

Cambodia

CSO Submission to the United Nations UNIVERSAL PERIODIC REVIEW, 4TH CYCLE

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Joint Thematic Submission on

LABOR RIGHTS



SUBMITTING ORGANIZATIONS:

1. Banteay Srei
2. Building and Wood Workers Trade Union Federation of Cambodia (BWTUC)
3. Cambodian Alliance of Trade Unions (CATU)
4. Center for Alliance of Labor and Human Rights¹ (CENTRAL) - main submitting organization
5. Cambodian Food and Service Workers Federation (CFSWF)
6. Cambodian Informal Economy Workers Association (CIWA)
7. Cambodian Tourism and Service Workers' Federation (CTSWF)
8. Cambodian Youth Network (CYN)
9. Coalition of Cambodian Apparel Workers' Democratic Unions (C.CAWDU)
10. Gender and Development for Cambodia (GADC)
11. Labour Rights Supported Union of Khmer Employees of NagaWorld (LRSU)
12. Solidarity Center Cambodia (ACILS)
13. The Affiliated Network for Social Accountability Cambodia (ANSA Cambodia)
14. The Free Independent Trade Union Federation (FUFU)
15. The Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)
16. The Independent Democratic Association of the Informal Economy (IDEA)
17. The Independent Trade Union Federation (INTUFE)
18. The People Center for Development and Peace (PDP)
19. Transparency International Cambodia (TI Cambodia)
20. Youth Resource Development Program (YRDP)

¹ The Center for Alliance of Labor and Human Rights (CENTRAL) is a Cambodian founded, run, and operated non-governmental organisation based in Phnom Penh. Operating since 2016, CENTRAL's long-term strategic goal is to contribute to transparent and accountable governance for the fulfilment of workers' and human rights in Cambodia. To work towards this goal, CENTRAL organises and supports Cambodian working people through legal aid, capacity building and other appropriate means to demand transparent and accountable governance for labour and human rights. Through support from CENTRAL, more effective communication has been opened between unions, the government, and international buyers, resulting in an unprecedented development, where voices of workers in Cambodia can be and are being heard.
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1. Introduction

1.1 It is with concern that the members of this joint submission highlight the continued erosion of rights in the labor sector. We observe that the independent trade union movement in Cambodia is being specifically and systematically targeted via administrative requirements, judicial obstruction and harassment and criminalization. While the Royal Government of Cambodia seeks to project an image of reform by introducing amendments to the labor and trade union laws¹, these changes are tokenistic concessions, for they do little to address the core issues with these laws nor align them with international standards.

2. Methodology

2.1 In July 2023, representatives from submitting organizations held small group discussions, where they identified seven areas of concern. Additional discussions in September and October allowed stakeholders to share insights and validate draft recommendations. Separate interviews with experts from joint organizations were supplemented with desk research.

3. THE NATIONAL UPR CONTEXT

3.1 Cambodia was last reviewed in January 2019, where there were at least 24 supported recommendations related to labor and/or union rights. In this submission, we focus in particular on reviewing the implementation of Theme D45: Freedom of Association².

4. KEY AREAS OF CONCERN AND RECOMMENDATIONS

A. Burdensome registration, MRS certification and reporting procedures for unions and regulations for union dues at factories with collective bargaining agreements result in the denial of freedom of association and collective bargaining protected by ILO Conventions C.87, C.98 and ICCPR Article 22.

4.1 Registration applications are rejected for trivial reasons such as minor spacing, punctuation, grammatical or spelling mistakes, resulting in a time-consuming process of re-submission³. As of October 2023, based on data compiled by members of this submission, at least 23 enterprise-level union registrations remain pending, some for more than a year⁴.

4.2 Unions are still required to meet onerous reporting requirements⁵. Failure to comply may lead to a fine, suspension, or removal from the registry. This constitutes unnecessary interference in the internal governance of associations restricting the freedom of association.

4.3 Unions in the provinces are required to register at the MoLVT in Phnom Penh. This involves high costs, travel time and unnecessary absences from the workplace, making it difficult for workers in outlying areas to unionize.

4.4 The “Most Representative Status” certification criteria set out in the TUL continue to be similarly burdensome. It is often a logistical challenge⁶ to obtain the support of 30 percent of the workers. MRS certification requires membership records, including members’ thumbprints and signatures; financial reports with incomes and expenses of union dues, and for the employer to verify the number of employees at the enterprise. Employers frequently take a long time or even refuse to do so in order to stall the process.

