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LABOR RIGHTS

Joint Submission

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1. INTRODUCTION

1.1. The joint members of this submission are alarmed by the deterioration of rights over the last several years, particularly in the lead up to the June 2017 elections, as well as to the upcoming July 2018 elections. The Royal Government of Cambodia (RGC) is increasingly using repressive tactics, including burdensome registration and reporting procedures for unions,² restrictions on opportunities for workers to organize in associations and trade unions,³ intimidation and other harassment, threats including violence, and arbitrary arrest and detention to suppress civil society, including trade unionists.⁴ Regulations have also been adopted that impede access to justice for workers seeking remedy for rights violations.⁵ Furthermore, the Cambodian Government has failed to take the needed steps to offer better protection mechanisms for Cambodian migrant workers abroad. These actions have largely diminished the space for the enjoyment of fundamental freedoms in Cambodia, including the rights to association, expression and assembly. While some labor rights improvements since the last UPR cycle can be noted, many challenges remain.

1.2. In this report, organizations outline the following concerns:

- A. Burdensome registration and reporting procedures for unions result in the denial of freedom of association and collective bargaining 3
- B. Regulations that restrict the gathering of CSO's and unions and the recently enacted Trade Union Law and Minimum Wage Law contain provisions that limit protests, strikes and collective bargaining which violates peoples' freedom of peaceful assembly and opportunities for workers to organize or represent their members. 5
- C. Criminalization and anti-union discrimination, including threats and acts of violence, marginalize union leaders and labor right activists 7
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- G. Cambodia’s institutional and normative framework fails to protect migrant workers in Cambodia, and Cambodians abroad 13

2. METHODOLOGY

- 2.1. Representatives of submitting organizations held discussions in February 2018 as a small group and held larger group discussions with both civil society organizations (hereinafter “CSO”) on the ground, as well as with union leaders and members. The group developed seven areas of concern and an additional working group was held with union leaders and union members to provide stakeholders the opportunity to share views, findings and conclusions. Separate interviews were also conducted with members of the joint organizations with particular expertise in topic areas, which was then supplemented by desk research.

3. THE NATIONAL UPR CONTEXT

- 3.1. Cambodia was last reviewed in 2014 in its second cycle. Its first cycle of UPR was in 2009. There were twenty-two recommendations during the two cycles regarding labor rights.

4. LABOR RIGHTS

A. Burdensome registration and reporting procedures for unions result in the denial of freedom of association and collective bargaining.

- 4.1. While UN Member States in previous UPR cycles recommended Cambodia ensures that domestic legislation enables labor unions and other civil society groups to exercise their freedoms of expression, association and peaceful assembly,⁶ the RGC has instead adopted burdensome and complicated regulations on the registration of CSOs and TUs, and enacted reporting requirements that notably restrict those rights.

- 4.2. On 4 May 2016, the RGC adopted the Trade Union Law (TUL) and on 27 June 2016, Prakas⁷ 249 on Registration of Worker Organizations Trade Unions and Employer Associations was issued. Both the TUL and Prakas 249, read together, grant authorities excessive discretionary control over TUs' registration, creating an environment that is conducive to arbitrary refusal of registration.⁸
- 4.3. Article 14 of the TUL disallows unregistered unions from carrying out their operations, whilst Article 1 of Prakas 249, provides that only registered trade unions and workers' organizations have legal personality and status. This denial of legal personality prior to registration impacts on unions' ability to appeal against denial of registration and violates international law norms, requiring a system of notification, rather than permission, for union registration. In one instance, CFSWF attempted to organise a union at a gas company. When the local union attempted to register, the Ministry refused, claiming that they needed to register a union in each branch (as opposed to one representing union). This was impossible to do before the registration period lapsed.
- 4.4. Article 20 of TUL, requires trade union leaders to be literate, able to read and write Khmer and to have never been convicted of a criminal offence. Similarly, Prakas 249 requires leaders of trade unions or employer associations to provide a thumb-printed declaration that they can read and write Khmer, and that they have never been convicted of an offence. These requirements violate equality guarantees in both the ICCPR and the ICESCR,⁹ which entitle everyone to the rights provided for in the Covenants "without distinction of any kind, such as "(...) language (...)," and "similar ILO requirements."¹⁰ The literacy requirement is particularly problematic in provinces outside of Phnom Penh where illiteracy is common. Discrimination based on language and education excludes a large percentage of Cambodian nationals from leadership in unions.¹¹
- 4.5. Prakas 249 further stipulates additional reasons for denial of registration, including: if the goal or objective of the union/association "will not protect or promote rights and benefits to the individual," or "the scope or subject of the trade union or employer association is unclear which can mislead the public." The form required in terms of Article 3.iv of the Prakas, requires detailed information on the trade union leaders'

spouse and family. These provisions allow excessive state interference in TU registration and threaten the existence of independent TUs in Cambodia.

