

Submitting Organisation

Since 1989, CCC has worked to ensure that the fundamental rights of workers are respected. We educate and mobilise consumers, lobby companies and governments, and offer direct solidarity support to workers as they fight for their rights and demand better working conditions.

Clean Clothes Campaign brings together trade unions and NGOs covering a broad spectrum of perspectives and interests, such as women's rights, consumer advocacy and poverty reduction.

As a grass-roots network of hundreds of organisations and unions, both in garment producing countries and in consumer markets, we can identify local problems and objectives and transform them into global actions. We develop campaign strategies to support workers in achieving their goals. We also cooperate extensively with similar labour rights campaigns.

Clean Clothes Campaign has supported trade unions and human rights organisations in Cambodia for more than two decades. Since the 2014 crackdown on garment workers protesting at Phnom Penh's Veng Sreng Boulevard, leaving at least five people dead and a young boy wounded and missing, we have intensified our cooperation with credible organisations in the country.

Summary

The Kingdom of Cambodia is not respecting its human rights obligations in relation to the right to freedom of association. Crackdowns on the right to join and establish trade unions without interference and the right to carry out trade union activities, hereunder public protests and strikes occur on a daily basis. In the past few years, the Government of Cambodia has acted repeatedly to limit the activities of certain unions, to curtail their general operations, and to prosecute key trade union organisers and activists. According to the 2018 ITUC Global Rights Index, an annual survey of violations of trade union rights globally, Cambodia is one of the ten worst countries for workers' rights.¹

With our in-depth knowledge about the political situation and labour market related issues Clean Clothes Campaign views the current state of trade union rights in the Kingdom of Cambodia as critical warranting urgent review by international supervisory mechanisms.

Our primary concerns with respect to trade union rights, workers rights and broader civil and political rights in the Kingdom of Cambodia are:

- Overall speaking, recent developments in Cambodia on general civil and political rights are worrisome and severely affect the political space workers and their organisations may enjoy within the kingdom.

¹ The report ranks the ten worst countries for workers' rights in 2018 as Algeria, Bangladesh, Cambodia, Colombia, Egypt, Guatemala, Kazakhstan, the Philippines, Saudi Arabia and Turkey.

- The Law and the underlying Prakas unduly curtail workers associational rights by reserving main representation and bargaining rights to those unions who have obtained the so-called Most Representative Status.
- The associational rights of workers are further diminished by an unreliable, burdensome registration process of any union.
- Especially the lack to judicial remedy in labour)management disputes sets the context of non-respect for a broad range of labour rights issues.
- The political space for unions to represent their workers is further eroded by a longstanding and ongoing criminalisation of worker protests and other activities of workers.

International Human Rights Obligations of the Kingdom of Cambodia

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”². In 1992 the Kingdom of Cambodia ratified the International Covenant on Economic, Social and Cultural Rights obliging State parties to ensure the right to form and join trade unions of their own choice, including at national and international level³. The Covenant further states that trade unions have the right to function freely and to take strike action⁴. However, the Kingdom of Cambodia has not signed nor ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

The International Covenant on Civil and Political Rights was also ratified by The Kingdom of Cambodia in 1992 and 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”⁵. In addition Article 19 of the ICCPR requires signatory states to guarantee the right to freedom of expression, including the right to receive and impart information and ideas of all kinds regardless of frontiers. Namely "Everyone shall have the right to hold opinions without interference" and “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Although the Kingdom of Cambodia has signed the Optional Protocol to the International Covenant on Civil and Political Rights it still has yet to deposit an instrument of ratification or accession.

The Kingdom of Cambodia has also ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948), and ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949).

Civil and Political Rights

The evolution of workers rights in Cambodia has been affected by a significant deterioration, of not the total collapse, of

² Universal Declaration of Human Rights, Article 23(4)

³ ICESCR, Article 8

⁴ *ibid*

⁵ ICCPR article 22

broader civil and political rights in the country. The following evolutions are important to bear in mind and influence significantly labour rights of workers.

The 2015 Amendment on the Law on Associations and NGOs (LANGO)

In 2015 the Government of Cambodia adopted an amended Law on Associations and NGOs (LANGO), severely restricting the political and public space accorded to NGOs and therefore restricts freedom of association and expression in violation of international human rights law. It can be misused politically to silence those who criticize government laws and policies. Amongst the concerning issues, the law requires mandatory registration for all domestic and international associations, unfettered ministerial discretion over registration and deregistration on vague grounds. All registered organizations are then required to maintain “political neutrality,” which is not clearly defined. It also legalizes, as clearly seen in the last year, the control and censorship of activities of domestic and international associations and NGOs.

Organisation told to leave

On the 23rd of August the US-funded National Democratic Institute (NDI) was told by the authorities to immediately cease its operations in Cambodia and close its office, alleging the organisation had failed to register under the above mentioned LANGO and had not paid taxes. International staff members of NDI were given seven days to leave the country. This is the first substantive closure of an organisation under the LANGO. This act has been widely condemned by local and international civil society groups, UN experts and members of the international community, on the basis that it was designed for arbitrary use against specific organisations.