4.5 MoLVT’s Decision 1103/23 stipulates that the one-time fee for non-union workers at factories where a collective agreement has been signed must not exceed the amount equivalent to a month’s union dues. This discourages union membership, interfering with the internal affairs of the union; and is not in compliance with paragraph 2, Article 26 of the Law on Trade Unions.

Recommendations:

4.6 As previously recommended, ensure that all workers can both register their unions and obtain MRS certification through a simple, objective, swift, and transparent process⁷. This should be accomplished by the end of 2024.

- Remove prior authorization requirements from TUL and Prakas No. 249 on registration and replace this with system of prior notification, which provides that a certificate will be provided upon submission of the information listed.
- Repeal Article 14 of TUL stating that unions cannot operate without registration
- Establish a decentralized system to register unions in all provinces to expedite the registration process
- Promptly process the registration of union mandate renewals following union elections, without any undue delays or political interference.
- Establish a publicly accessible, regularly updated online database and enquiry service on trade union registration under the MoLVT, in consultation with social partners and with the assistance of the ILO.
- Ensure that civil servants - including public sector teachers - domestic workers and workers in the informal sector are able to fully exercise their freedom of association rights
- Remove the MRS requirement for employers to certify the number of employees at the enterprise, replacing it with a simpler check-off system⁸ of union membership and fees instead
- Repeal MoLVT's Decision No. 1103/23 dated 28 June 2023 so that workers' organizations retain the right to determine the amount and conditions of the service fee for non-union workers at factories where they have secured a collective bargaining agreement.

B. Judicial obstruction preventing cases from being heard at the Arbitration Council⁹, and the TUL's unchanged stipulation that minority unions are not allowed to represent workers in individual disputes restrict workers' access to justice

4.7 Under Article 2(3) of the ICCPR, and Articles 38 and 39 of the Cambodian Constitution, Cambodian citizens have the right to effective judicial remedies, including a competent legal system that addresses rights violations.

4.8 Over the last few years, a trend has emerged with labor officials at the MoLVT overstepping their authority to miscategorize collective labor disputes as individual disputes¹⁰, in effect preventing them from being heard by the Arbitration Council. As of October 2023, the members of this joint submission have counted at least 44 cases of misclassification whereby these cases have not been able to reach the AC, leaving adjudication by the national courts to be the only recourse.

4.9 However, access to a legal remedy for workers through the national courts falls below international standard.¹¹ Litigation through the national courts is time-consuming and costly, procedures are unclear, and there is a wide-spread perception of corruption¹².

4.10 The 2021 Amendment to the Labor Law allows individual labor disputes to be heard at the Arbitration Council. However, this is not slated to take place until the end of 2024 and it is unclear how the AC will be able to address a growing backlog of both collective and individual disputes¹³.

Recommendations:

4.11 Enable the judicial system's dispute resolution mechanisms to effectively address workers' rights by ensuring that the Arbitration Council is able to function independently and effectively

to resolve disputes in a timely manner¹⁴, and by allowing minority unions to represent workers in individual disputes.

- Adopt a *prakas* clarifying that labor disputes involving unions are collective labor disputes by default, preventing systemic misclassification of collective labor disputes as individual labor disputes by the MoLVT.
- As previously recommended, allow workers to choose their own representative for dispute resolution
- Ensure labor conciliators work on the resolution of labor disputes in an independent and impartial manner to ensure fair outcomes for affected workers
- Set clear guidelines for labor conciliators to forward *all* disputes to the Arbitration Council related to shop steward elections, mass layoffs, and dismissals of trade union leaders where prior authorization has been sought from the labor inspector
- Enable the Arbitration Council to review decisions of labor officials upon referral of their actions or decisions from the Minister of Labor.
- Allow minority unions to represent workers in individual disputes.

C. Regulations¹⁵ that restrict the gathering of CSOs and unions in the Trade Union Law and Covid-19 Law contain provisions which limit protests and strikes, violating the right to peaceful assembly

4.12 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.

4.13 The TUL contains provisions restricting strikes and collective bargaining, imposing disproportionate sanctions when such provisions are violated.¹⁶ As a result, physical threats and judicial harassment against demonstrating unions and CSOs remain prevalent¹⁷. For example, after NagaWorld laid off 1,329 casino workers in April 2021 and workers from the Labour Rights Supported Union of Khmer Employees of NagaWorld (LRSU) engaged in a peaceful, well-publicized strike, the police physically assaulted and arrested striking workers¹⁸.

