

CAMBODIA

Report on Prosecution of Six Independent Trade Union Leaders

NOVEMBER 2020



AMERICAN BAR ASSOCIATION

Center for Human Rights



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ABOUT

The American Bar Association Center for Human Rights promotes and protects human rights worldwide by mobilizing lawyers to help threatened advocates, protect vulnerable communities, and hold governments accountable under law.

ACKNOWLEDGMENTS

This report was prepared by staff attorneys of the American Bar Association Center for Human Rights and reflects their views. It has not been approved by the House of Delegates of the Board of Governors of the American Bar Association and therefore should not be construed as representing the policy of the American Bar Association as a whole. Further, nothing in this report should be considered as legal advice in a specific case.

Front Cover: C.CAWDU President Ath Thorn at the Cambodian Apparel Workers Democratic Union (C.CAWDU).

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I. EXECUTIVE SUMMARY

The treatment of labor union leaders by governmental authorities in Cambodia has a volatile history and has been the subject of concern by various international and regional authorities, including the International Labor Organization, the European Commission, and certain United Nations Special Rapporteurs. National and international organizations focusing on human rights and labor rights have criticized provisions in Cambodia's Trade Union Law, Law on Associations and Non-Governmental Organizations (LANGO), and Criminal Code, which collectively impede the ability of labor union organizations to organize workers and to continue general operations or engage in any activity deemed political by the Cambodian government. In addition, labor organizers are individually targeted with criminal prosecutions, in which the slow-moving criminal trial process becomes a punishment in and of itself. This report focuses on the prosecution of six labor union leaders who faced criminal charges in the aftermath of protests surrounding the 2013 National Assembly election results, which continued the 28-year reign of Prime Minister Hun Sen and his Cambodian People's Party.

In these six cases, this report finds significant procedural and substantive violations of international rights to fair trial, freedom of association, and other rights recognized under conventions to which Cambodia is a party. In July 2018, labor union leaders Ath Thorn, Pav Sina, Mam Nhim, Rong Chhun, Yang Sophorn, and Chea Mony were officially charged with a range of crimes carrying jail sentences of up to five years, including obstructing traffic and intentionally causing damage or violence. The accused were not detained before their trial. After a delay of four years from the time the events in question occurred, the trial commenced in December 2018. In an egregious interference with the individuals' right to adequate time to prepare their defense, the charges against the defendants were changed by the trial judges on December

11, 2018—the same day on which their verdict was delivered. All six defendants were convicted on the new charges of “instigation” under Article 28 of the Cambodian Criminal Code in relation to the following offenses: “intentional acts with violence with aggravating circumstances,” under Article 218 of the Criminal Code; “intentionally causing damage with aggravating circumstances,” under Article 411 of the Criminal Code; “threats to destroy followed by an order,” under Article 424 of the Criminal Code; and “acts of using any means to obstruct public traffic,” under Article 78 of Law on Traffic. The six defendants were sentenced to two years and six months suspended imprisonment term.

Subsequently, in May 2019, Prime Minister Hun Sen exerted public pressure on the Court of Appeal, which eventually set aside the prison sentences for the six union leaders but not their convictions. Despite the defendants avoiding a prison sentence, the consequences of conviction remained severe, as, under Article 20 of the Trade Union Law, an individual was ineligible to act as leader of a trade union if they had been convicted of any criminal offense. This provision of the Trade Union Law was amended in January 2020 after Cambodia's trade partners, including the European Union, pressured the government to amend the law.

Despite the ultimate avoidance of a guilty verdict for the six union leaders, the improvised nature of the acquittal demonstrates the lack of institutional protections for labor unions engaging in nonviolent criticism of governmental policy. The unexplained delay in investigating the case, conviction in the absence of any persuasive evidence on charges that were changed at the last minute, and the Prime Minister's efforts to influence the timing and outcome of the appeal all constitute severe violations of international norms.

Legal and institutional reforms are urgently needed in Cambodia. The government is facing an increased wave of scrutiny of its treatment of labor union members. With nearly half of the nation's exports and GDP relying on a dynamic garment and footwear production sector, the government's ongoing harassment of workers in this sector risks undermining economic development of the country. In February 2020, the European Commission decided to suspend Cambodia's "Everything But Arms" preferred trading status based on a multi-year review process in response to the deterioration in the human rights situation. In particular, the Commission highlighted the unresolved prosecution of labor union leaders and various over-broad or vague labor law provisions as severe violations of the state's obligations under international law.

To restore its preferred trading status with the European Union and avoid further economic damage, the government will need to address

the underlying concerns laid out by the European Commission. Yet, throughout the summer of 2020, the Cambodian government arrested and charged several union leaders, human rights defenders, and democracy advocates for various crimes. Rather than continuing this harassment of labor unionists and human rights defenders, the government must facilitate a process that expedites the dismissal of any pending frivolous claims that punish labor union leaders for activity protected under international law and commits to avoiding these kinds of prosecutions altogether. In addition, while there have been some reforms made to the nation's Trade Union Law relating to the ability of individuals charged with crimes to hold leadership positions in the union, substantial reforms must also be made to the nation's Law on Associations and Non-Governmental Organizations and the Criminal Code to bring the country into compliance with its international obligations to facilitate the return of the nation's preferred trading status with the European Union.



C ambodian workers urge global clothing brands to give a \$177 monthly minimum wage. Photo credit: Licadho

II. INTRODUCTION¹

In July 2018, Ath Thorn, Pav Sina, Mam Nhim, Rong Chhun, Yang Sophorn, and Chea Mony were officially charged with a range of crimes, carrying jail sentences of up to five years. The charges related to events that had occurred more than four years earlier, in the context of the mass protests that swept Phnom Penh in the aftermath of the 2013 National Assembly election. Following the announcement of the ruling party's reelection, ongoing protests by workers demanding better working conditions, higher wages, rights to freedom of association, and organizing and collective bargaining, swelled with citizens protesting the election results. All six individuals were leaders of independent Cambodian trade unions. Members of those unions had been among the many textile workers who had participated in the January 2014 protests, in which factory owners alleged at the time that criminal acts of violence had been committed by protesters.

After more than four years of inaction during which the threat of criminal charges remained hanging over all six individuals while they remained outside jail custody,² charges of committing violence during the protests were

finally brought and the case went to trial in December 2018.³ Following flawed proceedings that violated the right to a fair trial, in which the judges changed the charges during their final deliberation, the six defendants were convicted on charges of instigation under Article 28 of the Cambodian Criminal Code in relation to offenses under Articles 218, 411, 424 of the Criminal Code and Article 78 of the Law on Traffic. They were finally acquitted in May 2019, more than five years after their ordeal began. Following several public interventions by the Prime Minister, in violation of the right to an independent judiciary, the Court of Appeal quashed the convictions.

The case of the six union leaders is one particularly egregious example of the criminalization of legitimate trade union activity and harassment of labor activists that have taken place in Cambodia in recent years⁴ and which escalated severely in the months leading up to the National Assembly elections in July 2018. Despite constitutionally guaranteed human rights protections, the ability of individuals in Cambodia to exercise their right to freedom of association by forming and participating in trade

- 1 This report was prepared by staff attorneys of the American Bar Association Center for Human Rights and reflects their views. It has not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore should not be construed as representing the policy of the American Bar Association as a whole. Further, nothing in this report should be considered as legal advice in a specific case.
- 2 As detailed below, multiple allegations were made against the six union leaders at the time of the protests. After January 2014, many Cambodian union leaders were subject to judicial harassment, creating a fear that such allegations could be made a pretext for criminal prosecution. *See generally, Cambodia: Democracy Under Threat*, CAMBODIAN CENTER FOR HUMAN RIGHTS (CCHR) (September 2015), https://cchrcambodia.org/admin/media/analysis/analysis/english/2015_09_24_CCHR_Briefing_Note_Cambodia_Democracy_Under_Threat_ENG.pdf.
- 3 The Criminal Procedure Code of Cambodia has no time limit or statute of limitations for a criminal trial's investigations phase.
- 4 *See* Int'l Labor Org. [ILO], *Observation of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)*, ILO Doc. 3344064 (2017), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3344064; ILO, *Committee on Freedom of Association Case No. 3121* (383rd Report, November 2017); *Observations of the International Trade Union Confederation to the CEACR* (2016) "denouncing the criminalization of trade union activities through harassing lawsuits, arrest and long-pending trials before courts who independence is questioned" (CEACR Observation 2017, introductory paragraph).



unions has been increasingly restricted.⁵

Growing awareness among enterprises investing in Cambodia of their responsibility to ensure that human rights are respected in their supply chains has highlighted the importance of respect for fundamental freedoms and rights to Cambodia's international reputation and economic prospects. The European Union (EU)'s 2020 decision to temporarily withdraw Cambodia's highly beneficial "Everything But Arms" (EBA) trade preferences for certain products in light of the deteriorating human rights situation has also highlighted the potentially severe economic consequences of Cambodia's serious and systematic violation of principles laid down in United Nations treaties and International Labor Organization conventions, which Cambodia has ratified.⁶

This report begins with background on the case of the six union leaders and the recent history of the labor movement and fundamental freedoms in Cambodia (Section II), and then sets forth the legal framework governing the exercise of fundamental freedoms and labor rights in Cambodia, as well as relevant fair trial rights under Cambodian and international law (Section III). Section IV provides a detailed account of the prosecution of the six union leaders, and an analysis of its conformity with international and domestic fair trial standards. Finally, in Section V, the report concludes with several recommendations to the Royal Government of Cambodia (RGC) and other actors to ensure that fundamental freedoms, labor rights, and the right to a fair trial are respected in the future.

5 *E.g.*, 2018 Country Reports on Human Rights Practices: Cambodia, U.S. DEP'T OF STATE (Mar. 13, 2019), <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/cambodia/>; MICHEL FORST, WORLD REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS 301–05 (2018), <https://www.protecting-defenders.org/pdf.js/web/viewer.html?file=https%3A//www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf> (supplement to Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Rep. of the Special Rapporteur on the Situation of Human Rights Defenders*, U.N. Doc. A/73/215 (July 23, 2018)); Mom Kunthea, "Union submits petition to mark labour day," *KHMER TIMES* (May 2, 2019), <https://www.khmertimeskh.com/50599804/union-submits-petition-to-mark-labour-day/>.