4.6. Unions are required to meet onerous reporting requirements, including annual financial statements and activity reports, bank account details and updating of any of the information required for registration. For example, Section 17(a) and (b) of TUL requires that unions provide bank account details within 45 days of receipt of registration, and update this whenever changes are made (except changes to membership), within 15 days. If any TU fails to comply with these requirements, the union may face a fine, suspension, or removal from the registry.

4.7. Provisions requiring updated information on accounts are unduly onerous, since union membership is constantly changing, and the control exercised exceeds the more standard labor obligation to submit periodic reports. The requirement that unions annually submit a list of all activities, is similarly intrusive and violates the freedom of association.¹² Leading CSOs and TUs are often unable to meet the demanding reporting requirements, opening the possibility for the Ministry of Interior to request reports to harass associations and obstruct their work. Non-compliance with reporting requirements exposes CSOs and TUs to abuse and risks of suspension or deregistration¹³ which constitutes unnecessary interference in the internal governance of associations restricting the freedom of association.

B. Regulations that restrict the gathering of CSO's and unions and the recently enacted TUL and Minimum Wage Law contain provisions that limit protests, strikes and collective bargaining which violates peoples' freedom of peaceful assembly and opportunities for workers to organize or represent their members.

4.8. Article 21 of the ICCPR guarantees the right of peaceful assembly, whilst Article 31 of the Cambodian Constitution entrenches the rights to freedom of assembly and expression. Similarly, Article 42 of the Constitution incorporates the right to establish associations and political parties and the right to take part in mass organizations to protect national achievement and social order.

- 4.9. Despite clear recommendations to the RGC in previous UPR cycles, since strikes in 2014 for minimum wage increases, the RGC has adopted the TUL and Law on Minimum Wage (MWL), containing controversial articles that undermine rights to associate, as well as freedom of expression.
- 4.10. According to Article 54 TUL, in order for a union to represent their members in the negotiation of Collective Bargaining Agreements (CBA) in their workplace, the union must have Most Representative Status (MRS). This provision however currently obstructs unions' rights to collectively bargain for better working conditions and benefits for workers and also prevents minority unions from representing and joining in the process as well.
- 4.11. The Ministry of Interior further issued a notification #1753 on the Operation of Association and NGOs, increasing scrutiny to regulate CSOs and TUs.¹⁴ This notification requires associations and NGOs which want to conduct activities to inform provincial or local authorities three days prior to the activity. Failure to inform grants authorities the right to stop the activities. Moreover, it provides grounds for legal action against unregistered NGOs conducting activities.
- 4.12. The MWL, adopted in June 2018, contains provisions which limit the ability of labor rights activists, union leaders and CSOs to express their views on the minimum wage. Article 16 requires any person other than the National Minimum Wage Council who conducts research on the minimum wage to submit the findings and sources of related data to the Council within 15 days of the research's completion. It remains unclear what happens after the research is provided to the NMW Council. For example, can the research be released to the public either before or after being submitted to the Council? Also, does the Council have discretion to modify the research or prevent such research from being disseminated? Moreover, the Law provides for heavy administrative fines with no explicit right of appeal. These fines, if unpaid, could lead to penalties of imprisonment.¹⁵
- 4.13. Specifically, the requirement to submit research within 15 days represents an unnecessary restriction on the freedom of expression. When read in conjunction with Article 28, the new language could allow for heavy sanctioning or criminalization of any actor who conducts minimum wage research but fails to report it within the 15-day

deadline. The combined effect of these provisions would place minimum wage-related research activities under an excessive level of state control, and severely impacts the exercise of fundamental freedoms.

- 4.14. The TUL also contains provisions restricting strikes and collective bargaining and imposes disproportionate sanctions when such provisions are violated.¹⁶ As a result, physical threats and judicial harassment against demonstrating unions and CSOs remain prevalent. For instance, some government senior officials warned of smashing protesters' teeth using bamboos and threatened to kill hundreds of protesters. Similarly, in April 2016, Sut Chet and Chea Udom, from the Collective Union of Movement of Workers (CUMW), were beaten by police at a peaceful gathering near Cambodia's National Assembly, protesting against the draft TUL.¹⁷

C. Criminalization and anti-union discrimination, including threats and acts of violence, marginalize union leaders and labor right activists.

- 4.15. The deteriorating political environment has resulted in the prosecution and imprisonment of political opponents and human rights defenders, as well as union leaders, members and labor right activists, who face judicial harassment and threats made by authorities.
- 4.16. Recent amendments to the constitution and criminal code have been used to impose criminal charges on union leaders and labor right activists.¹⁸ Articles 305 and 307 of the Criminal Code set out the offences of defamation and insult, which require only that the defamation or insult be "circulated in public or exposed to the sight of the public." This clause exposes union leaders and labor rights activists to risks of being prosecuted for private conversations that are later publicized without their consent. While both offences are only punishable with fines, failure to pay may lead to jail time and compulsory labor as punishment. Similarly, the crimes of defamation and insult are defined in overly broad terms which enable far-reaching exercise of discretion.¹⁹
- 4.17. Provisions on the crime of incitement are similarly concerning. Article 495 of the Criminal Code is broadly interpreted and does not require a crime to actually take place as a result of incitement. This vague and overly broad provision has been used by

authorities to sanction union leaders and labor rights activists for openly advocating for labor standards.