Attack on media:

The opposition-aligned Mohanokor radio station and the independent Voice of Democracy (VOD) were taken off the air along with provincial broadcasts of Radio Free Asia (RFA) and Voice of America (VOA) relayed by stations across the country. Until now at least 31 broadcasts relayed from Phnom Penh and 20 provinces have been ordered to close by the authorities vague grounds. RFA and VOA also face arbitrary and targeted licensing and tax investigations which could force their complete closure.

The independent English-language newspaper, The Cambodia Daily, which has operated for 24 years, was forced to close on the 4th of September. Three weeks prior to the close down the authorities accused the newspaper for not have paid taxes mounting US\$6.3 million and gave the newspaper an ultimatum: pay or close. The Cambodia Daily is an independent outlet renowned for critical investigative reporting on sensitive topics such as corruption, waste, environmental issues and land rights.

Arrest of opposition party leader Kem Sokha and the dissolution of the main opposition party

Kem Sokha, Cambodia's opposition leader and President of the National Rescue Party (CNRP) was arrested on the 3rd of September (12.30 am) over allegations of treason, with Prime Minister Hun Sen accusing him of conspiring with the United States to oust his regime. In a startling escalation in an already deteriorating political climate, the premier claimed the government had “no choice” but to detain the CNRP leader, who was arrested together with eight

bodyguards during a raid on his home. Kem Sokha was taken into custody by more than 100 police and sent almost 200 kilometres away to a prison near the Vietnamese border. He has now been charged with treason. Subsequently his party was dissolved based on new legislation that prevents party leaders from holding a criminal conviction. 118 of CNRP's members have been barred from taking part in politics for five years. In reality all this means that the current regime efficiently removed the only party in Cambodia able to challenge them in the 2018 election.

General Issues with the Trade Union Law

The Trade Union Law, enacted since 2016, is inconsistent with fundamental principles of freedom of association.

The requirement of “most representative status” (MRS) and the restrictions placed on unions that do not have MRS is one of the key problems with the law. According to Article 54 of the Trade Union Law, unions are prohibited from bargaining collectively or seeking government mediation to resolve disputes. In addition, the law has been implemented in ways that workers who are members of unions that do not have MRS have been increasingly unable to use the Arbitration Council to resolve disputes, as the Ministry of Labor has refused to refer cases involving non-MRS unions to the Arbitration Council. The Council is an indispensable tool in ensuring prompt, fair adjudication of alleged worker rights violations. It is imperative that access to the Arbitration Council be immediately restored without delay.

More broadly, the ILO's review noted significant problems with the Trade Union Law. Freedom of association cannot be fully achieved in Cambodia without a revision of the Trade Union Law, and the Prakas in consultation with the ILO, and in a manner that renders it consistent with Convention ILO 87 and 98. The Ministry's October 16 statement suggests that the government will draft a Prakas that would allow minority unions to represent their members in “collective labor disputes”; this Prakas could be a positive step, but the Trade Union Law will need to be revised in order to create a permanent solution.

Issues with the Union Registration

Since the passage of the Trade Union Law, the registration process has imposed bureaucratic, burdensome and complicated requirements that create inappropriate obstacles to workers' ability to form unions. Furthermore, union registration has been implemented in a discriminatory manner, with irrelevant issues, such as typos or grammatical mistakes, being used to arbitrarily deny registration to legitimate unions. One example of the inappropriate obstacles to registration is that in order to register new unions, workers must submit the names, National Social Security Fund (NSSF) identification numbers, addresses and phone numbers of all the union's members, and those of their parents, spouses and children as well.

Especially, the issuance of Prakas 249 on Registration of Worker Organizations Trade Unions and Employer Associations further grants authorities excessive discretionary control over trade unions registration, creating an environment that is conducive to arbitrary and overly formalistic refusal of registration.

Article 14 of the TUL does not permit unregistered unions to carry out their operations, while Article 1 of the abovementioned Prakas, 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 to register a union.

Also, the requirement in said law and Prakas for trade union leaders to be literate, and be able to read and write Khmer; and also, to never have been convicted of a criminal offence seems incoherent with International Standards including the ICCPR and ICESCR. This poses a significant restriction for garment workers in a country where access to formal education is uneven, and strikes and protests are often met with criminal prosecutions.

These requirements place a substantial burden, but also actively chill, the exercise of associational rights, as both ordinary workers and union leaders may rightly fear that submitting such personal information may expose both themselves and their family members to retaliation by employers and/or state authorities. The government should not only reform the law by adopting a quick and simple registration process that is consistent with core ILO conventions and the government's commitment, but should also promptly respond to the backlog of pending applications using fair, objective criteria when deciding whether to grant registration.

Unions or employer associations are required to meet onerous reporting requirements, which include annual financial statements and activity reports, bank account details and updating of any of the information required for registration. In the Garment Industry, the provisions requiring updated information on accounts, are unduly, since union membership is constantly changing, and the control exercised in these provisions exceeds the more standard labor obligation to submit periodic reports. The requirement that unions annually turn over a list of all their activities, is similarly unduly intrusive and violates the right to freedom of association. Legitimate Trade Unions are often unable to meet the demanding reporting requirements, leaving the possibility for the Ministry of Interior to request reports to harass associations, obstruct their work or even suspend or deregister, thus severely restricting the freedom of association.