6 Commission Regulation 2020/550, 2020 O.J. (L127) 1, 1–12 [hereinafter EU Decision]. See also European Commission Press Release IP/20/229, "Trade/human rights: Commission decides to partially withdraw Cambodia's preferential access to the EU market" (Feb. 12, 2020), https://ec.europa.eu/commission/presscorner/detail/en/ip_20_229. The EU found serious and systemic violations of Int'l Covenant on Civil and Political Rights [ICCPR], Arts. 19, 21, 22, 25, Mar. 3, 1976, 999 U.N.T.S. 171 (rights concerning freedom of expression, freedom of assembly, freedom of association, and political participation); Int'l Covenant on Economic, Social and Cultural Rights [ICESCR], Arts. 2(2), 7, 8, 11(1), Dec. 16, 1966, 993 U.N.T.S. 3 (rights concerning non-discrimination, conditions of work, trade union activities, and standard of living); ILO, Convention No. 87: Freedom of Association and Protection of the Right to Organise, July 9, 1948 [hereinafter ILO Convention 87]; ILO, Convention No. 98: Right to Organise and Collective Bargaining Convention, June 8, 1949 [hereinafter ILO Convention 98].

III. RECENT HISTORY OF THE LABOR MOVEMENT AND FUNDAMENTAL FREEDOMS IN CAMBODIA

According to industry reports, exports of garments, footwear, and travel goods from Cambodia in 2018 amounted to \$9.5 billion, making up 43 percent of Cambodia's GDP and half of its total exports.⁷ The garment sector is the primary economic industry in Cambodia, employing over 650,000 workers and worth over US\$6.3 billion.⁸ In 2018, Cambodia was the sixth largest garment supplier, the fourth largest footwear supplier, and the fourth largest travel goods supplier to the U.S. market, and Cambodia was the fifth largest garment supplier, the fifth largest footwear supplier, and the fourth largest travel goods supplier to the European market.⁹

As a result of the importance of the garment manufacturing sector to Cambodia's economy, those it employs and the unions that represent them constitute a politically significant constituency for Cambodia's government. In the aftermath of the 2013 National Assembly elections, the participation of garment workers

and union representatives discontented with the minimum wage increase and other labor rights issues was key to the effectiveness of unprecedented mass protests against the reported results of the elections.¹⁰ Protestors called for an impartial investigation of electoral irregularities that facilitated the continuation of Hun Sen's 28-year rule through his Cambodian People's Party.¹¹ Months of large-scale protests ended on January 3, 2014, when at least four protestors were shot dead and dozens wounded, allegedly by security forces, on the outskirts of the capital, Phnom Penh.¹²

Following this demonstration of the ability of Cambodia's labor movement to influence domestic politics, the government took steps to appeal to garment factory workers and their union representatives ahead of the National Assembly elections in July 2018. These policies for workers in the Cambodian garment and footwear sector included a significant increase

7 American Apparel and Footwear Association, "Leading fashion brands send letter to Cambodia government," letter from 20 international brands to Cambodian Prime Minister Hun Sen (May 2, 2019), https://www.aafaglobal.org/AAFA/AAFA_News/2019_Letters_and_Comment/Leading_Fashion_Brands_Send_Letter_to_Cambodia_Government.aspx.

8 Letter from six federations of international garment, footwear, and travel goods brands and retailers to Cambodian Prime Minister Hun Sen (Mar. 19, 2018), https://www.fairlabor.org/sites/default/files/letter_to_cambodian_government_march_2018.pdf.

9 Letter from eight federations of international garment, footwear, and travel goods brands and retailers to Cambodian Prime Minister Hun Sen (Apr. 4, 2019), https://www.fairlabor.org/sites/default/files/cambodia_letter_1904_-_final_final.pdf.

10 "Striking garment workers join Cambodian opposition protests," RADIO FREE ASIA (Dec. 26, 2013), <https://www.rfa.org/english/news/cambodia/workers-12262013183522.html>.

11 "Cambodia: Systematic problems undermine elections," HUMAN RIGHTS WATCH (July 26, 2013), <https://www.hrw.org/news/2013/07/26/cambodia-systematic-problems-undermine-elections>. See also Kate Hodal, "Cambodia election protests grip Phnom Penh," *THE GUARDIAN* (Sep. 16, 2013), <https://www.theguardian.com/world/2013/sep/16/cambodia-election-protests-phnom-penh>.

12 Press Release, Office of the High Commissioner on Human Rights, "Cambodia protest deaths: U.N. rights expert urges calm and restraint by all sides," U.N. Press Release OHCHR/14150 (Jan. 3, 2014), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14150&LangID=E>; "Cambodia: Victims of protest crackdowns denied justice," AMNESTY INT'L (June 4, 2015), <https://www.amnesty.org/en/latest/news/2015/06/cambodia-victims-of-protest-crackdowns-denied-justice/>; Krishnadev Calamur, "4 Killed As Cambodian Police Fire At Striking Garment Workers," NPR (Jan. 3, 2014), <https://www.npr.org/sections/thetwo-way/2014/01/03/259389559/cambodian-police-fire-at-striking-garment-workers-4-dead?t=1571780790764>.

in the minimum wage as well as the provision of pensions and transport subsidies.¹³ However, the evident power of the trade union movement in Cambodia also triggered a backlash in the form of wider and increasingly severe restrictions of civil society space in Cambodia, particularly in the 18 months preceding the 2018 polls.¹⁴

In recent years, local and international trade unions and NGOs have reported that official tactics to restrict activism by civil society and the labor movement have shifted from violent crackdowns to more sophisticated use of the civil and criminal law.¹⁵ As recognized by the EU and

the ILO, among others,¹⁶ the Law on Associations and Non-governmental Organizations (LANGO),¹⁷ Trade Union Law¹⁸ (amended in December 2019)¹⁹, and provisions of the Criminal Code²⁰ have been used to threaten organizations with dissolution or suspension, and individuals with imprisonment and/or hefty fines, for alleged noncompliance with their provisions. This strategy has been employed on repeated occasions, with the result that many trade union leaders have expressed concern that they face real risks when they speak out against human rights and labor rights abuses.²¹ Since 2016, criminal charges have been brought against labor rights activists and several

- 13 See ILO, "How has garment workers' pay changed in recent years?," *CAMBODIA GARMENT & FOOTWEAR SECTOR BULLETIN*, June 2018, pp. 1–7, 12, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_631686.pdf (citing EC and other official sources); Ben Sokhean and Zsombor Peter, "In charm offensive, Hun Sen promises workers raises, pension," *THE CAMBODIA DAILY* (Aug. 21, 2017), <https://english.cambodiadaily.com/editors-choice/in-charm-offensive-hun-sen-promises-workers-raises-pension-133852/>.
- 14 Press Release, Office of the High Commissioner on Human Rights, "Cambodia: U.N. Special Rapporteur calls for restoration of democracy and vibrant civil society," U.N. Press Release OHCHR/22521 (Dec. 11, 2017), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22521&LangID=E>; Press Release, Office of the High Commissioner for Human Rights, "Cambodia at a crossroads: U.N. expert calls on Government to choose path of human rights," U.N. Press Release OHCHR/22820 (Mar. 14 2018), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22820&LangID=E>.
- 15 See, *Cambodia Alliance of Trade Unions (CATU) v. Cambodia*, Case No. 3121, Complaint, [Para 159 and 139] (ILO Comm. on Freedom of Association Feb. 27, 2015), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50001:0::NO::P50001_COMPLAINT_FILE_ID:3240014; *CATU v. Cambodia*, Case No. 3121, Effect given to the recommendations of the committee and the Governing Body, ¶¶ 25, 36, (ILO Comm. on Freedom of Association June 2019), https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3998885; ILO, *supra* note 4; "Cambodia: Ongoing misuse of law to silence opponents further deepens impunity and undermines the rule of law," INT'L COMM. OF JURISTS (Oct. 18, 2017) <https://www.icj.org/cambodia-ongoing-misuse-of-law-to-silence-opponents-further-deepens-impunity-and-undermines-the-rule-of-law/>.
- 16 EU Decision, *supra* note 6, at ¶¶ 37-39 (citing, inter alia, U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Cambodia*, A/HRC/41/17, pp. 11 et seq. inter alia recommendations 110.12, 110.27, 110.29, 110.81, 110.83, 110.85, 110.87, 110.91, 110.93, 110.94, 110.96, 110.98, and 110.99 (April 5, 2019); ILO, *Observation of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)*, ILO Doc. 4023154 (2019), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4023154:NO ("The Committee must recall once again that some provisions in the LANGO contravene freedom of association rights of civil servants under the Convention, as it lacks provisions recognizing civil servants' associations' right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without interference of the public authorities, and the right to affiliate to federations or confederations.")
- 17 LAW ON ASSOCIATIONS AND NON-GOVERNMENTAL ORGANIZATIONS (Cambodia), [https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Unofficial Translation of 5th LANGO ENG.pdf](https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Unofficial%20Translation%20of%205th%20LANGO%20ENG.pdf).
- 18 *Law on Trade Union (Cambodia)*, https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=103389&p_lang=en.
- 19 *The government reported to the ILO that amendments relevant to ILO concerns had been adopted on November 26, 2019, and the ILO CEACR requested the government provide a copy of such amendments. ILO, supra note 16. On December 19, 2019, the Constitutional Council of Cambodia reportedly approved the draft law with amendments to ten articles. Niem Chheng, "CCC passes amendments on 10 articles of Trade Union Law," The Phnom Penh Post (Dec. 19, 2019), <https://www.phnompenhpost.com/national/ccc-passes-amendments-10-articles-trade-union-law>.*
- 20 See generally CODE CRIMINAL (Cambodia), https://www.unodc.org/res/cld/document/khm/criminal_code_of_the_kingdom_of_cambodia_html/Cambodia_Criminal-Code-of-the-Kingdom-of-Cambodia-30-Nov-2009-Eng.pdf (providing an English translation of the Cambodian Criminal Code).
- 21 See Cambodian Center for Human Rights, "Fact sheet: Escalation of violent repression of trade union activities," (March 2016), https://cchrcambodia.org/index_old.php?url=media/media.php&p=factsheet_detail.php&fsid=69&id=5.

prominent independent union leaders²² as well as other human rights defenders,²³ including four staff members of Cambodia's Human Rights and Development Association (ADHOC)²⁴ and a member of the National Election Committee, who were arbitrarily detained for over a year.²⁵ In a 2017 report on the globalized trend of arresting trade unionists as a tactic to control labor activism in repressive regimes, the International Trade Union Confederation (ITUC) reported that this trend was particularly evident in Cambodia and three other countries.²⁶

International observers have asserted that the threats against human rights defenders and labor activists should be understood in the context of a continuing culture of impunity in