- 4.18. The number of trade unionist and union leaders facing criminal charges or imprisonment in reprisal for peaceful trade union activities is steadily increasing.²⁰ For example, the Cambodian Labour Confederation alone faced a total of 90 charges against 46 union leaders and members in the period of 2014-2017. These included 5 defamation charges, and 26 charges for incitement in response to their open expression of views on social and economic policies.²¹ Other raised charges were intentional violence and death.
- 4.19. In February 2016, trade union officials Toch Srun and Yung Leap were arrested in the wake of a garment factory protest in Samrong Tong district.²² In July 2016, three trade union activists – Yon Sambou, Sok Siden, and Meas Touch – were arrested following attempts to incite a strike in Kampot.²³ Union leaders and labour rights activists including Rong Chhun, Chea Mony, Ath Thorn, Yang Sophorn, Pav Sina and others are all facing criminal charges which many believe to be intimidation and threats against outspoken figures.²⁴
- 4.20. Threats against prominent HRDs including trade union leaders are compounded by government statements raised in the local media. Specifically, Prime Minister Hun Sen warned that those who disturb national security by exercising their fundamental freedoms should “prepare the coffin,” a comment which Council of Ministers spokesman Phay Siphon reiterated: “Tell all your friends, if you support the color revolution, prepare your own coffin.”²⁵
- 4.21. These threats and prosecutions have a chilling effect on fundamental freedoms including the freedom of expression, peaceful assembly, association, as well as freedom from arbitrary arrest, and are not in compliance with international human rights law.
- 4.22. Moreover, government threats have also had a chilling effect on third parties’ willingness to assist or associate with unions or CSOs. For instance, on 18 October 2016, a workers’ association organized a meeting in a restaurant, which was cancelled by the restaurant the day before the meeting citing threats from authorities as the reason

for the cancellation. The Solidarity Center in examining the exercise of the freedom of expression through the Fundamental Freedoms monitoring Project (FFMP) found that government threats have a kinetic effect on all activities of trade unions. 51.4% of the interviewed TU leaders reported they had experienced third-party interference with fundamental freedoms.

D. Imposed pre-hearing certification requirements for workers to bring cases before the Arbitration Council constrain access to justice.

4.23. Under Article 2 of the ICCPR and the Cambodian Constitution, Cambodian citizens have the right to effective judicial remedies, including a competent legal system that addresses rights violations.

4.24. Cambodia, in 2002, took steps towards increasing access to justice for workers through the establishment of an alternative dispute resolution mechanism, the Arbitration Council, specifically dedicated to labor rights. However, the provisions contained in the TUL have not had the effect of enabling workers access to a legal remedy.

4.25. Article 54 of TUL states that only union members with MRS have rights in collective dispute resolution through the Arbitration Council. To obtain this status, the TUL outlines several requirements, including obtaining a registration certificate and getting support of at least 30 percent or more of the total workers in the workplace.

4.26. These registration requirements have put great pressure on unions to obtain MRS. It is difficult for unions to meet registration requirements because the registration certificate is notoriously difficult to attain; and it is often logistically challenging to obtain the support of 30 percent of the workers. For instance, many garment companies have workers spread out over many buildings and sections which makes it difficult to obtain votes.

4.27. In fact, access to dispute resolution mechanisms to vindicate workers' rights has decreased since the adoption of the TUL. According to the Arbitration Council report, 338 cases were brought to the Council in 2015, and 248 in 2016. Since the adoption of the TUL, there has been a noticeable drop to only 8 cases per month.²⁶ The caseload

has continued to decrease, falling down to only 5 cases in the last 5 months of 2018.²⁷ Failure to obtain MRS means that the only other legal avenue available for unions is the national courts.

4.28. Yet, access to a legal remedy for workers through the national courts falls below international standards. Litigation through the national courts is time-consuming and costly, procedures are unclear, and there is a wide-spread perception of corruption.²⁸ According to the World Justice Project's Rule of Law index, Cambodia ranked 112 out of 113 in the overall ranking in 2016.²⁹ Many workers perceive judges as biased in favor of influential parties. For instance, two years ago, Co-Seek Garment workers brought a case before the Phnom Penh Court concerning a factory that closed without providing workers legal compensation for wages owed to them after the employer fled the country. Despite Labor Law Articles 121-125 stating that workers' claims must be settled before creditors when a factory is liquidated, the Court awarded workers only \$7,000 of the total \$35,000 awarded. Having to appeal, the plaintiffs to date are waiting for redress.³⁰

4.29. Additionally, the Arbitration Council does not have jurisdiction over individual cases. Based on the cases that Solidarity Center has been working on, the inability for workers to seek remedies through local courts, coupled with the imposed limits on cases before the Arbitration Council, prevents workers from asserting rights as a result of workers dropping complaints.

