,000 USD.

However, evidence of the debt was never produced, nor was any relationship between the two men established. Police and prosecutors did not investigate any other suspects or accomplices, despite evidence indicating their existence, and the lack of any motive for the killing.

In January 2014, security forces violently attacked a protest over the payment of minimum wages killing six persons. The government claims that, it established three investigative Committees, including the Veng Sreng Road Violence Fact-Finding Commission, which completed their work two years ago. However, the findings of these Committees have never been shared with the public or the concerned trade unions. Furthermore, the government has been unable to point at any measures taken as the result of these investigations.

There is still no investigation and prosecution with respect to the murder of Chea Vichea, Ros Sovannarith and Hy Vuthy, all former leaders of the Free Trade Union of the Workers of the Kingdom of Cambodia.

### ➤ **Judicial harassment**

Instead of focusing its efforts at prosecuting the violent acts above, public authorities have actively targeted trade unionists and other human rights defenders for criminal charges in retaliation for their legitimate exercise of fundamental rights. Judicial authorities consistently prosecute activists for alleged criminal defamation and insult under the Penal Code of 2009 with a view to silence and intimidate them. Most importantly, there is no guarantee of due process rights when workers and activists become the target malicious prosecution.

The heightened criminalisation of trade union activities and actions of political opponents received the mention of the United Nations Special Rapporteur on the situation of human rights in Cambodia who warned that the criminal punishment of activists may create an atmosphere of fear and intimidation that could negatively affect the right to freedom of expression, leading to self-censorship.

The Cambodian Labour Confederation (CLC) alone counts at least 25 leaders and members, imprisoned or threatened with criminal punishment for expressing their views on problematic social and economic policies of the government.

Since the last national election in 2014, there have been 61 instances of trade unionists taken to court by both employers and public authorities for alleged criminal offences related to defamation, incitement, intentional violence and damage, aggravating circumstances or causing traffic blocks in response to protest actions.

In February 2016, two union leaders were prosecuted for damaging company property during a legitimate strike calling for improved working conditions. The allegations were not backed by any evidence. In the same month, drivers from the Cambodian Transport Workers Federation (CTWF) were protesting the dismissal of 45 employees who had been dismissed for attempting to form a union. The employer-backed Cambodia Confederation Development Association (CCDA) organised a counter protest allowed by the authorities. The CCDA demonstrators violently attacked and beat the CTWF workers with sticks and metal bars. Fourteen people were injured. Two bus drivers in the CTWF and the Cambodian Informal Workers Association, the first group

to announce their protest, were arrested and charged with aggravated intentional violence and obstructing traffic. The counter protesters were not charged.

The two accused drivers filed a legal action against two members of the CCDA for provoking and perpetrating aggravated violence among others. The courts permitted and heard a counter-claim of criminal defamation against the accused drivers. The drivers were sentenced to six months imprisonment with a one million riel fine each.

On the same day of the protest mentioned above, Ath Thorn, President of the CLC, Sok Chhun Oeung, President of the Cambodian Informal Workers Association and the Secretary of the CTWF, Eang Kim Hun were charged with criminal offences. The charges were filed subsequent to a visit of Prime Minister Hun Sen to the garment factories during which he openly threatened Ath Thorn and Rong Chun in order to prevent mass protest actions within the garment factories ahead of the elections. Trade union leaders were warned against organising political protests in support of the arbitrarily dissolved Cambodia National Rescue Party.

➤ **Freedom of association, right to peaceful assembly and right to strike**

While the Constitution grants the right to freedom of association, the right to peaceful assembly and the right to strike, the Government of Cambodia has failed in its duty to uphold these rights in practice. Many attempts by workers to freely assemble and to publicly and peacefully express their views have been met with bans, and stoppages. Security forces frequently employ disproportionate and excessive force in order to crush peaceful assemblies.