Cambodia over recent decades, which includes political violence and anti-union discrimination.²⁷ Perpetrators of human and labor rights violations regularly go unpunished, preventing victims from obtaining justice,²⁸ as illustrated by the continued lack of timely, independent, and transparent investigations into the deaths of environmental activist Chut Wutty, political analyst Kem Ley, and several trade unionists,²⁹ including Chea Vichea³⁰ and Ros Sovannareth.³¹ The message that human rights activists may be the target of violence with little or no protection from the law contributes to a chilling effect that impedes legitimate activism and criticism of those in power.³²

The United Nations Human Rights Council has repeatedly expressed "serious concern"

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- 22 "Cambodia: End criminalization of unionists," HUMAN RIGHTS WATCH (Dec. 24, 2018), <https://www.hrw.org/news/2018/12/24/cambodia-end-criminalization-unionists#>; Yon Sineat, "Union reps charged for 'organising illegal strike,'" *THE PHNOM PENH POST* (Feb. 15, 2018), <https://www.phnompenhpost.com/national/union-reps-charged-organising-illegal-strike>; Pech Sotheary, "Workers demand release of jailed union leaders," *KHMER TIMES* (Feb. 14, 2018), <https://www.khmertimeskh.com/50108443/workers-demand-release-jailed-union-leaders/>; U.S. DEP'T OF STATE, *2017 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CAMBODIA* (2018), <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/cambodia/>. See also "Global unions demands charges against union leaders dropped," BUILDING & WOOD WORKERS' INT'L, (Nov. 23, 2018), <https://www.bwint.org/cms/global-unions-demands-charges-against-union-leaders-dropped-1229>.
- 23 David Hutt, "How Cambodia killed its unions," *ASIA TIMES* (May 2, 2018), <https://asiatimes.com/2018/05/how-cambodia-killed-its-unions/>.
- 24 Cambodia's Human Rights and Development Association (ADHOC) is an independent NGO that works on issues relating to democracy and human rights in Cambodia; ADHOC operates in Cambodia and has been active since 1991. ADHOC, *Who We Are*, <https://www.adhoccambodia.org/about-us/who-we-are/>.
- 25 Khuon Narim, "Adhoc 5 given five year suspended sentences," *KHMER TIMES* (Sep. 26, 2018), <https://www.khmertimeskh.com/536795/adhoc-5-given-five-year-suspended-sentences/>.
- 26 INT'L TRADE UNION CONFEDERATION [ITUC], *THE 2017 ITUC GLOBAL RIGHTS INDEX: THE WORLD'S WORST COUNTRIES FOR WORKERS 71* (2017), <https://www.uniontounion.org/sites/default/files/pdf/Globalrightsindex2017.pdf>.
- 27 *Cambodia: The Roots of Cambodia's persistent rights violations: Impunity of the powerful Statement to the 42nd session of the UN Human Rights Council*, LAWYERS' RIGHTS WATCH CANADA (Sept. 2, 2019), <https://www.lrwc.org/ws/wp-content/uploads/2019/09/HRC42.Cambodia.written-statements.21August2019.FINAL.LOGO-FN.pdf>.
- 28 U.S. DEP'T OF STATE, *2018 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CAMBODIA* (2019), <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/cambodia/>.
- 29 The ILO Committee of Experts expressed "deep concern" at the lack of concrete results concerning the investigations into the murders of trade union leaders Chea Vichea and Ros Sovannareth in 2004 and Hy Vuthy in 2007, and urged the authorities to bring the real perpetrators and instigators to justice in order to "end the prevailing situation of impunity in the country with regard to violence against trade unionists." ILO, *supra* note 4. In an active case against the Cambodian government that has been pending since 2004, the ILO warned that "the absence of proper investigation or redress creates a situation of impunity, which may reinforce the atmosphere of mistrust and insecurity, prejudicial to the exercise of trade union activities" and that, in relation to the investigations of murders and assaults against trade unionists that "justice delayed is justice denied." Case No. 2318, Interim Report, ¶¶ 109-110 (ILO Comm. on Freedom of Association, October 2019), https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0:NO:50002:P50002_COMPLAINT_TEXT_ID:4017574.
- 30 Erin Handley, "Panel points out labour shortcomings in study," *THE PHNOM PENH POST* (Feb. 13, 2017), <https://www.phnompenhpost.com/national/panel-points-out-labour-shortcomings-study>.
- 31 Campaign to End Impunity, "#NeverForget: Ros Sovannareth," (2017), https://www.cchrcambodia.org/our_work/campaigns/impunity-2017/lmg/profile/12-Ros-Sovannareth-en.png; CCHR, "Joint statement: CSOs call on authorities to step up the fight against endemic impunity in Cambodia" (Nov. 1, 2018), https://cchrcambodia.org/media/files/press_release/702_jccoatsutfaiice_en.pdf; "Tell Them That I Want to Kill Them": Two Decades of Impunity in Hun Sen's Cambodia," HUMAN RIGHTS WATCH (Nov. 13, 2012), <https://www.hrw.org/report/2012/11/13/tell-them-i-want-kill-them/two-decades-impunity-hun-sens-cambodia>.
- 32 Cambodian Center for Human Rights, *Impunity in Cambodia*, (Nov. 11, 2014), https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_11_02_CCHR_Briefing_Note_Impunity_in_Cambodia_ENG.pdf; LAWYERS' RIGHTS WATCH CANADA, *supra* note 27.

at the deterioration of the civil and political environment in Cambodia due to “the chilling effect” of prosecutions and the negative impact of the LANGO on civil society.³³ The Council urged the Government of Cambodia to “take appropriate measures to encourage and enable civil society, including independent trade unions and media, to play a constructive role in consolidating democratic development.”³⁴ The Council’s recommendations in the Universal Periodic Review process, as well as the ILO supervisory mechanisms, have urged the Government to amend the law on associations to bring it in conformity with the state’s obligations under the International Covenant on Civil and Political Rights (ICCPR) and ILO Convention 87 on Freedom of Association and Protection of the Right to Organize.³⁵

In the absence of the main opposition party, the Cambodia National Rescue Party (CNRP), which had been forcibly dissolved in November 2017,³⁶ the ruling Cambodian People’s Party won all 125 parliamentary seats in the national elections on July 29, 2018. The United States and European Union had previously suspended their support for the elections following the CNRP’s dissolution and the arrest of its deputy leader, Kem Sokha, on treason charges.³⁷

Cambodia’s impressive development as a location for garment production was initially based on its

reputation for having higher labor standards than competing neighboring countries. Cambodia’s stated commitment to International Labor Organization (ILO) standards and its participation in the ILO Better Factories Cambodia program made it appear to be a credible destination for responsible sourcing.³⁸ As the environment for labor activists and civil society has deteriorated, calling this reputation into question and risking Cambodia’s access to key markets, international brands have spoken out, calling on the government to respect labor rights and fundamental freedoms more generally.³⁹ The importance of concrete improvements in the human rights situation, not only as a good in itself and a legal obligation but also as a strategic choice for Cambodia’s economy, was brought out clearly in an influential 2018 Investment Policy Review of Cambodia by the Organization for Economic Cooperation and Development (OECD).⁴⁰ The report, which focuses on the concerns of the OECD countries that are the source of much of Cambodia’s foreign investment, pointedly observed that “signaling alone cannot be expected to resolve ongoing issues in Cambodia or overcome country risk perceptions.”⁴¹

Companies and investors operating in Cambodia have acknowledged the important role of human rights defenders in identifying risks or problems in their business activities and have shown support for

33 *E.g.*, Human Rights Council Res. 42/37, U.N. Doc. A/HRC/RES/42/37 at ¶¶ 25, 27 (Oct. 9, 2019); Human Rights Council Res. 36/32, U.N. Doc. A/HRC/RES/36/32 at ¶¶ 22, 23 (Sep. 29, 2017).

34 Human Rights Council Res. 42/37, *supra* note 33, at ¶ 30; Human Rights Council Res. 36/32, *supra* note 30, at ¶ 25.

35 Human Rights Council, Rep. of the Working Group on the Universal Periodic Review: Cambodia, ¶ 110.12, U.N. Doc. A/HRC/41/17 (Apr. 5, 2019); ILO, *supra* note 16 (LANGO provisions contravene freedom of association rights of civil servants including teachers).

36 “Cambodia top court dissolves main opposition CNRP party,” BBC News (Nov. 16, 2017), <https://www.bbc.com/news/world-asia-42006828>.

37 Prak Chan Thul, “Defiant Hun Sen tells U.S. to cut all aid to Cambodia,” REUTERS (Nov. 19, 2017), <https://www.reuters.com/article/us-cambodia-usa/defiant-hun-sen-tells-u-s-to-cut-all-aid-to-cambodia-idUSKBN1DJ049>; Sun Narin, “EU Cuts Cambodia Election Funding,” *VoA News* (Dec. 12, 2017), <https://www.voanews.com/east-asia-pacific/eu-cuts-cambodia-election-funding>.

38 Better Factories Cambodia began in 2001. ILO, “See Better Factories Cambodia,” https://www.ilo.org/asia/projects/WCMS_099340/lang--en/index.htm; ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT [OECD], INVESTMENT POLICY REVIEW: CAMBODIA 2018 (2018), pp. 160–61, https://read.oecd-ilibrary.org/finance-and-investment/oecd-investment-policy-reviews-cambodia_9789264309074-en [hereinafter “OECD IPR”].

39 In January 2014, following the crackdown on election protests, Puma immediately announced it would suspend production in Cambodia; Adidas also voiced concerns. Prak Chanthol, “Cambodia protesters call off rally after bloody crackdown,” REUTERS (Jan. 4, 2014), <https://www.reuters.com/article/us-cambodia-protest/cambodia-protesters-call-off-rally-after-bloody-crackdown-idUSBREA020UF20140104>.

40 The report, addressed to the RGC, noted the importance of “responsible business conduct” as a strategic choice, and that “focus on impacts and addressing environmental and social risks of business operations can be a bridge between maximising societal impacts of investment and creating a level playing field for new investors that may perceive the risks of investing as too high due to Cambodia’s position in global rankings.” OECD IPR, *supra* note 38, at 162.