E. Rights violations in employment persist due to gaps in the Labor Law leaving workers vulnerable to forced overtime and other exploitative working conditions

4.30. There is a need for greater promotion and protection of workers' rights at the national level. Workers in industries including the garment sector, construction industry, as well as domestic and precarious workers, continue to face hardships. The RGC's failure to adopt mechanisms that offer protection against forced overtime, occupational safety and health and other exploitative working conditions has resulted in ongoing human rights violations.

- 4.31. Labor rights in Cambodia are regulated through the Labor Law. Cambodia has ratified the major ILO Conventions, and human rights treaties pertaining to the protection of workers,³¹ yet, protection mechanisms for workers in Cambodia are not yet up to par with its international obligations.
- 4.32. The Labor Law and regulations lack provisions protecting workers from forced overtime. Additionally, the TUL is ambiguous at best. Various provisions in the law have an arbitrary and discriminatory impact on unions. Specifically, workers are often caught in a system that leaves them no choice but to work overtime. When workers work 8 hours a day, they often only receive the minimum wage of \$170 per month—a wage insufficient to support living conditions. To compensate for low wages, workers are forced to work overtime, to a total of 10-14 hours per day.³² Because of the proliferation of short-term contracts, workers who refuse overtime frequently do not have their contracts renewed.³³ The weakening of unions further limits workers' representation and ability to bargain for better conditions. For example, construction workers encounter difficulties joining unions, resulting in low wages, harsh working environments, and lack of health care. This power lock on workers limits their freedoms and induces compulsory overtime.
- 4.33. Additionally, union members bargaining for better conditions commonly experience discrimination. Often, when workers provide notice to companies or attempt to register their unions within factories, they are dismissed on the grounds that their short-term contract has ended, whilst non-unionized workers have their contracts renewed.³⁴ Union leaders face termination of their employment contracts, and some even get criminally charged with incitement for conducting illegal strikes when their members gather to demand leaders be reinstated.³⁵
- 4.34. Despite the recent adoption of the Prakas on Working Conditions of Domestic Workers, there is still no specific law on the protections of domestic workers. The Prakas does not state the penalty for violations of the provisions. In a practical sense, domestic workers still find it difficult to organize or join union, subject to low pay, working long hours, violence, and other bad working conditions.

F. Protection mechanisms against gender-based violence remain below the necessary international standards

- 4.35. Women remain disproportionately affected by the absence of a legal and policy framework to address the protection of workers. According to Article 45 of the Constitution, “Men and women have equal rights in all fields, especially in marriage and family.”
- 4.36. Nonetheless, women face discrimination and gender-based violence in the world of work including on employer-provided transportation to work, in the workplace, and during rest and bathroom breaks the work floor including discrimination violence and harassment by managers and business owners of female union leaders; violence and harassment of pregnant workers who are particularly vulnerable when employed on short-term contracts; sexual harassment and sexual violence including assault; poor hygiene services; and discrimination based on job position.
- 4.37. While the Labor Law prohibits sexual harassment,³⁶ it lacks a definition of the term specifying what behaviors constitute sexual harassment. Failing to comply with international legal obligations, the Cambodian government has not implemented specific laws addressing sexual harassment in the workplace, accountability mechanisms, programs that are aimed at changing attitudes related to the roles and status of men and women in Cambodia.³⁷
- 4.38. Women are disproportionately victims of both physical and verbal abuse, particularly in garment factories. Research conducted by CENTRAL in 2018 exposed the full spectrum of violence suffered by women in garment factories supplying to major brands including Gap, H&M and Walmart. Female workers reported repeated instances of physical abuse at the hands of predominantly Chinese managers, including beatings and having heavy bundles of clothes thrown at them.³⁸ Women also reported regularly receiving verbal abuse from management as a result of failures to reach ever-increasing production targets, with threats of contract non-renewal often accompanying the abuse.³⁹

- 4.39. Pregnant workers experience discrimination and arbitrary dismissal. During interviews conducted by CFSWF with entertainment sector workers, female workers reported they had to undergo urine tests to check whether they were pregnant before they could obtain jobs. In other cases, if found pregnant, female workers promised to get abortions to increase their chances of getting the job. Garment workers experience similar forms of discrimination. Since female workers are often employed through short term contracts, employers threaten to not renew contracts of pregnant women to escape obligations pertaining to maternity leave.⁴⁰
- 4.40. Female union leaders are particularly vulnerable as they face reprisals in the workplace for taking leadership positions within unions and often work late hours. Management teams in factories use various tactics to discriminate and threaten union leaders, and one female union leader reported was told “You should protect yourself or you will be hit or raped since you work late at night.”⁴¹
- 4.41. In addition, there is still a pay gap between males and females in the construction industry. This gap is grounded on the stereotype that female construction workers are only able to work low-skilled tasks and therefore deserve lower pay, even though most women are paid less even when they are working identical tasks to male workers. Cambodia, per Article 5(a) of CEDAW, is required to work towards “the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” Yet, measures to implement these provisions in a way that would secure women at the workplace against discrimination based on stereotypes, have not been adopted. Moreover, it is difficult for women to form a union in the construction industry, adding to their vulnerability.