A number of other provisions of the Trade Union Law, in combination with the restrictions noted above, make many associational activities practically illegal. Articles 12 and 13 of the law stipulate a number of requirements for registering and governing unions that violate freedom of association. In order to elect or reelect officers, establish or amend bylaws, or approve strikes, labor organizations - no matter their size - must convene a meeting attended by a majority of their rank- and- file members – a clearly unreachable requirement that, in effect, prohibits basic union activities.

The proposed Labour Dispute Procedure Law

The central device of the Kingdom of Cambodia to increasing access to justice for workers was the establishment of an alternative dispute resolution mechanism, the Arbitration Council, specifically dedicated to labor rights. However, the provisions contained in the Trade Union Law have not had the effect of enabling workers access to a legal remedy.

Article 54 of TUL (see also supra) states that only union members with Most Representative Status (“MRS”) have the right to 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.

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

In fact, access to dispute resolution mechanisms to vindicate workers' rights has decreased since the adoption of the Trade Union Law. According to the Arbitration Council report, 338 cases were brought to the Council in 2015, and 248 in 2016. Since the adoption of the Trade Union Law in 2016, there has been a noticeable drop to only 8 cases per month. The caseload has continued to decrease, falling down to only 5 cases in the last 5 months in 2018. There is no labor court in Cambodia, therefore, failure to obtain MRS means that the only other legal avenue available for unions is the national courts.

Even if access to the Arbitration Council were to be restored, still key improvements should be made to the dispute resolution process reliable and effective. In addition to ensuring access for all unions to the Arbitration Council as described above, would be to make Arbitration Council decisions binding. At present, the decisions are only binding if neither party objects, decreasing their effectiveness. Making all decisions binding would significantly improve labor law enforcement in Cambodia. The most efficient avenue to achieve this would be a private memorandum of understanding between Garment Manufacturers Association in Cambodia (GMAC) and the unions, witnessed by the ILO. It could also be achieved through legislation. However, given the current political climate this does not seem like a viable option now.

Criminalization of worker protest

In January 2014, in the wake of a violent assault by Cambodian security forces on workers who were protesting for higher wages, 170 factories authorized the Garment Manufacturers Association in Cambodia (GMAC) to file a criminal complaint against the leaders of six major union bodies. Given the well-documented lack of independence of the Cambodian judiciary, the Cambodian government has been able to use this criminal complaint as a pretext to place restrictions on the union leaders' mobility and strategically call them in for questioning as a form of intimidation at key moments.

Recommendations

We therefore call on the Kingdom of Cambodia to:

Repeal the Law on NGOs.

Review the Trade Union law, the prakas and practice:

- Enable a process of registering the most representative union for the purpose of collective bargaining and reviewing the law and prakas to align it with international standards;

- adjust the union registration procedure to make it more transparent and effective and to guarantee the associational rights and freedoms of workers in Cambodia and address the backlog of pending applications including but not limited to:
 - Prior authorization requirements should be removed 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 prior 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

Work to restore and strengthen the Arbitration Council (AC) as a mean to resolve industrial disputes by:

- Allow minority unions to represent members in collective labor disputes by removing Article 54 of the New Trade Union Law (see also recommendations on the Arbitration Council)
- Restoring access to dispute resolution by the AC, by directing the Ministry of Labor to resume referring cases brought by all unions to the AC;
- Allow workers to choose their own representative for dispute resolution.
- Allow individual dispute to have an access to the Arbitration Council.
- Ensuring workers are protected from any reprisal or prejudicial action and have easy access to conciliation and arbitration for any unresolved grievances;
- Allowing trade unions to freely conduct legitimate industrial actions, particularly if a dispute is long- running;
- Revocation of the draft Law on Labor Dispute Adjudication Procedures
- Moving towards making all AC decisions binding;

Remove the politically motivated cases against key trade union leaders defenders, notably:

- The criminal charges brought against six prominent union leaders during the 4 January 2014 government crackdown, following workers' protests for higher wages (i.e. the Veng Sreng case), namely Ath Thorn of the Coalition of Cambodian Apparel Workers' Democratic Unions (C.CAWDU); Mom Nimh of the National Independent Federation Trade Unions of Cambodia (NIFTUC); Yang Sophorn of the Cambodian Alliance of Trade Unions (CATU); Chea Mony of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC); Pav Sina of the Collective Union of Movement of Workers (CUMW); and Rong Chhun of the Cambodian Confederation of Unions (CCU); and
- The criminal charges against 12 independent union leaders in the February 2016 Capital Bus case, most prominently Ath Thorn (President CLC and C.CAWDU), Kong Athit (Vice President, CLC and C.CAWDU), Ean Kim Hun (General Secretary of the Cambodian Transport Workers Federation (CTWF), Nin Kosal (Deputy Secretary of CTWF), and Sok Chhun Oeung (President of the Cambodian Informal Worker Association).