41 OECD IPR, *supra* note 38, at 165.

their work.⁴² In response to charges brought against Moeun Tola, Executive Director of the Centre for Alliance of Labor and Human Rights (CENTRAL), and two other civil society activists,⁴³ brand representatives visited Cambodia. On November 1, 2018, the Fair Labor Association, American Apparel, and Footwear Association sent a follow-up letter emphasizing that “political freedoms, rule of law, and enforcement of international civil and labor rights are essential for international trade and responsible business.”⁴⁴

In response to the deteriorating civil and political situation in Cambodia, on February 26, 2018, the EU Council adopted conclusions on Cambodia urging the Cambodian government “to cease using the judiciary as a political tool to harass and intimidate political opponents, civil society, labor rights activities and human rights defenders” and invited the Commission to enhance its monitoring of the situation under its delegated authority relating to Everything But Arms (EBA) and other EU trade preferences.⁴⁵ In October 2018, a Cambodian news outlet reported that EU officials and counterparts in the RGC had started to discuss the EBA scheme, intending to find common ground and reach a positive solution.⁴⁶ On February 11, 2019, the Commission adopted a decision initiating the procedure for temporary withdrawal of tariff preferences from Cambodia and issued a notification to Cambodia.⁴⁷ On November 12, 2019, the Commission submitted a report to Cambodia on its findings and conclusions, on

which the Cambodian government commented on December 12, 2019.⁴⁸ After a year of engagement with the government, designed to help improve the situation, on February 12, 2020, the European Commission, exercising its delegated authority on behalf of the European Union under EU Regulation 978/2012,⁴⁹ temporarily withdrew Cambodia’s EBA status on certain of its products. The withdrawal was based on the government’s failure to sufficiently address the issues raised in the notification and on the findings of the report that was issued November 12, 2019, and on subsequent evaluations and assessments in light of the government’s comments and developments thereafter.⁵⁰

Despite the EU’s measured action and consideration of Cambodia’s economic development needs, including the need to diversify Cambodia’s export base and the socio-economic impact of the action, including on workers and industries,⁵¹ limiting preferential access to the EU market for certain Cambodian products risks having a serious negative impact on Cambodia’s open and export-driven economy, something of concern not only to those who depend on the industry for their livelihoods but also to the international brands who invest and source there. A senior industry expert projected that a permanent revocation of the EBA, if it were to occur, would cause negative consequences for the Cambodian garment industry for which increased trade with China could not compensate in the long run.⁵²

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- 42 Ana Zbona, “Human rights defenders and civic freedoms essential for profitable business, say major companies,” Bus. & Human Rights Resource Centre (Dec. 7, 2018), <https://www.business-humanrights.org/en/blog/human-rights-defenders-and-civic-freedoms-essential-for-profitable-business-say-major-companies/>.
- 43 Andrew Nachemson and Niem Chheng, “Three activists charged for allegedly misappropriating funds meant for Ley funeral,” *THE PHNOM PENH POST* (Jan. 18, 2018), <https://phnompenhpost.com/national/three-activists-charged-allegedly-misappropriating-funds-meant-ley-funeral>.
- 44 See Letter from Michael Posner, Board Chair, Fair Labor Ass’n. and Steve Lamar, Exec. Vice President, American Apparel & Footwear Ass’n, to Ith Sam Heng, Cambodian Minister of Labour and Vocational Training (Nov. 1, 2018), https://media.business-humanrights.org/media/documents/files/documents/2018-11-01_Thank_you_to_Minister_of_Labor-2_0.pdf.
- 45 Foreign Affairs Council of the European Union, 6416/18, Conclusions - Cambodia, adopted at its 3598th meeting (Feb. 26, 2018), Annex, ¶¶ 4, 8 <https://data.consilium.europa.eu/doc/document/ST-6416-2018-INIT/en/pdf>.
- 46 Meas Sochea, “A positive sign: Cambodian government is discussing with the EU concerning the EA, analysts,” *THE PHNOM PENH POST* (Oct. 15, 2018), <https://goo.gl/w133Yv>.
- 47 Commission Regulation 978/2012, 2019 O.J. (C55) 11, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D0212\(02\)&rid=3](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D0212(02)&rid=3).
- 48 EU Decision, *supra* note 6.
- 49 EU Reg. 978/2012, *supra* note 6.
- 50 EU Decision, *supra* note 6, at sec. 2.2.3.
- 51 *Id.* The consideration of economic development needs and socio-economic impact are required under EU Reg. 978/2012. *Supra* note 6.
- 52 Tassilo Brinzer, “Cambodian garment industry will suffer ‘negative consequences’ if EU trade deal is revoked,” *SEA GLOBE* (Oct. 12, 2018), <https://sea-globe.com/cambodia-garment-industry-suffer-eba-agreement-eu-trade-deal/>.

The Garment Manufacturers Association in Cambodia,⁵³ unions, and labor groups⁵⁴ have also expressed their serious concerns at the potential setback for Cambodia's economy should the EU decide to withdraw Cambodia's highly advantageous trade preferences. Following the EU's launch of a six-month period of intensive monitoring and engagement with the RGC to review the EBA on February 11, 2019, eight brands' associations sent another follow-up letter on April 4, 2019, to urge the RGC to set out a road map of time-bound commitments to address concerns over labor rights.⁵⁵ In May 2019, 20 international brands that source from Cambodia wrote to the Prime Minister, expressing their concern "that the labor and human rights situation in Cambodia is posing a risk to trade preferences for Cambodia" and repeating their recommendations for action that "could demonstrate real progress toward respecting trade unions and civil society" and so keep Cambodia's trade preferences in place.⁵⁶ Following the announcement of the EU decision, some of the private sector with business activities in Cambodia have expressed their concern and reportedly asked the EU to postpone the withdrawal, citing the level of unemployment that has already been induced by the pandemic.⁵⁷

53 *EU to hit Cambodia with trade sanctions, says Myanmar may follow*, REUTERS (Oct. 6, 2018), <https://www.moneycontrol.com/news/business/eu-to-hit-cambodia-with-trade-sanctions-says-myanmar-may-follow-3018871.html>.

54 David Boyle, *Cambodia Faces Potential Economic Collapse*, VOICE OF AMERICA (Oct. 10, 2018), <https://www.voanews.com/a/cambodia-faces-potential-economic-collapse/4607448.html>.

55 AAFI et. al., *Cambodia: Associations representing intl. apparel & footwear brands join letter urging govt. to address labour & human rights concerns*, Bus. & Human Rights Resource Centre (Apr. 4, 2019), <https://www.business-humanrights.org/en/cambodia-associations-representing-intl-apparel-footwear-brands-join-letter-urging-govt-to-address-labour-human-rights-concerns>. The Government provided the ILO with a roadmap on implementation of ILO recommendations concerning freedom of association and presented a progress report on its follow-up in 2019. ILO, *supra* notes 4, 16.

56 Letter from 20 international brands to Prime Minister Hun Sen, *supra* note 7.

57 See, e.g., Sok Chan & Yeshi Dema, "European companies ask EU to postpone EBA withdrawal," *KHMER TIMES* (Apr. 9, 2020), <https://www.khmertimeskh.com/711044/european-companies-ask-eu-to-postpone-eba-withdrawal/>; Poovenraj Kanagaraj, "Private sector 'regrets' EBA partial withdrawal decision," *KHMER TIMES* (Feb. 17, 2020), <https://www.khmertimeskh.com/691649/private-sector-regrets-eba-partial-withdrawal-decision/>.

IV. LEGAL FRAMEWORK FOR FUNDAMENTAL FREEDOMS, LABOR RIGHTS, AND FAIR TRIAL RIGHTS IN CAMBODIA

On paper, Cambodian domestic law provides for some human and labor rights protections, and Cambodia is a party to all major human rights conventions, as well as all eight fundamental ILO conventions.⁵⁸ However, the increased restriction and criminalization of the legitimate activities of the labor movement have been reflected in changes to the legal framework regulating fundamental freedoms and labor rights in Cambodia in recent years. As observed in 2018, “developments in law, policy and practice, including amendment of the Constitution to introduce a lèse-majesté law, have targeted critical and dissenting voices and significantly curtailed fundamental freedoms.”⁵⁹ Notably, provisions of the 2016 Trade Union Law (reportedly amended in late 2019),⁶⁰ and the Law on Associations and Non-governmental Organizations (LANGO), present significant obstacles in terms of the compliance of Cambodia’s legislation with international standards for freedom of association⁶¹ and have been highlighted as a concern for potential investors in Cambodia.⁶²

Fundamental Freedoms and Labor Rights under Cambodian and International Law

By virtue of Article 31 of the Constitution,⁶³ the rights enshrined in the United Nations Charter, the Universal Declaration of Human Rights, and all the treaties and conventions related to human rights, women’s rights, and children’s rights are directly incorporated into Cambodian law.⁶⁴ In addition to the treaties expressly referenced in Article 31, the Constitutional Council’s decision of July 10, 2007 recognized that international treaties ratified by Cambodia are considered to be law, like any national laws or the constitution.⁶⁵

1. Non-Discrimination

Trade unionists are among all persons protected by the general guarantee against discrimination in Article 26 of the ICCPR, which provides that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law” and includes protection

58 Cambodia is a party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the International Covenant on Civil and Political Rights (ICCPR) (and has signed but not ratified its Optional Protocol); the International Covenant on Economic, Social, and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; and the Convention on the Rights of the Child (CRC) and both its Optional Protocols. Cambodia has also ratified all eight fundamental conventions of the ILO, including Convention 87 on Freedom of Association and Protection of the Right to Organise and Convention 98 on the Right to Organise and Collective Bargaining.

59 Rhona Smith (Special Rapporteur on the Situation of Human Rights in Cambodia), *Rep. of the Special Rapporteur on the Situation of Human Rights in Cambodia*, ¶ 89, U.N. Doc. A/HRC/39/73 (Aug. 15, 2018).

60 See, *supra* notes 18–19 and accompanying text for details.

61 E.g., ILO, *supra* note 16; ILO CEACR, Observation on Convention 98, adopted 2019, published 109th ILC session (2021) (CEACR Observation 2019 Convention 98) https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:2284533

62 OECD IPR, *supra* note 38, at 175.

63 See Kuong Teilee, *Cambodian Constitutional Provisions on Treaties: A Story of Constitutional Evolution Beyond Rhetoric*, 1 *CAMBODIAN YEARBOOK ON COMPARATIVE LEGAL STUDIES* 1 https://harvard-yenching.org/sites/harvard-yenching.org/files/featurefiles/HYI_-_KUONG_Teilee_Cambodian_Constitutional_Provisions_on_Treaties.pdf.

64 Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007), https://www.ccc.gov.kh/admin/uploads/dec_2007_92.pdf.

65 *Id.*

from discrimination on the grounds of political opinion. ILO Convention 98 protects workers from anti-union discrimination in their employment and seeks to preserve the integrity of collective bargaining by protecting unions from “acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’ organisations.”

Article 31 of the Constitution of Cambodia provides for equality of all people before the law and enjoyment of the same rights, liberties, and duties without discrimination on specified grounds, including on the basis of political opinion.