G. Cambodia’s institutional and normative framework fails to protect migrant workers in Cambodia, and Cambodians abroad

- 4.42. Cambodia plays a significant role as a country of origin and destination for migrant workers. Cambodian migrant workers sent abroad are poorly protected and face challenges including physical and mental abuse, exploitation, human trafficking and

enslavement. Similarly, there is a large population of migrant workers currently living in Cambodia, particularly Vietnamese, who lack proper documentation.

- 4.43. Since the last UPR cycle, Cambodia has taken important steps towards better protecting its migrant workers.⁴² It concluded several bilateral labor migration and trafficking agreements and action plans for the protection of migrant workers against trafficking with Thailand,⁴³ Vietnam,⁴⁴ China⁴⁵ and South Korea.⁴⁶ Based on these agreements, the RGC intervened in several migrant worker cases and arranged repatriation to Cambodia.⁴⁷
- 4.44. Yet, while Member States recommended ratification of the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families,⁴⁸ the RGC has yet to do so.
- 4.45. The overall level of protection received by Cambodians traveling abroad remains fragile. A recent study released by the ILO indicated that out of four researched Southeast Asian countries, migrant workers from Cambodia have the worst experiences. Eight out of ten workers experience labor rights abuses while abroad, and more than two-thirds reported mental or physical health problems upon return.⁴⁹ While Cambodia entered into several MOUs, these agreements are often poorly implemented, and migrant workers do not receive the benefits promised. For instance, bilateral agreements fail to include provisions on social protection for Cambodian migrant workers abroad. Additionally, the RGC fails to support migrant workers abroad in their right to unionize. Migrant workers are generally not granted any rights to unionize under the laws of the destination country, nor do the MOUs currently in place provide any form of additional protection.
- 4.46. To the extent that bilateral agreements grant protection, they do so only for documented workers. Approximately 45 percent of Cambodian migrant workers venture abroad without proper documentation.⁵⁰ Failure to ratify the Convention on Migrant Workers, and a lack of additional protection mechanisms in MOUs for undocumented workers leaves migrant workers traveling abroad in a vulnerable state. In 2017, CENTRAL provided legal aid and assistance to 222 Cambodian victims of trafficking and exploitation in Thailand and Malaysia. In January 2017, 24 Cambodian migrant

workers were arrested in Malaysia as a result of not having proper legal documentation. CENTRAL contacted the Cambodian embassy seeking their intervention in the case, however no action was taken and the workers were imprisoned for six months. In June 2017, CENTRAL, in collaboration with CFAT, assisted 29 workers who were exploited by a Thai employer. The workers had been working in Chonburi for many months but had not received wages. Following CENTRAL and CFAT's intervention, the 29 workers received approximately \$10,000 in compensation.

- 4.47. In addition to the lack of protection mechanisms, recruitment costs form a major source of the exploitive system for migrant workers in Cambodia. Compared to other countries, recruitment fees are high—estimated at \$70 to \$100.⁵¹ Cambodia has not impose any limits on these fees. While recruiters charge high fees, they do not always send migrant workers abroad, are sent on incorrect visas. The lack of proper documentation limits their access to foreign justice mechanisms, social security, and health care.⁵² Moreover, when visas are granted, workers are often tied to one employer. When they face abuse from this employer, they do not have the freedom to run away because of visa restrictions.
- 4.48. Regarding the delay in the ratification of the Migrant Workers' Convention, the joint organizations are particularly concerned with the status of Vietnamese migrant workers in Cambodia. Organizations estimate that there are around 500,000 undocumented Vietnamese migrant workers living in Cambodia. After living in Cambodia for generations they have lost their Vietnamese citizenship, and have no access to Cambodian citizenship, rendering them stateless. This has dire consequences not only on their access to healthcare, education, justice in domestic courts, social security, freedom of movement, transfer of assets, and housing, but also makes them vulnerable to exploitative working conditions.
- 4.49. In failing to implement mechanisms for a comprehensive and self-sustainable system of protection for migrant work, the RGC is violating its international obligations and has fallen short of complying with recommendations accepted in previous cycles.