4.15 The implementation of the Law on Measures to Prevent the Spread of Covid-19 and Other Infectious and Serious Diseases, adopted on 11 March 2021, hastily and without consultation with civil society organizations has encroached on the right to freedom of assembly and protest to obtain appropriate solutions by state authorities due to its excessive restrictions¹⁹.

Recommendations:

4.16 As previously recommended, eliminate regulations that infringe on people's right to protests, conduct strikes to guarantee people's freedom of association, expression, and peaceful assembly. The state must guarantee the right to strike without interfering and using force against the strikers.

- Develop and adopt a code of practice or a handbook on the policing and handling of industrial and protest actions with technical assistance of the ILO and the OHCHR.
- Properly train police forces²⁰ and the Committee on Strikes and Demonstration on the nature of labour disputes and how to effectively distinguish and not criminalize such disputes, with the assistance of the ILO and in consultation with trade unions.
- Amend the TUL and Law on Measures to Prevent the Spread of COVID 19 and other Serious, Dangerous and Contagious diseases so that they comply with C87, in consultation with social partners and the ILO.

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

4.17 The deteriorating political environment has resulted in the ongoing persecution of political opponents and human rights defenders, as well as union leaders, members and labor rights activists who continue to face judicial harassment, threats and criminal charges or imprisonment in reprisal for peaceful trade union activities²¹.

4.18 Union leaders and activists continue to face termination or non-renewal of their employment contracts in cases of union-busting²², often under the guise of pandemic-induced layoffs²³. Some are criminally charged with incitement²⁴ and others dismissed on false charges of serious misconduct²⁵.

Recommendations:

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

- Unconditionally drop all charges against trade unionists for carrying out legitimate trade union activities. Detained trade unionists must be released and provided with compensation.
- Reinstate dismissed trade unionists in consultation with trade unions on all the cases of unfair dismissals submitted to the MoLVT.
- Ensure that all union leaders upon election receive protection against discrimination in the workplace
- 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.
- Repeal the offenses²⁶ in the Criminal Code that allow for the criminalization of union leaders and labor rights activists.
- Amend or repeal legal provisions in all laws²⁷ that restrict the right to freedom of association in contravention of Cambodia's international human rights law obligations

E. Independent worker unions, and unions from all sectors are not fully represented in the National Council on Minimum Wages and Labor Advisory Council respectively.

4.20 Independent worker voices are not fully represented in the National Committee on Minimum Wages (NCMW), a tripartite body of 17 members each from the government, employers, and unions. The vast majority of the 17 workers' representatives are not from independent, democratic unions²⁸.

4.21 The Labor Advisory Council (LAC) oversees the entire employment sector, but there are worker representatives from the entertainment sector and the informal economy, resulting in the uneven development of rules and policies for these sectors.

Recommendations:

4.22 Ensure that independent union and worker voices from excluded sectors are properly represented in the National Council on Minimum Wages and Labor Advisory Council respectively.

- Establish clear and transparent criteria for the selection and fair representation of workers in the NCMW, in consultation with independent unions and relevant organizations to set up this mechanism before the minimum wage negotiations in 2024.
- Invite representatives of independent unions from the food, entertainment and informal sectors that represent the real voices of workers in their sectors to be members of the LAC, ensuring their inclusive participation in the Council from 2024 onwards.

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

4.23 Sexual harassment is prohibited by the Labor Law,²⁹ but it lacks a definition of the term specifying what behaviors constitute sexual harassment. The scope of the definition in Article 250 of the criminal code is also limited in that it does not cover single instances of abuse or abuse occurring between peers³⁰.

4.24 Women, not to mention women with disabilities and diverse SOGIESC³¹, are disproportionately victims of both physical and verbal abuse³², particularly in garment factories,³³ and the entertainment sector³⁴. Pregnant workers³⁵ and workers with disabilities continue to experience discrimination and arbitrary dismissal³⁶. Since female workers are often employed through short term contracts, employers do not renew contracts of pregnant women to escape obligations pertaining to maternity leave.