2. Freedom of Expression and Assembly

Articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) set out the rights to freedom of expression, assembly, and association respectively. Although non-binding, the UDHR has strong political and moral force, and is generally accepted as reflecting customary international law.

Article 19(2) of the ICCPR guarantees the right to freedom of expression, which may be subject only to such restrictions as are provided by law and necessary for the limited purposes prescribed by Article 19(3).⁶⁶ Article 21 of the ICCPR protects the right of peaceful assembly, which may also be subject to certain limited restrictions.⁶⁷ Article 41 of the Constitution of Cambodia provides the right to freedom of expression and assembly, subject to certain limitations, most of which are aligned with the Covenant.

3. Freedom of Association and Labor Rights

The right to freedom of association is protected in human rights law under the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 22 of the ICCPR

recognizes the right of all people to enjoy freedom of association, including the right to form and join trade unions. It further provides:

“No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

The UN Human Rights Committee, the treaty body established under the ICCPR, has further clarified the limitations prescribed in the Covenant, including in articles 19, 20 and 22:

Where such restrictions are made, states must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.⁶⁸

Under international principles, the right to freedom of association imposes on states not only a negative duty to not obstruct the exercise of that right, but also an obligation to take positive measures to establish and maintain an environment that enables freedom of association.⁶⁹

Turning to specific protections for workers’ rights under international law, the ICESCR contains a range of explicit guarantees. Article 8 of the ICESCR protects the rights to form trade unions and join the trade union of one’s choice, subject only to the rules of the organization concerned; the right of trade unions to function freely

66 The limited purposes consist of respect for the rights or reputations of others and protection of national security or public order, public health, or morals. See International Covenant on Civil and Political Rights arts. 19(3)(a), 19(3)(b), Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

67 Restrictions to the right of peaceful assembly must be imposed in conformity with the law, and be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. See *id.* at Art. 21.

68 Human Rights Comm., General Comment No. 31, U.N. Doc. CCPR/C/GC/31 (May 26, 2004), ¶ 6. See also The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Comm’n on Human Rights, Economic and Social Council, U.N. Doc. E/CN.4/1985/4 (Sept. 28, 1984), <https://www.refworld.org/pdfid/4672bc122.pdf>.

69 Maina Kiai (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Rep. of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, ¶ 63, U.N. Doc. A/HRC/20/27 (May 21, 2012).

“subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others”; and the right to strike. Cambodia has been a member of the ILO since 1969 and has ratified all eight fundamental ILO conventions. These include Convention 87 on Freedom of Association and Protection of the Right to Organise and Convention 98 on the Right to Organise and Collective Bargaining.⁷⁰ Drafted before both the ICCPR and the ICESCR, these conventions set out the fundamental right to establish and join a union, as well as a number of more specific labor rights, obligations to take measures to ensure rights concerning freedom of association, and effective recognition of the right to collective bargaining. Under ILO Convention 87, the state must undertake to guarantee the right to freedom of association and “to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.”⁷¹ The ultimate responsibility for ensuring respect for the principles of freedom of association lies with the government, including in its national legislation.⁷²

Article 42 of the Constitution recognizes the right to create associations and political parties which “shall be determined by law.” Article 36 recognizes the right to create and participate in trade unions, the organization and functioning of which “shall be determined by law.” Article 37 provides that the rights to strike and to organize peaceful demonstrations “shall be exercised within the framework of law.” These constitutional references depend on legislation to define their scope and the protection they offer for freedom of

association, including for trade unions.

As foreseen in Article 36 of the Constitution, the organization and functioning of trade unions is further regulated by legislation. Prior to the adoption of the Trade Union Law, on May 17, 2016,⁷³ labor rights were solely governed by the 1997 Labor Law, which in principle reaffirmed the right to form unions (Article 266) and explicitly prohibited discrimination against union members (Article 279) and interference with union independence on the part of employers (Article 280). The Labor Law remains in force and continues to regulate some aspects of union activity, but in relation to registration requirements and sanctions against unions, it has been superseded by the LTU.

The Trade Union Law also explicitly recognizes the right to establish and participate in trade unions (Article 5) without discrimination (Article 6), the freedom not to join a union (Article 7), the freedom to participate in the leadership and management of a union (Article 8), and the freedom to freely elect representatives (Article 9), and also prohibits discrimination by employers against workers due to their union activities (Article 63).⁷⁴ However, other provisions of the 2016 law have been criticized for severely restricting the ability of trade unions to function effectively and independently, and hindering the rights of individuals to exercise their rights to join and participate in trade unions.⁷⁵ In particular, international organizations and local labor rights groups have alleged that the law obliges unions to undergo burdensome registration and reporting procedures to function lawfully, which makes lawful strike action more difficult and can lead to the dissolution of unions on excessively vague

70 See ILO, Ratifications for Cambodia, https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103055.

71 ILO Convention 87, articles 1, 11.

72 ILO, *FREEDOM OF ASSOCIATION: COMPILATION OF DECISIONS OF THE COMMITTEE ON FREEDOM OF ASSOCIATION*, (6th ed. 2018) [hereinafter CFA Digest], ¶¶ 45, 46, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf

73 [Law on Trade Union \(Cambodia\)](#), *supra* note 18.

74 *Id.* See also CCHR, “Factsheet: Trade Union Law,” (Aug. 2016), https://cchrcambodia.org/index_old.php?url=media/media.php&p=factsheet_detail.php&fsid=71&id=5.

75 ILO, *supra* note 16, calling for the Cambodian government to amend the LTU, particularly sections 20, 21, 29, and 38, which deal with the right to elect representatives freely with eligibility conditions left to the discretion of the unions and the right to dissolution voluntarily or through judicial channels. See also CFA Digest, *supra* note 72, at ¶¶ 424, 585, 606, and 986, discussing that formalities of registration are acceptable but cannot impede the right to establish union, eligibility conditions, and that there is a serious infringement if dissolution is done by administrative authority.

grounds.⁷⁶ ILO Convention 87 provides, *inter alia*, that workers' organizations shall "have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes" without interference from public authorities that would restrict this right or impede its lawful exercise (Article 3), and shall not be liable to dissolution or suspension by administrative authority (Article 4). Article 22 of ICCPR provides, in its paragraph 3, that its application does not prejudice the guarantees provided under ILO Convention 87.

The law obliges trade unions to register with the Ministry of Labor and Vocational Training (MLVT) to function lawfully. Unregistered unions do not enjoy the protections set out in the Trade Union Law and may be subject to onerous fines if they operate while unregistered. Article 12 enables the MLVT to deny an application for registration if it does not comply with registration requirements involving the provision of a lengthy list of documents, including names of the union's leaders, members, and statutes and regulations.

In practice, local groups have reported that the law's registration requirements have been a significant obstacle to the exercise of freedom of association in Cambodia. A 2018 report on fundamental freedoms in Cambodia found that 81.08 percent of surveyed trade unions found registration forms difficult to complete, with only 45.8 percent of monitored unions successfully registering with the Ministry.⁷⁷ Unions that still had not successfully registered reported that they had applied, but that their applications had not yet been processed due to issues such as formatting, font, and spelling. As a result, these unions allege that the constitutionally and internationally

guaranteed right of individuals to participate in trade unions has been, in effect, made conditional on the approval of government. Under international law, an organization does not need to be registered to be protected by the right to freedom of association, and where a registration procedure is necessary—for example, to access certain benefits or acquire legal capacity—international best practice is for a notification regimen to be used, rather than authorization.⁷⁸

Article 13 sets out a list of ten requirements for a union's statutes, including mandated procedures regarding strike action and a statement of the qualifications of union leaders. A union's statutes must require a quorum of 50 percent plus one of the members for a decision-making meeting on strike action, with a threshold of 50 percent plus one required to approve strike action. States must respect the right to privacy of associations under Article 17 of ICCPR and should not condition any decisions and activities of the association.⁷⁹

To remain registered, unions are obliged to supply annual financial statements and activity reports based on the union's financial records. Any update of the information required for registration (except for changes in membership) must be notified to the MLVT within 15 days of any change (Articles 17-19). Of course, trade unions should comply with any relevant Cambodian domestic law, including the provisions of criminal and taxation laws, and it may be legitimate for states to require some reporting from associations in the interests of transparency and accountability. However, any such requirements should not be arbitrary and should not be used to target associations. The justification for this heightened level of scrutiny of the financial management of trade unions under the Trade Union Law is unclear. These invasive

76 A number of recommendations made by Human Rights Council Members in the context of Cambodia's most recent Universal Periodic Review in January 2019 related to the rights of labor activists and, in particular, called for reform of the Trade Union Law. See *Responses to Recommendations*, UPR INFO (Sept. 12, 2019), https://www.upr-info.org/sites/default/files/document/cambodia/session_32_-_january_2019/2rps_cambodia.pdf. The RGC replied by "noting," but not accepting one of those recommendations, stating that "such [registration and reporting] requirements should not be seen as restriction of rights and freedoms of organizations, associations and trade unions. On the contrary, these requirements help ensure transparency and legitimacy of unions as well as their sustainability." Human Rights Council, Rep. of the Working Group on the Universal Periodic Review, ¶ 7, U.N. Doc. A/HRC/41/17/Add.1 (Apr. 5, 2019).

77 CCHR, *SECOND ANNUAL REPORT OF CAMBODIA FUNDAMENTAL FREEDOMS MONITORING PROJECT* (2018), https://cchrcambodia.org/admin/media/report/report/english/FFMP_Second%20Annual%20Report_EN.pdf.

78 Maina Kiai (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Rep. of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, ¶ 59, U.N. Doc. A/HRC/29/25 (Apr. 28, 2015).

79 Maina Kiai (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Rep. of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, ¶ 65, U.N. Doc. A/HRC/20/27 (May 21, 2012).

requirements are onerous, disproportionately interfere with the internal functioning of unions, and appear to serve no purpose other than enabling the Ministry to occupy the resources of trade unions, intimidate their members, and monitor their activities. The experience of several Cambodian NGOs threatened with suspension or dissolution for failure to comply with analogous requirements under the LANGO shows that the risk of abuse of such provisions is real.⁸⁰

Dissolution of trade union organizations is one of the severest restrictions of the principle of freedom of association, where it is not voluntary or is undertaken by independent judicial channels.⁸¹ In order to ensure that the limitations set out in the ICCPR⁸² do not violate the overriding obligation in the ICCPR to safeguard the guarantees of ILO Convention 87, dissolution should occur only in extremely serious cases, following a judicial decision so that the rights of defense are fully guaranteed.⁸³ However, as noted by the ILO Committee of Experts,⁸⁴ Article 29 of the Trade Union Law contains a number of excessively vague grounds for dissolution of trade unions and Article 65(f) makes it unlawful for a union “to agitate for purely political purposes or for their personal ambitions or committing acts of violence at the workplace and other places.” These broad and subjective terms are clearly open to abuse and could easily be manipulated

to silence organizations and individuals of whom the government disapproves. Under Article 30, a leader of a dissolved union cannot lead or be responsible for the administration of a union for five years following the date of the verdict, imposing a severe restriction on the freedom of association of such individuals.