5. RECOMMENDATIONS

5.1. Revoke trade union registration and reporting requirements that result in the restriction of the freedom of association, assembly, and expression.

- Prior authorization requirements should be removed from TUL and Prakas N 249 on registration and replaced with a system of prior notification, which provides that a certificate will be provided upon submission of the information listed.
- Provisions and onerous conditions limiting unions' ability to operate before and during the registration process, should be removed.
- Remove prerequisites that require union leaders to be literate and provide family background information.
- Remove from TUL and Prakas, the penalty of suspension, fine or dissolution for failure to meet reporting requirements.

5.2. Eliminate regulations that infringe on people's right to protests, conduct strikes and engage in collective bargaining to guarantee people's freedom of association, expression, and peaceful assembly.

- Revoke provisions that both weaken the right to representation and bargaining position of workers and constrain unions' abilities to gather data to determine the annual minimum wage.
- Impose protection mechanisms to guarantee workers' right to protest.

5.3. Protect TU leaders and TU members from all forms of discrimination, violence and threats, including defamation and incitement charges.

- Repeal the offenses in the Criminal Code that allow for the criminalization of union leaders and labor rights activists. Specifically, public defamation (Article 305), insult (Article 307), malicious denunciation (Article 311), lèse majesté (Article 437 bis), incitement (Article 495), publishing commentaries intended to unlawfully coerce judicial authorities (Article 522) and discredit judicial authorities (Article 523); Articles 66, 80, and 93-95 of the Telecommunications Law; and Article 41 of the Anti-Corruption Law.
- Ensure that all union leaders upon election receive protection against discrimination in the workplace and increase labor inspections to ensure full implementation of such protections.

- Grant union leaders that are victims of discrimination, violence and threats unimpeded access to the Arbitration Council, instead of obligating these parties to resolve their cases before the Ministry of Labour.

5.4. Enable the judicial system to effectively address workers' rights by allowing workers to take cases directly to the Arbitration Council.

- Eliminate the requirement of obtaining MRS or 30% of thumbprints from workers in the workplace for unions to bring cases to the Arbitration Council.
- Allow workers to choose their own representative for dispute resolution.
- Allow individual disputes access to the Arbitration Council.

5.5. Take affirmative measures to promote and protect workers' rights at the national level by increasing the capacity of the labor inspector.

- Increase the number of labor inspectors and resources allocated to them, and grant labor inspectors unannounced and unrestricted access to all worksites to ensure that conditions such as overtime, low wages, and exploitative working conditions are reported to the Ministry of Labor and properly addressed. Increase the ability of the Ministry of Labor to collect and make publicly available data on violations on number of inspections and violations of labor rights.
- Establish a wage enforcement mechanism to ensure access to justice of guaranteed wage claims, and impose sanctions on employers who use low wages as a mechanism to compel workers to work overtime.

5.6. Ensure legal protections against gender-based violence at work including through the inclusion of a definition for sexual harassment and further protective mechanisms against sexual harassment and discrimination.

- Include a definition for gender-based violence in the labor law
- Establish a tripartite working group to work on addressing issues and challenges related to Gender Based Violence at work.
- Require the company to have an annual report outlining the monitoring procedures in addressing GBV at work. .

5.7. Take affirmative action to guarantee further protection of Cambodian migrant workers in bilateral agreements with third states by increasing labor inspections making available complaints mechanisms.

- Increase labor inspections for migrant workers. Ensure that every country that has an MOU is supported by a local embassy equipped to provide the support services needed on the ground to ensure full implementation of the protections outlined in the MOU.
- Establish an independent body that provides access for migrant workers to bring violations protections of MOU's before the Cambodian government.
- Have well constructive, well-developed MOU's aiming at the protection of labor and workers' rights in destination countries, including simple procedures for the issuing of passports for oversea work and a by the government regulated bar on recruitment fees.

6. ADVANCED QUESTIONS

6.1. What steps will the RCG take to ensure that the registration and reporting requirements in the TUL and Prakas do not curtail and prevent trade unions registration and autonomous functioning?

6.2. What protection mechanisms will be put in place to ensure people's rights to collective bargaining and peaceful assembly in the form of protest and strike action?

6.3. What enforcement regulations will be put in place to ensure that all workers are able to obtain access to an effective remedy through the Arbitration Council?

6.4. Can Cambodia allow individual's access to the Arbitration Council?

6.5. What can Cambodia do to increase the mandate and oversight of labor inspectors over exploitive working conditions?

6.6. How can Cambodia develop a normative and institutional framework to counter gender-based violence in the workplace?

6.7. How can Cambodia strengthen its administrative infrastructure to monitor and enforce protection mechanisms for documented and undocumented migrant workers abroad, including provisions on social security, and the right to unionize?