4.25 Female union leaders and activists remain particularly vulnerable³⁷ as they face repercussions at the workplace for taking leadership³⁸ positions within unions and often work late hours. Management teams in factories use various tactics to discriminate and threaten independent union leaders, such as getting “yellow” unions to intimidate them³⁹.

4.26 Recommendations:

- Ensure legal protections against gender-based violence at work through the inclusion of a definition for sexual harassment, and gender-based violence according to the definition from CEDAW General Recommendation No. 35.
- Expand the role of Cambodia’s tripartite national Labor Advisory Committee (composed of representatives for workers, employers and government) to discuss policies and mechanisms to prevent and address GBV at work.
- Mandate all employers to create codes of conduct⁴⁰ on inclusion and non-discriminatory gender policies (LGBTIQ+ and people with disability) at the workplace.
- Ratify ILO Convention 190 on the elimination of violence and harassment in the world of work

G. Cambodia’s institutional and normative framework fails to protect migrant workers

4.27 Since the last UPR cycle, Cambodia has taken certain steps towards better protecting its migrant workers. It concluded several bilateral labor migration agreements⁴¹ with Thailand, Malaysia, and South Korea and introduced national action plans to address issues of human trafficking⁴² to and collaborate with Vietnam,⁴³ China⁴⁴ against trafficking. On the basis of these agreements, the RGC intervened in several migrant worker cases and arranged repatriation to Cambodia.⁴⁵ 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 in the last 2 cycles,⁴⁶ the RGC has yet to do so.

4.28 Recruitment costs⁴⁷ exploit migrant workers in Cambodia, many of whom borrow from private moneylenders, micro-finance institutions, banks and even their employers to cover the cost of migration. Cambodia has not imposed any limits on these recruitment fees. The lack of proper documentation limits workers’ access to foreign justice mechanisms, social security, and health care.⁴⁸ Workers are often tied to one employer in their visas and do not have the freedom to leave if they face abuse from their employer.

4.29 Recommendations:

- Ensure that every destination 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 MOU protections, including simple procedures for the issuing of passports for overseas work and a by the government regulated bar on recruitment fees

- Establish an independent body that provides access for migrant workers to bring violations of protections offered by MOUs before the Cambodian government regardless of their migration status
- Ensure that the recruitment of workers abroad is free of charge in accordance with ILO Convention No. 181.
- As previously recommended and supported in the last two UPR cycles, ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁴⁹

Endnotes

¹ The 2019 Amendment of the Trade Union Law has led to some improvements¹ to FoA, but union leaders and labor advocates find these changes to be cosmetic. The 2021 Amendment to the Labor Law allows individual labor disputes to be heard at the Arbitration Council. However, RGC has yet to promulgate ministerial orders ("Prakas") to give effect to the amendments. Among these are amendment to Article 20 of the TUL removed two restrictions for holding a union leadership position. Union leaders who are Cambodian nationals no longer need to prove they are literate in Khmer and all union leaders, regardless of nationality, no longer need to prove they have no previous criminal convictions. Article 29 was amended such that unions no longer face the possibility of dissolution in the event its leaders or managers commit serious misconduct or a serious offense. Article 54 was amended to allow minority unions to represent workers in collective labor disputes which do not involve the implementation of a collective bargaining agreement. See Annex 3 for an in-depth analysis of the 2020 amendments to the Trade Union Law.

² The 3rd cycle UPR recommendations falling under this theme are: 110.151 Ensure that the trade union rights of workers are guaranteed in line with the relevant ILO Convention and that unions may register unhindered and represent their members (Sweden); **Source of position:** A/HRC/41/17/Add.1 - Para. 2 and 110.152 As previously committed to by the Government following the State's second review, simplify and reform registration procedures for unions and other civil society organizations (United States of America). The 2019 Amendment of the Trade Union Law has led to some improvements² to FoA, but union leaders and labor advocates find these changes to be cosmetic. The 2021 Amendment to the Labor Law allows individual labor disputes to be heard at the Arbitration Council. However, RGC has yet to promulgate ministerial orders ("Prakas") to give effect to the amendments.