The LANGO,⁸⁵ enacted in 2015, does not apply to enterprise-based trade unions, but contains similarly restrictive provisions as to registration, reporting, and political activities. The manner in which the law is being implemented illustrates how the law is being employed as a means to restrict civil servant unions, including teacher unions, and the activities of civil society organizations.⁸⁶ Moreover, failure to comply with the LANGO has already been invoked on a number of occasions to justify the suspension or threatened closure of NGOs or associations, and has been used to sanction the attempts of teachers to organize and establish unions.⁸⁷

Although international human rights law permits limitations of the right to freedom of association for specified purposes as prescribed by law and “necessary in a democratic society,”⁸⁸ it also prohibits the taking or application of any legislative measures that would prejudice the guarantees of ILO Convention 87.⁸⁹ States that ratify Convention 87 accept the obligation not to impose the ICCPR limitations in any way that prevents the exercise

80 Ben Sokhean and George Wright, “NDI banned, foreign staff face forcible expulsion,” *THE CAMBODIA DAILY* (Aug. 24, 2017), <https://english.cambodiadaily.com/news/ndi-banned-foreign-staff-face-forcible-expulsion-2-133964/>; Leonie Kijewski and Mech Dara, “Hun Sen: Rights organisation CCHR will not be shut down,” *PHNOM PENH POST* (Dec. 3, 2017), <https://www.phnompenhpost.com/national-politics/hun-sen-rights-organisation-cchr-will-not-be-shut-down>; Leonie Kijewski and Niem Chheng, “Equitable Cambodia allowed to reopen,” *PHNOM PENH POST* (Feb. 26, 2018), <https://phnompenhpost.com/national/equitable-cambodia-allowed-reopen>.

81 CFA Digest, *supra* note 72, paras. 979–81 and 986.

82 Maina Kiai (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Rep. of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, ¶ 75, U.N. Doc. A/HRC/20/27 (May 21, 2012) (restrictions on the freedom of peaceful assembly and association must meet three requirements: the restriction must be done in order to deal with a clear and imminent danger resulting in a flagrant violation of national law, the restriction should be strictly proportional to the legitimate aim pursued, and the restriction can only be used when a lesser restrictive would be insufficient to deal with the danger.)

83 CFA Digest, *supra* note 72, at ¶¶ 1000, 1002.

84 ILO, *supra* note 16 (calling for amendments to article 29).

85 LAW ON ASSOCIATIONS AND NON-GOVERNMENTAL ORGANIZATIONS (Cambodia), *supra* note 17.

86 See Rep. of the Office of the High Commission for Human Rights in Cambodia, *A Human Rights Analysis of the Law on Associations and Non-governmental Organisations*, (Aug. 4, 2015), p. 2, https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR_analysis_of_5th_LANGO_Eng.pdf; ILO, *supra* note 16.

87 ILO, *supra* note 16.

88 Under Article 22 of the ICCPR, the law may be imposed solely to protect national security or public safety, public order, public health or morals, or the rights and freedoms of others. Human Rights Comm., *Belyatsky et. al. v Belarus*, U.N. Doc. CCPR/C/90/D/1296/2004, ¶ 7(3) (2007).

89 ICCPR, article 22, ¶ 3.

of legitimate trade union rights and activities.⁹⁰ Contrary to Cambodia's obligations under the ICCPR and Convention 87, the Trade Union Law not only fails to pursue the permitted aims or qualify under the requirements of what is necessary in a democratic society,⁹¹ but also prejudices the guarantees of Convention 87.⁹²

Fair Trial Rights under International and Cambodian Law

The right to a fair trial is guaranteed by both international and Cambodian domestic law. Article 10 of the UDHR provides that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” The right to a fair trial is also guaranteed by the ICCPR, Article 14 of which sets out in more detail a number of subsidiary elements of the right to a fair trial. Those elements that are relevant to this case study are set out in further detail below. These treaty-based fair trial rights are incorporated into Cambodian law by virtue of Article 31 of the Constitution. As discussed below, Article 38 of the Constitution recognizes several fair trial guarantees.

1. The Right to an Independent Tribunal

Article 14(1) of the ICCPR provides that “in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” The requirement of

independence includes the actual independence of the judiciary from political interference by the executive branch and legislature. States are required to take measures to protect judges from political influence.⁹³

The Constitution makes several references to the independence of the judiciary, in Articles 51, 128, 130, and 132. The three separate laws enacted in 2014 concerning the judiciary—the Law on the Organization of the Court, the Law on the Statute of Judges and Prosecutors, and the Law on the Organization and Function of the Supreme Council of Magistracy⁹⁴—regulate the structure and functioning of the judicial branch, although they have been criticized as undermining the independence of the judiciary.⁹⁵

The Cambodian Criminal Procedure Code contains several provisions designed to ensure the independence of the judiciary. Articles 55 and 288 ensure judges cannot sit in cases in which they have already acted in another capacity, for example as prosecutor or investigating judge; Article 337 prevents interference with judicial deliberations. Article 556 ensures that sitting judges may only be challenged on certain grounds.⁹⁶

2. The Right to be Presumed Innocent

Article 14(2) of the ICCPR provides that “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” The right to be presumed innocent is fundamental to the protection of human rights and is one of the fundamental principles of a fair trial, from which states may

90 CFA Digest, *supra* note 72, ¶¶ 74, 157, 218, 230, 557, 825, 916.

91 See, EU Decision, *supra* note 4, ¶ 62 (concluding that Cambodia's use of law including LANGO does not satisfy conditions set out in article 22(2) of the ICCPR).

92 ICCPR, article 22, ¶¶ 2, 3; ILO Convention 87, arts. 1, 11.

93 Human Rights Comm., General Comment No. 32, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007), ¶ 19 [hereinafter GC 32].

94 Law, THE ARBITRATION COUNCIL, <https://www.arbitrationcouncil.org/resources/laws-regulations/law/> (last visited Oct. 1, 2020).

95 “Cambodia: Withdraw fundamentally flawed judiciary laws,” HUMAN RIGHTS WATCH (May 3, 2014), <https://www.hrw.org/news/2014/05/03/cambodia-withdraw-fundamentally-flawed-judiciary-laws>. Members of the Human Rights Council made multiple recommendations related to strengthening the independence of the judiciary in Cambodia's most recent Universal Periodic Review in January 2019. See *Responses to Recommendations*, *supra* note 83. The RGC's reply, “noting” but not accepting one of those recommendations, stated that “[t]he executive branch does not interfere in the works of judges and prosecutors. The executive body has duties to take necessary measures to ensure effective law enforcement. The three laws have determined and ensured independence of the Court especially of the judges and prosecutors. [...] The judicial reform is not subject to perfection or immediate completion. It demands constant improvements from shortcomings that may arise from the implementation process.” Human Rights Council, Rep. of the Working Group on the Universal Periodic Review, ¶ 8, U.N. Doc. A/HRC/41/17/Add.1 (Apr. 18, 2019). Cambodia's mid-term report on implementation of its UPR recommendations is due in July 2021.

96 CODE CRIMINAL art. 556 (Cambodia), http://sithi.org/admin/upload/law/2007_Criminal_Procedure_Code_in_Eng_2007.pdf.

not derogate even in times of emergency.⁹⁷

This right is asserted in Article 38 of the Constitution, which states that “the accused shall be considered innocent until the court has judged finally on the case.” Article 357 of the Criminal Procedure Code provides that “the facts shall be clear and beyond a reasonable doubt.” Article 351 of that code and Article 38 of the Constitution similarly require that, in line with international standards, any doubt should benefit the defendant. Under Article 321 of the Criminal Procedure Code, the decision of the court must be based only on the evidence that it has in the file or that has been presented at the hearing. These provisions are intended to protect the right of the accused to be presumed innocent, as well as to ensure that any convictions are in accordance with law.

The right guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, thus ensuring that the accused has the benefit of any doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.⁹⁸ The presumption not only applies to how individuals are treated in the courtroom, but also requires all public authorities to refrain from prejudging the outcome of a trial by, for example, requiring that authorities abstain from making public statements affirming the guilt of the accused. The media should avoid news coverage undermining the presumption of innocence⁹⁹ and, in some cases, the state may need to take steps to ensure that media coverage does not influence the trial.¹⁰⁰

3. The Right to be Informed of the Nature and Cause of the Charge

ICCPR Article 14(3)(a) guarantees the right of an individual “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.” This right may be fulfilled by stating the charge either orally— if it is later confirmed in writing—or in writing,

provided that the information indicates both the law and the alleged general facts on which the charge is based. In the case of trials in absentia, this provision requires that, notwithstanding the absence of the accused, all due steps have been taken to inform accused persons of the charges against them and to notify them of the proceedings.¹⁰¹ This right is implemented in part by Article 325 of the Cambodian Criminal Procedure Code, which provides that “the presiding Judge shall inform the accused of the charges he is accused of.”

This right not only ensures transparency and that individuals understand why they are being prosecuted, but is also linked to the right to adequate facilities to prepare a defense. The right to defend oneself can only be exercised effectively if accused individuals are aware of the charges of which they are accused. As a result, it follows from this right that the charges cannot be changed unless sufficient time is provided to the accused to prepare a defense to the new charges.¹⁰²

4. The Right to Adequate Time and Facilities to Prepare a Defense

Article 14(3)(b) of the ICCPR provides that “in the determination of any criminal charge against him, everyone shall be entitled [...] to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.” This provision is an application of the principle of equality of arms, which means that the same procedural rights are to be provided to all the parties unless the distinctions being made are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.¹⁰³ “Adequate facilities” must include access to documents and other evidence, including all materials that the prosecution plans to offer in court against the accused or that are exculpatory.¹⁰⁴

97 Human Rights Comm., General Comment No. 29, U.N. Doc. CCPR/C/GC/29 (Aug. 23, 2007), ¶ 11 [hereinafter GC 29].

98 GC 32, ¶ 30.

99 *Id.*

100 Human Rights Comm., *Dole Chadee et al v Trinidad and Tobago*, U.N. Doc. CCPR/C/63/D/813/1998 (1998).

101 GC 32, ¶ 31.

102 See *Pélissier & Sassi v. France*, 1999-II Eur. Ct. H.R. 279, 295.

103 GC 32, ¶¶ 13, 32.

104 *Id.* at ¶ 33.