Endnotes

¹ The joint members of the Labor Rights group comprise organizations in Cambodia that advocate for labor rights of workers on the ground. **Solidarity Center** is the largest U.S.-based international worker rights organization helping workers attain safe and healthy workplaces, family-supporting wages, dignity on the job and greater equity at work and in their community's programs. Working with unions and other allies in all major industries, the Solidarity Center Cambodia seeks to protect and advance worker rights through training and support, including legal advocacy, as workers increasingly stand up for their rights and demand living wages and decent working conditions.

² See for the registration requirements respectively articles 3, 14, 20 of the Trade Union law, and Prakas 249. For the reporting requirements.

³ See Ministry of Interior (“MoI”) notification #1753 (October 2017), which installed a prior notification system for all civil society organization activities requiring trade unions and civil society organizations (“CSO”) to notify the MoI three days prior to conducting any activities.

⁴ See on trade union leaders and labor activists subjected to harassment, FUNDAMENTAL FREEDOMS MONITORING PROJECT: QUARTERLY REPORT: YEAR 2, QUARTER 3, CCHR, ADHOC, ACILS (August 2017), at 7.

⁵ Article 54 of the Trade Union Law (“TUL”) states that only union members with Most Representative Status (“MRS”) have the right to collective dispute resolution through the Arbitration Council.

⁶ See recommendations 118.15 by Canada, 59 by the United States UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Cambodia*, 27 March 2014, A/HRC/26/16.

⁷ Ministerial Orders or Proclamations (Prakas) are used to implement and clarify specific provisions within higher-level legislative documents. While Prakas instruments do not carry the full force of a law, they are practical implementation tools binding the actions of Ministry of Labour and Vocational Training (MOLVT) officials.

⁸ FUNDAMENTAL FREEDOMS MONITORING PROJECT: ANNUAL REPORT, CCHR, ADHOC, ACILS (2016-2017), at 5 (“FFMP Annual Report”).

⁹ Articles 2 of the ICCPR and the ICESCR.

¹⁰ 2012 ILO General Survey, at 21.

¹¹ In 2013, the adult literacy rate for Cambodia was 78.3 %, see UNICEF, *Statistics, available at* https://www.unicef.org/infobycountry/cambodia_statistics.html.

¹² FFMP Annual Report (2016-2017), at 6. Indeed, a CSO/TU Leaders' Survey revealed that 55.4% of those surveyed reported that they had not met the reporting requirements under the LANGO or the TUL; 13.7% reported that they did not know if they had or not. Only 17% reported being able to comply with the financial reporting obligations.

¹³ Chapter 15 TUL.

¹⁴ MINISTRY OF INTERIOR, NO. 1753 S.J.N. (Oct. 2, 2017), *raised during workshop with trade union leaders*.

¹⁵ Article 16 of Minimum Wage Law (MWL) states that (...) *anyone other than the National Minimum Wage Council who conducts a research on Minimum Wage shall submit the findings and other related sources or data in the research to the National Minimum Wage Council in 15 days after the research has been completed.*

¹⁶ Restrictions on illegal strike action (Article 92), internal decision-making (Article 13) and collective bargaining (Articles 69-74), sanctions are included in Articles 76-95 the Trade Union Law.

¹⁷ CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (LICADHO), ‘Protesting Union Members Beaten Next to Cambodia’s National Assembly’ (4 April 2016), *available* <http://www.licadho-cambodia.org/flashnews.php?perm=167>.

¹⁸ Respectively Article 49 (new) of the constitution amendment and Art. 437(bis) of Criminal Code FFMP Annual Report (2016-2017), at 5.