In January 2018, 588 workers were dismissed from a garment factory in Takhmao town in Kandal province of Cambodia for having taken strike action. Workers went on strike after their employer retained their wages for over one year. Moreover, there are reports of workers fainting on the factory floor in garment factories due to the inadequate health and safety measures undertaken by their employer. Despite their justified grievances and the legitimacy of the strike action, the court ordered to end their strike without addressing any of the grounds brought forward by the workers. It is no wonder that the failure of the government to perform its duty to protect workers has emboldened the employer to sue the Coalition of Cambodia Apparel Workers' Democratic Union for the protests.

In June 2017, ten union leaders of the Independent Collective Union Movement of Workers (CUMW) were suspended for seven months in Phnom Penh's Por Sen Chey district for protesting the refusal of their employers to grant them reasonable time to travel to their villages and other towns to exercise their right to vote in the communal elections. Though, in this case, the government intervened to lift the suspensions, the incident reveals an intolerance for the reasonable exercise of workers' rights and the need for the government to create capable and independent state institutions for the protection of human and labour rights. Moreover, civil society, including trade unions, were prevented from monitoring the elections because their umbrella association, Situation Room, was considered as "political" under the 2015 Law on Associations and Non-Governmental Organizations (LANGO).

In May 2017, the Phnom Penh authorities banned a coalition of independent trade unions representing many of the garment sector's 700,000 workers from holding a march to celebrate International Workers' Day and hand over a petition to the National Assembly. Instead, unions were told they could commemorate the day at their offices or at private venues. The holding of public meetings and the voicing of demands of a social and economic nature on the occasion of May Day are traditional forms of trade union action. The ILO Committee on Freedom of Association highlighted that trade unions should have the right to organise freely whatever meetings they wish to celebrate on May Day.

Security forces injured at least one union official as they violently broke up a demonstration by opponents of the controversial new Trade Union Law on 4 April 2016 as it was being debated in the parliament. Security guards were brought in to disperse unionised workers protesting against the controversial draft trade union law. Trade union members, human rights organisations and workers' rights groups were pushed, shoved and in some instances beaten by the security guards after the demonstrators started chanting slogans against the draft law as it was due to be voted in the National Assembly. Yang Sophorn, a prominent union leader and president of the Cambodian Alliance of Trade Unions, was one of the protesters shoved to the ground, while Suth Chet, a member of Collective Union of Movement of Workers, was punched in the face by one guard while being restrained by several others, and sustained an injury to his left eye.

#### ➤ **Regressive legislative reforms**

Legal reforms undertaken since 2014 have come under heavy criticism from the ILO supervisory bodies and the UN Special Rapporteur on the situation of human rights in Cambodia, who made it clear that *laws are unfortunately not systematically reviewed by legislators for compliance with human rights*.

The new Trade Union Law was passed in April 2016. The law arbitrarily excludes several categories of workers from its coverage such as workers in banking, healthcare, teachers, civil servants and informal workers. It unreasonably restricts the right to strike by imposing excessive and unjustified pre-requisites and gives the government the authority to interfere in internal trade union affairs without justification or judicial oversight. New burdensome and intrusive registration requirements have made it even more difficult for workers to set up trade unions without being subjected to an arbitrary authorisation procedure. Currently, at least 61 trade union registration applications remain pending due to the onerous registration requirements as well as arbitrary delays. The law prevents minority unions with less than one-third of workers from entering into collective agreements and bars unregistered unions from operating.

Federations are no longer allowed to represent their members in collective disputes, which has significantly hampered workers' access to justice. Complaints before the Arbitration Council have dropped from a monthly average of 30 cases to six. In this regard, the ILO CEACR urged the government to ensure that trade unions are not deprived of the essential means to defend the occupational interests of their members, such as making representations on their behalf and representing them in grievances.

Moreover, four different subsidiary legislation (*prakas*) have been proposed in order to guide the implementation of the Trade Union Law. The drafts reveal serious attempts by the government to interfere in trade union administration with very intrusive regulations on trade union financial reporting, operation of shop stewards and procedures for payment of membership dues.