This right is given effect in part in Articles 98 and 149 of the Cambodian Criminal Procedure Code, which ensure that lawyers are able to communicate with their clients while in detention, and Article 319, which ensures lawyers can access their clients' case files.

5. The Right to be Tried without Undue Delay

Article 14(3)(c) of the ICCPR provides that “in the determination of any criminal charge against him, everyone shall be entitled [...] to be tried without undue delay.” This provision is designed to avoid keeping persons for too long in a state of uncertainty about their fate, and, if they are held in detention during the period of the trial, to ensure that they are not deprived of their liberty for longer than necessary. It also serves the interests of justice by reducing the opportunity for evidence to become lost or destroyed and the memories of witnesses to become distorted. The right relates not only to the period from initial charge to commencement of trial, but also until the final judgment on appeal. Every stage of the process, from first instance to appeal, must take place without undue delay, and what is reasonable will depend on the circumstances of the particular case, but will take into account factors such as the complexity of the case and any unexplained periods of delay or inactivity on the part of the public authorities.¹⁰⁵

There is no equivalent guarantee in Cambodian domestic law, other than the provision in Article 38 of the Constitution, that any prosecution shall be in accordance with law. Under Article 283 of the Criminal Procedure Code, the president of the Investigation Chamber has a duty to ensure that there is no unreasonable delay in the implementation of procedures.

6. The Right to be Present at Trial and to Legal Representation

Article 14(3)(d) of the ICCPR provides that “in the determination of any charge against him, everyone shall be entitled [...] to be tried in his presence, and to defend himself in person or through legal representation of his own choosing.” Proceedings in the absence of the accused may,

in some circumstances, be permissible in the interest of proper administration of justice, that is, when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. However, such trials are only compatible with Article 14(3)(d) if the necessary steps are taken to summon accused persons in a timely manner, to inform them beforehand about the date and place of their trial, and to request their attendance.¹⁰⁶

This right is reflected in Cambodian law in Article 300 of the Cambodian Criminal Procedure Code, which provides that “the accused shall appear in person during the hearings at the court. The accused may be assisted by a lawyer chosen by himself.” In order to allow the accused to participate in a trial, the accused should receive a summons to appear at the hearing. The procedures for issuing a summons are set out in Articles 465-474 of the Criminal Procedure Code. The period between the delivery of the summons and the date to appear before the Court is 15 days if the accused resides in the same territory as the court of first instance, and 20 days if the accused resides in another territory within Cambodia. In relation to Court of Appeal hearings, Article 388 provides that “the president of the Criminal Chamber shall notify the Prosecutor General of the Court of Appeal of the hearing date” and “the Prosecutor General shall summon the accused person, the civil parties and civil responsible persons” in accordance with the same summons procedures as for a first instance trial.

7. The Right to a Reasoned Judgement

Article 14(5) of the ICCPR provides that “[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.” For an individual to be able to appeal a conviction, the individual will obviously need to have access to the first instance judgment and the reasons on which the decision was based. However, the right to reasoned judgment not only protects the accused, but also promotes transparency and accountability in judicial proceedings, as well as the legitimacy of the justice system as a whole. The right to a reasoned judgment does not require that a

¹⁰⁵ *Id.* at ¶¶ 27, 35.

¹⁰⁶ *Id.* at ¶ 36.

detailed answer be made to every argument and will vary according to the nature of the decision and the circumstances of the case.¹⁰⁷ However, it must cover all important points, including an evaluation of the evidence and the facts.¹⁰⁸

This right is protected in principle by Article 357 of the Cambodian Criminal Procedure Code, stipulating that:

[t]he judgment shall be divided into two parts: – The holding (the arguments of facts and law that led to the court’s decision) – The ruling (the decision of the court) the facts shall be clear and unequivocal. The court shall examine each of the charges and arguments presented during the trial. In the holding part of the judgment, the court shall respond to the written arguments submitted by any party. In the ruling part of the judgment, the court shall note the offense committed by the accused, the applicable law, the sentence and any civil remedy.

Business and Trade Obligations

Human rights treaties are addressed to governments and are binding on the states that choose to become parties to them. However, virtually all human rights can be impacted by the decisions and actions of non-state actors such as corporations and investors, directly or indirectly, with labor rights among the rights that are most likely to be impacted by business activities. The past ten years have seen increased recognition of the responsibility of business to respect the human

rights of individuals impacted by their business activity. In 2011, the U.N. General Assembly endorsed the U.N. Guiding Principles on Business and Human Rights,¹⁰⁹ developed by the U.N. Special Representative of the Secretary-General on human rights and transnational corporations, Professor John Ruggie. The Guiding Principles set out a tripartite framework: the existing state duty to protect against human rights abuses by third parties, including business; the responsibility of business to respect human rights, including principles concerning fundamental rights at work,¹¹⁰ to avoid infringing on the human rights of others, and to address adverse human rights impacts with which they are involved; and the responsibility of states to ensure that when such abuses occur, those affected have access to an effective remedy.¹¹¹

As explained in the Guiding Principles, a key part of operationalizing this responsibility to respect human rights is the carrying out of human rights due diligence by corporate actors.¹¹² This includes the identification of risks of human rights abuse throughout the supply chain, and since 2011, a number of international instruments, mechanisms, and policy documents have sought both to provide guidance to business enterprises in carrying out due diligence and to hold them accountable.¹¹³ For industries known to have a high risk of human rights abuses in the supply chain—including the garment, textile, and agricultural industries—a number of sector-specific guidance documents have been developed which, while non-binding, represent widely accepted international standards for conduct in these areas.¹¹⁴ Increasingly, some

107 See *Van de Hurk v Netherlands*, 288 Eur. Ct. H.R. at ¶ 61 (1994); *Higgins v. France*, 1998-I Eur. Ct. H.R. at ¶¶ 42–43.

108 See STEFAN TRECHSEL, HUMAN RIGHTS IN CRIMINAL PROCEEDINGS 107 (2006).

109 Human Rights Council Res. 17/4, U.N. Doc. A/HRC/RES/17/4 (June 16, 2011)/

110 ILO Declaration on Fundamental Principles and Rights at Work, adopted by International Labour Conference (ILC), 86th Sess., 1998, Annex revised 2010, <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> (Fundamental principles and rights at work include freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination with respect to employment and occupation.)

111 John Ruggie (Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises), *Guiding Principles on Business and Human Rights*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

112 *Id.* at ¶¶ 17–21.

113 OECD, *OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES* (2011), <http://www.oecd.org/daf/inv/mne/48004323.pdf> (adhered to by 48 OECD and non-OECD countries); OECD, *OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT* (2018), <http://mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>.

114 See 2012 FAO *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests* (<http://www.fao.org/3/i2801e/i2801e.pdf>); OECD, *OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS IN THE GARMENT AND FOOTWEAR SECTOR* (2018), <https://www.oecd-ilibrary.org/docserver/9789264290587-en.pdf?expires=1602519810&id=id&accname=guest&checksum=8049FB8FB580AB2ABD66C7404B1EF32F>; OECD, *OECD-FAO GUIDANCE FOR RESPONSIBLE AGRICULTURAL SUPPLY CHAINS* (2016) <https://www.oecd-ilibrary.org/docserver/9789264251052-en.pdf?expires=1602519973&id=id&accname=guest&checksum=03AEDA1EC2BDF07CB423D66858828829>.

jurisdictions—such as France and the Netherlands—are introducing mandatory corporate due diligence through domestic legislation, which will add greater teeth to the requirement that businesses act to address risks of human rights abuse in their supply chains.¹¹⁵

Cambodia is a location for significant amounts of foreign investment by transnational investors, and a source of both raw materials and finished products—such as garments and agricultural products. As a result, respect for human rights by business, and effective human rights due diligence by businesses that engage in activities that may impact human rights in Cambodia, is an important element of the human rights landscape in the Kingdom.

115 Béatrice Madeline, « La loi française sur « le devoir de vigilance » fait peu à peu des émules, » *LE MONDE* (May 23, 2019), https://www.lemonde.fr/societe/article/2019/05/23/la-loi-francaise-sur-le-devoir-de-vigilance-fait-peu-a-peu-des-emules_5466023_3224.html (discussing Loi 2017–399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre (1) [Law 2017–399 on the Duty of Vigilance of Parent Companies and Ordering Companies (1)], *Journal Officiel De La République Française [J.O.] [Official Gazette of France]*, Mar. 28, 2017, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>); Juliane Kippenberg, “Netherlands takes big step toward tackling child labor,” HUMAN RIGHTS WATCH (June 4, 2019), <https://www.hrw.org/news/2019/06/04/netherlands-takes-big-step-toward-tackling-child-labor> (discussing Wet van 24 oktober 2019, Stb. 2019, 401, https://www.eerstekamer.nl/behandeling/20170207/gewijzigd_voorstel_van_wet (Neth.)).

V. THE PROSECUTION OF THE SIX UNION LEADERS

Facts and Procedure¹¹⁶

The prosecutions of the six union leaders related to events that took place between December 25, 2013 and January 3, 2014 at Canadia Industrial Park, near Veng Sreng Boulevard in Phnom Penh. The events took place in the context of the mass protests against the outcome of the 2013 National Assembly elections, which had been joined by garment workers and trade unions protesting for a higher minimum wage.

At the time of the events, all six individuals were leaders of prominent independent Cambodian trade unions: Ath Thorn, of the Coalition of Cambodian Apparel Workers' Democratic Union; Pav Sina, of the Collective Union of Movement of Workers; Mam Nhim, president of the

National Independent Federation Textile Union of Cambodia; Rong Chhun, president of the Cambodian Independent Teachers Association; Yang Sophorn, president of the Cambodia Alliance of Trade Unions; and the former president of the Free Trade Union of Workers of the Kingdom of Cambodia, Chea Mony.

While some allegations were made against the six by factory owners in January 2014,¹¹⁷ the six were neither arrested nor detained at the time and no further steps were taken in relation to the alleged events for more than four years. Then, on July 2, 2018,¹¹⁸ the prosecutor of the Phnom Penh Municipal Court opened an official investigation against the six, who were officially charged with the following four offenses:

1. "Intentional violence with aggravating circumstances" under Article 218 of the Criminal Code, which carries a sentence of two to five years imprisonment and, in certain cases, a fine;
2. "Intentionally causing damage with aggravating circumstances" under Article 411 of the Criminal Code, which carries a sentence of two to five years imprisonment and, in certain cases, a fine;
3. "Threats to destroy followed by an order" under Article 424 of Criminal Code, which carries a sentence of one to two years imprisonment and, in certain cases, a fine; and
4. "Use of any means to obstruct public traffic" under Article 78 of the Law on Traffic, which carries a sentence of one month to one year of imprisonment.