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- ¹⁹ In the Rule of Law Index Cambodia ranked 112 out of 113 in the overall ranking in 2016, *see* WORLD JUSTICE PROJECT RULE OF LAW INDEX (2016-2017) *available at* https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf.
- ²⁰ *See also* data in ILO, REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS: *Third Item on the Agenda: Information and reports on the application of Conventions and Recommendations* (May-June 2018), at 22 *available at* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_631799.pdf
- ²¹ Statistics monitored by the Solidarity Center.
- ²² Sen David, “Unionists arrested over Kampong Speu demonstration”, THE PHNOM PENH POST (3 February 2016), *available at* <http://www.phnompenhpost.com/national/unionists-arrested-over-kampong-speu-demonstration>.
- ²³ Sen David, “Trio jailed for leading Kampot strike action” THE PHNOM PENH POST, (7 July 2016), *available at* <http://www.phnompenhpost.com/national/trio-jailed-leading-kampot-strike-action>.
- ²⁴ Lay Samean and Shaun Turton “Old Veng Sreng case revived for NEC member”, THE PHNOM PENH POST (19 May 2016), *available at* <https://www.phnompenhpost.com/national/old-veng-sreng-case-revived-nec-member>
- ²⁵ Touch Sokha and Leonie Kijewski, “PM files lawsuit against analyst”, THE PHNOM PENH POST (14 February 2017) *available at*: <http://www.phnompenhpost.com/national/pm-files-lawsuit-against-analyst>.
- ²⁶ *See also* data in AC, ANNUAL REPORT 2016: *Investing in the Future: Arbitration Council's Commitment to Sustainable and Harmonious Industrial Relations* (2016), at 6 *available at* http://www.arbitrationcouncil.org/uploads/86219-ar_en.pdf
- ²⁷ *See also* data in AC, ANNUAL REPORT 2017: *Investing in the Future: Arbitration Council's Commitment to Sustainable and Harmonious Industrial Relations* (2017)
- ²⁸ Issues In The Judicial System Of Cambodia. (n.d.). Retrieved from <https://www.lawteacher.net/free-law-essays/administrative-law/issues-in-the-judicial-system-of-cambodia-administrative-law-essay.php>
- ²⁹ World Justice Project Rule of Law Index 2017, Report on Cambodia, *available at* <http://data.worldjusticeproject.org/#groups/KHM>.
- ³⁰ Yon Sineat, Daphne Chen, *Workers appeal back pay ruling*, THE PHNOM PENH POST (April 27, 2018), *available at* <https://www.phnompenhpost.com/national/workers-appeal-back-pay-ruling>.
- ³¹ *See* Right to freedom of opinion, information and expression: UDHR 19; ICCPR 19, Right to enjoy just and favourable conditions of work (including rest and leisure): UDHR 23 and 24; ICESCR 7, Right to work: UDHR 23; ICESCR 6.
- ³² *See also* Interview with Yang Sophorn, president of the Cambodian Alliance of Trade Unions (CATU) (Mar 31, 2017), *available at* <https://www.youtube.com/watch?v=3Bhts1U0CUw&feature=youtu.be>.
- ³³ Interview with Solidarity Center.
- ³⁴ Arbitration Council, Arbitral Award, Case N^o 007/16, Dated 18 February 2016, Ho Hsin Tai Limited, *Available at* <http://www.arbitrationcouncil.org/en/ac-decisions/arbitral-decisions>
- ³⁵ Outcome workshop with union leaders June 8, 2018.
- ³⁶ Article 172 of the Cambodian Labor law states that “All employers and managers of establishments in which child laborers or apprentices less than eighteen years of age or women work, must watch over their good behavior and maintain their decency before the public. All forms of sexual violation (harassment) are strictly forbidden.” Cambodian Labour Law (1997).
- ³⁷ Nuppun GBV Report (2017), at 3, *see also* Tanzer Z. (n.d). Review of Laws relating to GBV at work in Cambodia.
- ³⁸ GLOBAL LABOR JUSTICE, Gender Based Violence in the GAP Garment Supply Chain *2018), *available at* <https://www.globallaborjustice.org/wp-content/uploads/2018/06/GBV-Gap-May-2018.pdf> p. 59
- ³⁹ <https://www.globallaborjustice.org/wp-content/uploads/2018/06/GBV-Gap-May-2018.pdf> pp. 61-63
- ⁴⁰ Statement by CFSWF during UPR workshop on June 8, 2018.
- ⁴¹ Nuppun GBV Report (2017), at 6.
- ⁴² *See* Royal Government of Cambodia Submission, Sixth National Report on The Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (“RCG submission to CEDAW”) (April 2018), at 18.
- ⁴³ Thailand-Cambodia Memorandum of Understanding for Bilateral Cooperation in Counter Trafficking (2016), *see* RCG submission to CEDAW at 18.
- ⁴⁴ Vietnam-Cambodia Action Plan for the implementation of the 2015 Cambodia and Vietnam Agreement for Bilateral Cooperation on Counter Trafficking in Persons and Protection of Victims of Human Trafficking in line with the 2009 Standard Operating Procedures for the Identification and Repatriation of Trafficked Victims (2015), *see* RCG submission to CEDAW at 18.
- ⁴⁵ China – Cambodia Bilateral Agreement and Action Plan for Strengthening Cooperation in Counter Trafficking in Persons (2016), *see* RCG submission to CEDAW at 18.

⁴⁶ Republic of Korea – Cambodia Memorandum of Understanding for the deployment of Cambodian workers under the employment permit system, *see* RCG submission to CEDAW at 18.

⁴⁷ *See* RCG submission to CEDAW at 18.

⁴⁸ Respectively recommendations 118.6. by Ecuador, 118.7 by Egypt, and 118.8 by Ghana UPR Report Cambodia 2014; UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158.

⁴⁹ The International Labour Organization and the International Organization for Migration collaborated on a large-scale regional survey of over 1,800 migrant workers, *see* INTERNATIONAL LABOUR ORGANIZATION, *Risk and rewards: Outcomes of Labour Migration in South-East Asia (2017)*, *available at* http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_613815.pdf

[hereinafter: ILO Report 2017].

⁵⁰ ILO Report (2017), at 19.

⁵¹ *See* interview with joint organizations.

⁵² *See* interview with joint organizations.