The LANGO places heavy restrictions on the exercise of the right to freedom of assembly and unreasonably limits its effective exercise in practice. The law requires trade unions not only to request the authorisation of protests, demonstrations, marches but also trainings and other meetings. Most peaceful demonstrations require five days' notice, while impromptu gatherings require a 12-hour notice. As expected, requests for protests have rarely been granted. It has been revealed that more than 60 requests have been struck down in the period from April 2016 to March 2017. Moreover, the LANGO imposes an obligation of "neutrality towards political parties." The Ministry of Interior has the authority to deregister a trade union on this basis. Depriving workers of representation based on such a broad and general term, which may be prone to abuse in practice, is extremely problematic and contrary to the principles of freedom of association.

The government has also introduced a Draft Minimum Wage Law. This draft law is yet to be passed by the National Assembly. It proposes to prohibit the dissemination of research into wages, unless it has been formally submitted to the Minimum Wage Council within a tight deadline of 15 days. This restriction would apply to all citizens including trade unions and seriously affect their ability to campaign for fair wages. Academic researches may also lose their freedom to conduct research in the area, which is beneficial for society as a whole. The proposed article 26 prohibits any objection to the agreed minimum wage. Moreover, the draft provides for heavy and disproportionate administrative fines with no explicit right of appeal. If passed, this law may criminalise the exercise of academic freedoms and the core activities of trade unions during minimum wage negotiations.

#### ➤ **Prohibition of Child Labour and Trafficking**

The abuse of the rights of children in Cambodia remains a major problem. Statistical surveys carried out by the government (Cambodia Labour Force and Child Labour Survey) demonstrate that there are at least 755,245 economically active children in Cambodia. At least 55.1 per cent of these children are engaged in hazardous labour, including child prostitution. Young girls frequently become victims of rape and torture during their employment in brothels, beer gardens and massage parlours. It has been revealed that public authorities are often unable to target major offenders and kingpins due to their alleged ties to certain government officials.

The incidence of children as domestic workers remains prevalent. The ILO CEACR noted that the exclusion of domestic workers from the labour laws would have a devastating effect on the protection of children in domestic work. Primarily, girls between the ages of 7 and 17 work as domestic servants in third party homes where they are exposed to the risk of hazardous work. The ILO estimates that about one in nine households employ children with little or no pay or opportunity to go to school. These are mainly children from poor backgrounds who are denied

opportunity to go to school or join the relatively high dropout rate of 31 per cent. The right to education of these children is severely undermined by the government's failure to implement effective measures to increase school attendance. Child labour is also rife in agriculture where children work, particularly in sugar cane farms, such as the handling and spraying of pesticides and herbicides and cutting, tying and carrying heavy bundles of sugar cane.

➤ **Recommendations**

The Government of Cambodia should:

1. Immediately take steps to address the culture of impunity and to expeditiously address the issues of violence, which resulted in the death, injury and arrest of workers and human rights defenders.
2. Publish the reports of the three committees charged with investigations into the murders of, and violence perpetrated against, trade union leaders and ensure that the perpetrators and instigators of the crimes are brought to justice;
3. Expeditiously complete pending trade union registrations and ensure that workers are able to register trade unions through a simple, objective and transparent process and without previous authorization;
4. Bring the Trade Union Law and the accompanying regulations (prakas) into compliance with ILO Convention No.87 on Freedom of Association and ILO Convention No. 98 on the Right to Organise and Collective Bargaining;
5. Review and amend the LANGO in consultation with trade unions and civil society;
6. Ensure transparency and adequate consultations on all labour related legislation;
7. Ensure that acts of anti-union discrimination are swiftly investigated and that remedies and dissuasive sanctions are applied;
8. Prevent children from being exposed to the worst forms of child labour, in particular through increased labour inspections in the formal and informal economy;
9. Develop concrete plans of actions to increase the retention rates of children in school, particularly at the secondary school level; and
10. Fully comply with the recommendations of the ILO supervisory bodies, including the ILO Committee of Experts on the Application of Convention and Recommendation), the ILO Committee on the Application of Standards and the ILO Direct Contacts Mission of 2017.