

Labor Rights Thematic Group



Joint-Submission by:

Solidarity Center Cambodia (ACILS), Independent Democracy of Informal Economy Association (IDEA), Cambodian Youth Network (CYN), Cambodian Food and Service Workers Federation (CFSWF), The Cambodian Confederation Unions (CCU), Cambodian Labor Confederation (CLC), Center for Alliance of Labor and Human Rights (CENTRAL), Coalition of Cambodian Farmer Community Association (CCFC), Legal Support for Children and Women (LSCW)

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

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, some of which are:

- Take all necessary measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives. (United States)
- Take action to ensure that Cambodian legislation enables all political parties, labour unions and other civil society groups to exercise their rights to freedom of expression, association and peaceful assembly, and that peaceful demonstrations can occur safely and without fear of intimidation or excessive use of force on the part of the Cambodian authorities. (Canada)
- Strengthen its policies to improve labour standards for all workers and continue its efforts in reducing child labour. (Spain)
- Establish labour courts in an effort to guarantee respect for worker rights and to provide legal and efficient solutions to labour disputes, and revise the law on trade unions. (United States)
- Publicly speak out on reported cases of intimidation and violence - including murder - of trade unionists, the staff of non-governmental organizations and journalists and to ensure effective investigations and accountability for perpetrators. (Austria)

NATIONAL FRAMEWORK

- Trade Union Law (2016) and Prakas 249 (2016): Both, read together, grant authorities excessive discretionary control over Trade unions' ("TU") registration, creating an environment that is conducive to arbitrary refusal of registration. It also further contains provisions restricting strikes and collective bargaining and imposes disproportionate sanctions when such provisions are violated.
- Notification #1753 on the Operation of Association and NGOs increases scrutiny to regulate CSOs and TUs. 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.
- The Minimum Wage Law, adopted in June 2018, contains heavy administrative fines with no explicit right of appeal. These fines, if unpaid, could lead to penalties of imprisonment.
- 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.

CHALLENGES

IMPACT

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

The Royal Government of Cambodia (RGC) adopted burdensome registration and reporting requirements for unions in the Trade Union Law and Prakas which result in the denial of peoples' right to freedom of association and collective bargaining. For example, the government requires that organizations have legal personality and status that trade union leaders are literate and educated, and that extensive information of the leaders' spouse and family is provided prior to registration. Once unions are registered, onerous reporting requirements at penalty of suspension of the trade union are used by the Ministry of Interior to request reports to harass associations and obstruct their work. These laws open the door to excessive state interference in trade unions, and threaten the very concept of independent unions in Cambodia.

- Regulations that restrict the gathering of CSO's and unions and the recently enacted Trade Union Law and the Minimum Wage Law, 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.

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

Regulations have been adopted that stall access to justice for workers seeking remedy for rights violations. While Cambodia in 2002 took steps to increase access to justice for workers through the establishment of an Arbitration Council dedicated to labor rights, the newly adopted Trade Union Law ("TUL") significantly restricts this path. The TUL requires unions to (1) obtain a registration certificate that is notoriously difficult to attain, and (2) obtain the support of 30 percent of the workers. Workers are often spread out over many buildings and sections which makes voting procedures to obtain support difficult, if not impossible for unions to conduct. The inability for workers to seek remedies through local courts due to length of procedures, lack of expertise of the court and a culture of corruption, coupled with the imposed limits to litigate cases before the Arbitration Council perpetuate a broken system that prevents workers from asserting rights.

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CHALLENGES	IMPACT
<ul style="list-style-type: none"> ➤ Criminalization and anti-union discrimination, including threats and acts of violence, marginalize union leaders and labor right activists ➤ Rights violations in employment persist due to gaps in the Labour Law leaving workers vulnerable to forced overtime and other exploitative working conditions ➤ Cambodia's institutional and normative framework fails to protect migrant workers in Cambodia, and Cambodians abroad 	<p>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. Authorities use recent amendments to the constitution and criminal code to impose criminal charges on union leaders and labor right activists. For example, articles 305, 307 and 495 of the Criminal Code setting out the offences of defamation, insult, and incitement are defined in overly broad terms which enable far-reaching exercise of discretion. For example, provisions require merely 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.</p> <p>The RGC's failure to adopt mechanisms that offer protection against forced overtime, occupational safety and health and other exploitative working conditions in the Labor Law and Trade Union Law has resulted in ongoing human rights violations. 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, in some cases to a total of 10-14 hours per day. Because of the proliferation of short-term contracts, workers who refuse overtime frequently do not have their contracts renewed. 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.</p> <p>Cambodian migrant workers sent abroad are poorly protected and face challenges including physical and mental abuse, exploitation, human trafficking and enslavement. 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. In addition, 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. 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.</p>

RECOMMENDATIONS

- Revoke trade union registration and reporting requirements that result in the restriction of the freedom of association, assembly, and expression, including prior authorization requirements from TUL and Prakas N 249 and provisions that require high standards for union leaders to register, including literacy and family background requirements.
- Remove the penalty of suspension for failure to meet reporting requirements from the TUL and Prakas.
- Eliminate regulations that constrain people's right to protests, conduct legal strikes, the ability of unions to gather data to formulate the annual minimum wage, and engage in collective bargaining without fear of intimidation to guarantee peoples' freedom of expression, association and peaceful assembly.
- 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 Most Representative Status, 30% of votes from workers in the workplace, for unions to bring cases to the Arbitration Council.
- Protect TU leaders and TU members from all forms of discrimination, violence and threats, including defamation and incitement charges and 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.
- Take affirmative measures to promote and protect workers' rights at the national level by increasing 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.
- 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.
- Take affirmative action to guarantee further protection of Cambodian migrant workers in bilateral agreements with third states by increasing labor inspections and making available complaints mechanisms.