³ While the MoLVT delayed registration of trade union application such as at Elite (Cambodia) Factory within the required 30 days, all the elected leaders and founding members were fired by the employer for minor reasons. The MoLVT failed to forward the case to arbitration and voided the registration request upon their terminations. The delay, the targeted firing of union leaders and the subsequent voiding of the application appear to be coordinated. Article 14 of the TUL does not allow unregistered unions to operate, 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. One of the key challenges to freedom of association involves a specific nexus of issues connected to union registration. After their first election, a newly-formed union submits is required to submit its registration application to the Ministry of Labor. Upon submission, the application is accepted by the Ministry of Labor, which issues a receipt. The company, who would already have received official notification of the union's general assembly and the list of candidates, often responds negatively. If the candidates are on FDCs, their contracts will not be renewed upon expiry, especially if the 45-day period of protection (as an elected union official) from termination has ended. If the candidate is on a UDC, they may be laid off on account of a lack of orders or due to fabricated claims of misconduct and poor performance. Subsequently, if the ministry becomes aware of these dismissals, they may decline the registration, asserting that the union leaders no longer have affiliations with the company. These tactics impede the union from gaining official recognition, creating a deadlock. When assistance is sought from brands, they frequently counter by highlighting the union's lack of formal registration or improper formation. This stance effectively creates a stalemate: union leaders face termination, which hampers the union's official formation and recognition. Brands further back their position by referencing decisions from Ministry-led conciliation meetings that side with the company, using them as a reason not to reinstate workers. This recurring cycle is not only time-consuming but also epitomizes a form of judicial and administrative obstruction that severely curtails the freedom of association.

⁴ See Annex 4 for a list of pending union registrations compiled by union and federation members of this submission.

⁵ These include annual financial statements and activity reports, bank account details⁵ and updating of any of the information required for registration.

⁶ For instance, many garment, footwear and travel goods companies have workers spread out over many buildings and sections which makes it difficult to obtain votes.

⁷ In line with the International Labour Organization's (ILO) recommendations during the recent 2021 review of Cambodia's compliance with ILO Convention No. 87 and the ILO Direct Contacts Mission to Cambodia in 2022, as well as the 3rd cycle UPR recommendations on union registration under Theme D45: Freedom of Association which RGC has supported.

⁸ The check off system contains a database of all employee record which make a lot easier for union to get access as use it as reference for unions registration

⁹ Cambodia, in 2002, took steps towards increasing access to justice for workers though 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 given workers access to a legal remedy.

¹⁰ In an extreme example from early 2022, following a mass layoff affecting 117 workers at the waste disposal company CINTRI Cambodia, the MoLVT separated the case into 117 individual disputes instead of classifying them as a collective dispute.

¹¹ According to the [World Justice Project's 2022 Rule of Law Index](#), Cambodia ranked 139 out of 140 overall, coming out at the bottom for civil justice scores and third from the bottom in criminal justice. Many workers perceive judges as biased in favor of influential, paying parties. For instance, in a 2021 sexual harassment case at YTC factory in Kampong Speu, a factory supervisor clearly admitted on record to inappropriately touching a worker, and offered to pay her off, however the court ruled nonetheless that no offense had taken place.

¹² 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>;
<https://www.transparency.org/en/cpi/2022/index/khm>

¹³ Individual Case (CAS) - Discussion: 2021, Publication: 109th ILC session (2021) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Cambodia (Ratification: 1999)

¹⁴ In line with the International Labour Organization's (ILO) recommendations during the 2021 review of Cambodia's compliance with ILO Convention No. 87 and the ILO Direct Contacts Mission to Cambodia in 2022

¹⁵ Despite clear recommendations to the RGC in previous UPR cycles, since strikes in 2014 for minimum wage increases, the RGC adopted the TUL and Law on Minimum Wage (MWL), containing controversial articles that undermine rights to associate, as well as freedom of expression. The Ministry of Interior further issued a notification #1753 on the Operation of Association and NGOs, increasing scrutiny to regulate CSOs and TUs.

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 For example, in August 2020, Cambodian Independent Teachers Association (CITA) leader Ouk Chayavy was knocked off a motorbike in what she believes was an orchestrated “accident” meant to intimidate her from campaigning for the release of Rong Chhun, Cambodian Confederation of Unions president after visiting him in prison. Rong Chhun was arrested on 31 July 2020 for incitement to commit felony by making comments on farmland losses and border irregularities between Cambodia and Vietnam. Recently he was leading pickets in garment factory closures and urging the government to make human rights improvements. Sor Saknika, Sor Saknika, president of the Cambodian Informal Labourers’ Association (CILA) joined protests demanding his release, and was arrested for incitement on 7 August 2020.

¹⁸ See Annex 6 for further details of the NagaWorld case.

¹⁹ In the case of the NagaWorld strike, authorities arbitrarily deemed the strike illegal and applied this law as a pretext to violently remove strikers and temporarily confine them for testing.

²⁰ We note that “in October 2019, the MLVT, in collaboration with the Ministry of Interior, the ILO, and the Office of the United Nations High Commissioner for Human Rights-Cambodia (OHCHR Cambodia), organized a two-day training of trainers (ToT) on “the Rights to Strike and Peaceful Demonstration” conducted in four sessions with 128 participants, and follow-up training on “the Rights to Strike and Peaceful Demonstration” with 30 participants, who were police officers from the General Commissariat of National Police, to contribute to promoting freedom of association and harmony in industrial relations. The subjects of the training included the notions of labour disputes, labour dispute settlement, the notions of strikes, demonstrations and riots, preventive measures for strikes and demonstrations, mechanisms for strike and demonstration settlement, the international and national legal framework for peaceful assembly, and the definition, objectives and scope of the Law on Peaceful Demonstration.” (Source: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_COUNT_RY_ID:4111528,103055) In light of recent legal developments, and infringements to the right of workers to peaceful assembly, these trainings should be updated and carried out on a regular basis. The number of police officers participating in training sessions, the duration of such training, and the subjects covered, including as to whether the disciplinary consequences of using excessive force are part of the training should be reported to the CEACR, ILO and trade unions.

²¹ In May 2023, Theng Savoeun, Coalition of Cambodian Farmer Communities (CCFC) president; Nhel Pheap, a senior organizing officer; and Thann Hach, a community facilitator were arrested and charged with plotting under Article 453 and incitement under Articles 494 and 495 of the Criminal Code²¹. In the same month, a Phnom Penh court found LRSU leader Chhim Sithar and 8 fellow unionists guilty of incitement under Articles 494 and 495 of the Criminal Code, sentencing Sithar to two years in prison and the other union members to between one to one and a half years. See Annex 4 for a list of recent criminal charges against unionists and labor advocates.

²² CCHR’s annual FFMP findings for 2022 recorded at least 59 trade union members or activists who were dismissed, forced to resign, or had their contracts terminated due to their involvement or activism in a trade union, with about half of these incidents occurring in the garment sector. See Annex 4, which calculates that since 2018, at least 1502 factories from 46 factories have been illegally terminated.

²³ See e.g. https://www.hrw.org/sites/default/files/media_2022/11/cambodia1122web_1.pdf; [Stitched under strain](#):

[long-term wage loss across the garment industry; https://media.business-humanrights.org/media/documents/files/200805_Union_busting_unfair_dismissals_garment_workers_during_COVID_19.pdf](https://media.business-humanrights.org/media/documents/files/200805_Union_busting_unfair_dismissals_garment_workers_during_COVID_19.pdf)

²⁴ During the pandemic in 2020, Keo Thay, Chhum Chan from Prey Veng, Peat Mab, Sun Thun from Cambodian Independent Teachers Association (CITA), were arrested without warrant and detained with crimes of incitement and toppling the government for making online comments, conducting online classes when schools had been temporarily closed.

²⁵ In April 2020, Roo Hsing Garment factory in Phnom Penh dismissed three union leaders affiliated with the Cambodian Alliance of Trade Unions (CATU) – Ek Sarun, Sok Kong, and Kon Soch – accusing them of instigating a wildcat strike in response to pandemic-related holiday changes. However, both CATU federation president, Yang Sophorn, and the local leader, Ek Sarun, deny these claims, maintaining that their union didn't represent the workers in the affected section and had only spoken to each other about the holiday issue. This incident serves as an example of potential union-busting through baseless allegations against union representatives.

²⁶ 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.

²⁷ Including but not limited to the Trade Union Law, the Law on Associations and Non-Governmental Organizations (LANGO), public health-related laws (Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases, and the Law on the Management of the Nation in a State of Emergency. Recent amendments to the constitution and criminal code have been used to impose criminal charges on union leaders and labor right activists. 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. 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.

²⁸ In the latest minimum wage negotiations for 2024 held between August and September 2023, 12 of the 17 union representatives ultimately voted against workers’ interests for the government’s figure of 204 USD rather than the 213 USD the independent unions had proposed.

²⁹ 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).

³⁰ https://ngocedaw.org/wp-content/uploads/2015/05/Criminal_Code_EN-KH_Jan_2014.pdf

³¹ Ibid.

³² 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, during entry scans, on 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.

³³ Gender and Development Cambodia (GADC), 2022. Gender Intentionality Assessment in Cambodia’s Apparel and Footwear Industry; in a study published by Solidarity Center in May 2019, almost half (48%) of the women interviewed identified themselves as targets of GBV at work. 87% experienced verbal harassment or unwanted touching; 46% had a supervisor or manager force them to become their mistress or “second wife” with the understanding that it would improve their working conditions and 28% stated that had been coerced into sex with someone at work in order to extend a contract, fix their sewing machine or obtain a bonus³³.

³⁴ 37.5% of female entertainment workers reported experiencing GBV in the past 6 months. <https://doi.org/10.1177/0886260520948145>

³⁵ 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. Statement by CFSWF during UPR workshop on June 8, 2018, which they and several other union representatives maintain is still the case at a UPR 4th cycle validation workshop held at CENTRAL on 9 October 2023.

³⁶ Research by Solidarity Center found that 17 out of the 40 pregnant garment workers interviewed reported witnessing or having direct experience of verbal violence against pregnant workers. <https://www.solidaritycenter.org/wp-content/uploads/2019/06/Gender.Cambodia-report.6.19.pdf>

³⁷ Female unionists in the LRSU strikes also faced GBV, being groped and manhandled when they were forced by the police onto buses. They were kicked and punched when they resisted, resulting in one of the workers suffering a miscarriage. Source: CENTRAL, Legal Analysis On the case of the NagaWorld union strike.

³⁸ With many programs on gender equality to eliminate inequality, gender norms and harassment is present a barrier for women leadership. Most training that factories provided are still based on gender roles and mindset. For an instance, they still provide skill on leadership and technical regarding mechanic to males, and sexual reproductive rights or gender to female. Furthermore, there is no training for all workers except the team leaders or labor union representatives who have personal connections with the employers. (A report from Gender and Development for Cambodia on the Assessment of Gender Intentional at footwear industry in 2023)

³⁹ In a 2022 union-busting case that is still pending, a female union leader from Eastcrown Footwear Industries was pushed against the factory gate, had her union registration documents snatched from her, and was insulted with a string of words deeply derogatory to women

⁴⁰ The policy should state the organization's commitment to ensuring an equitable, diverse and inclusive workplace, require the creation of a Protection from Sexual Exploitation, Abuse and Harassment policy in the factories (PSEAH), and require companies to have an annual report outlining the monitoring procedures in addressing GBV at work in lines with these codes of conduct.

⁴¹ While Cambodia entered into several MOUs, these agreements are often poorly implemented, and migrant workers do not receive the benefits promised. Existing MOUs mainly highlight on formal recruitment procedure rather than focus on expanding the protection, social benefits and access to remedies for these vulnerable groups. Bilateral agreements also 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. Upon returning to Cambodia, many workers find themselves stripped of essential resources, and the Cambodian government has yet to establish a comprehensive plan to support and reintegrate them. 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.⁴¹ To the extent that existing bilateral agreements grant protection, they do so only for documented workers. Approximately 45 percent of Cambodian migrant workers venture abroad without proper documentation. 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.

⁴² In 2022 and 2023, Cambodia was place in the lowest rank possible Tier 3 in the U.S. Department of State's Trafficking in Persons (TIP) report.

⁴³ 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.

⁴⁴ China – Cambodia Bilateral Agreement and Action Plan for Strengthening Cooperation in Counter Trafficking in Persons (2016), see RCG submission to CEDAW at 18.

⁴⁵ See RCG submission to CEDAW at 18.

⁴⁶ 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.

⁴⁷ Compared to other countries, Cambodian migrant workers pay the highest recruitment fees in order to work in Thailand - between 250 to 600 USD. Source: <https://so03.tci-thaijo.org/index.php/mekongjournal/article/view/226515/163701>, p.15 and while recruiters charge high fees, they do not always send migrant workers abroad, or send them on incorrect visas.

⁴⁸ CENTRAL, draft position paper on Protection Migrant Workers Rights and Eliminating Human Trafficking through Ethical Recruitment (September 2023)

⁴⁹ As recommended by the Philippines and Egypt in the 3rd UPR of Cambodia. Source of position: A/HRC/41/17/Add.1 - Para. 2