116 This section includes information gathered from official and reliable third-party sources, including the decision of the Court of Appeals translated through the ABA Center's contractor, confidential interviews conducted with lead defense counsels in the cases analyzed in this report, and publicly available media reports. Contractors conducted the interviews in 2019 in person to answer factual inquiries regarding the substantive and procedural issues faced by counsel in defending their clients. The confidential interview notes and translated Court of Appeals decision remain on file at the Center.

117 In an open letter, the Garment Manufacturers Association in Cambodia alleged that the six leaders had, *inter alia*, destroyed factory property and incited workers to strike. Aun Pheap and Colin Meyn, "Amid strikes, minister raises minimum wage to \$100," *CAMBODIA DAILY* (Jan. 1, 2014), <https://english.cambodiadaily.com/news/amid-strikes-minister-raises-minimum-wage-to-100-49798/>. More than 100 factories also brought civil proceedings against the leaders. Aun Pheap, "100 factories suing unions behind strike," *CAMBODIA DAILY* (Jan. 10, 2014), <https://english.cambodiadaily.com/news/100-factories-suing-unions-behind-strike-50409/>.

118 This delay was permissible based on the statute of limitations listed under Article 10 of the Cambodian Criminal Procedure Code. The statute of limitations for misdemeanor crimes is five years, and for felonies is fifteen years. As defined by Articles 46 and 47 of the Criminal Code, a felony is a crime punishable by life imprisonment or imprisonment for more than five years, while a misdemeanor is a crime punishable by imprisonment for more than six days but less than five years.

There were 13 alleged victims, although only two of those victims filed complaints with the prosecutor at the Phnom Penh Municipal Court and became registered civil parties: Tim Vuthy and Chea Sophany. Tim Vuthy was a Veal Vong commune deputy police chief who claimed to have been directing traffic on Veng Sreng boulevard when protesters threw stones at him, seriously injuring his left eye.¹¹⁹ Chea Sophany was also a police officer, but he eventually withdrew himself from the Court of Appeals' hearing. Finally, Ken Loo, secretary general of the Garment Manufacturers Association of Cambodia, also filed a complaint for destruction of property on behalf of the factory owners and became a registered civil party.

First Instance Trial

On November 19, 2018, Phnom Penh Deputy Prosecutor wrote to five of the accused, informing them that December 7, 2018 had been set as the date for the trial. The sixth, Rong Chhun, did not receive a summons but instead received a phone call from the MLVT at short notice the day before the hearing. None of the six individuals chose to attend the trial hearing, although lawyers representing five of the individuals participated in the trial—Mam Nhim was unrepresented. The trial was held in public with no restriction on the ability of individuals to enter the courtroom, although a court clerk briefly questioned attendees.

The trial hearing took place at the Phnom Penh Municipal Court on December 7, 2018. The prosecutor made a statement setting out the charges against Yang Sophorn, Chea Mony, Pav Sina, Mam Nhem, Ath Thorn, and Rong Chhun. A clerk read out the witnesses' written statements as well as a letter from the Garment Manufacturers Association of Cambodia, the secretary general of which was a civil party to the case. The witness statements and testimonies did not place the accused at the scene of the alleged crime at the relevant time. However, the prosecutors did not produce any further evidence to show that the defendants had committed the crimes with which they were charged, nor were any witnesses

produced to support the prosecution's case.¹²⁰

Prior to the trial, the lawyers for the accused had submitted a written statement arguing that none of their clients had been at the location of the alleged events at the relevant time. No further evidence was presented by the defense at the trial hearing, and lawyers for the defense did not call or examine any defense witnesses. However, defense lawyers questioned the alleged victims and civil parties to the case, Tim Vuthy and Chea Sophany, asking whether they saw the six union leaders present at the location of the alleged crimes. Tim Vuthy and Chea Sophany said that they had not seen the six individuals at the location at the time but knew that the six are union leaders. Chea Sophany withdrew his claim for compensation during his testimony while Tim Vuthy maintained his claim as seen by observers in the court.

Given that the defendants' lawyers had already told the court that their clients denied being present at the scene of the alleged crimes, and the prosecution's witness statements as well as the victims' testimonies confirmed that they had not seen the six defendants at the location of the alleged crimes, the defense lawyers made a closing statement asking the court to drop all charges against their clients.

The verdict was announced on December 11, 2018, four days after the hearing. The judges had changed the charges against the six accused from four offences of committing violence to instigation (Article 28 Criminal Code) thereof.¹²¹ The court stated that it had found the six defendants guilty of instigation of the four offences based mainly on the witness statements and the testimonies of the victims. Each of the six union leaders received a two-and-a-half-year suspended sentence and they were ordered to pay, collectively, 35,000,000 riels (approximately US\$8,600) in compensation to the two victims who were civil parties. While the use of suspended sentences may have given the appearance of leniency, under Article 20 of the Trade Union Law in effect at the time, an individual is ineligible to act as leader of a trade union if they have been convicted of any criminal

119 Court of Appeals Decision, Cause and Parties Listing at page 1 and 2 (Annex I). [hereinafter Appeals Decision].

120 Appeals Decision, Paragraph 11.

121 See HUMAN RIGHTS WATCH, *supra* note 22.

offence.¹²² As a result, regardless of the sentence, the six defendants were effectively banned from engaging in trade union activity in the future.

All six defendants appealed the judgment. In a joint statement, 95 civil society organizations from across the globe condemned the convictions and the trial as flawed.¹²³

1. The Prime Minister's Interventions

In November 2018, before the trial date had been set, the Cambodian Prime Minister called on the courts to speed up the trials of the union leaders.¹²⁴ He also reportedly requested that the Ministries of Justice and Labor and Vocational Training (MLVT), the ministry with responsibility for labor rights and union issues, find ways to have the charges against the union leaders dropped.¹²⁵ However, as the charges brought concerned criminal offences under the Criminal Code rather than administrative violations of the Trade Union Law, the MLVT had no official role in the prosecutions.

The day after the first instance verdict was handed down, on December 12, 2018, the Prime Minister publicly commented on the outcome of the trial. The media reported that, while addressing 20,000 garment workers in Kampong Speu, the Prime Minister said that he believed three of the union leaders—Ath Thorn, Pav Sina, and Chea Mony—had not been involved in the demonstrations. The Prime Minister reportedly advised the three to appeal their convictions and said that there was evidence to show their innocence, even suggesting possible witnesses:

“Keo Remy can be a witness for Chea Mony, because at the time I received a report that forces would intervene [in the Veng Sreng protests], I called Keo Remy to tell him to instruct Chea Mony not to get involved. [...] For Ath Thorn, I sent a message via WhatsApp. For Pav Sina, I told Soy Sopheap

to not let him get involved. Therefore, I believe these three people have not been involved since the beginning.”¹²⁶

The media did not report any comments by the Prime Minister on the convictions of Yang Sophorn, Mam Nhem, or Rong Chhun.

2. Appeal Hearing

The appeal hearing took place on May 28, 2019 at the Phnom Penh Court of Appeal. Again, the judges stated, but did not describe in detail, the charges against the defendants. In stark contrast to the first instance trial, which took place before the Prime Minister's intervention, the questions posed by the appeal judges were balanced, with some reportedly in support of the prosecutor's case and others supporting the innocence of the accused. The lawyer for Ath Thorn argued, as at first instance, that his client had not been present at the location of the alleged crimes at the relevant time and that the victims and civil parties had not seen Ath Thorn at the place and time of the alleged crimes, and requested the judges to examine the written case file, which suggested that Ath Thorn was elsewhere at the time.¹²⁷ None of the other defense lawyers were notified of the hearing. Written statements of the six defendants were read, in which they denied the allegations and charges against them and stated that they were not at the location of the alleged crimes at the time.¹²⁸

Soy Sopheap is the editor-in-chief of *Dap News* and had been directly mentioned by the Prime Minister as a possible defense witness in his December 2018 remarks.¹²⁹ Soy subsequently volunteered to be a witness in the defense of Ath Thorn, testifying that at the time of the alleged events, he had asked Ath Thorn where he was, via the messaging app Telegram, and Ath Thorn replied that he was

122 Law on Trade Union, Art. 20 (Cambodia), <http://ilo.org/dyn/natlex/docs/ELECTRONIC/103389/125600/F1146872348/KHM103389%20Eng.pdf>

123 HUMAN RIGHTS WATCH, *supra* note 22.

124 Niem Chheng, “Lethal protest union leaders’ trial date set,” *PHNOM PENH POST* (Dec. 3, 2018), <https://www.phnompenhpost.com/national/lethal-protest-union-leaders-trial-date-set>.

125 Niem Chheng, “PM urges ministers to end all cases against union leaders,” *PHNOM PENH POST* (Nov. 8, 2018), <https://www.phnompenhpost.com/national/pm-urges-ministers-end-all-cases-against-union-leaders>.

126 Soth Koemsoeun, “PM: Three protest union leaders ‘innocent,’” *PHNOM PENH POST* (Dec. 13, 2018), <https://www.phnompenhpost.com/national/politics/pm-three-protest-union-leaders-innocent>.

127 Appeals decision, Paragraph 12.

128 *Id.* at 9–11.

129 Koemsoeun, *supra* note 126.

monitoring the situation of Vorn Pov, another association leader who had been arrested and sent to the Phnom Penh Municipal Court.¹³⁰ He then had another meeting at the Phnom Penh Municipal Hall.¹³¹ As a result, he could not have been present at the location of the alleged events at the time they were said to have occurred.

The prosecutor maintained the instigation charges against the six defendants and asked the trial judges to uphold the court of first instance guilty verdict.¹³² He argued that as the defendants were union leaders, they should have called on the protesting workers not to cause public disorder, and that, having failed to do so, they should be held accountable.¹³³ The thirteen written testimonies of victims and civil parties claimed in very similar terms that between December 25, 2013 and January 3, 2014, the six union leaders had incited and led violent protests, participants in which had made threats and harassed others working nearby.¹³⁴

The verdict was delivered the same day.¹³⁵ The appeal judges rejected the argument of the prosecutor and the testimonies of victims and civil parties. In the absence of any evidence supporting the guilt of the six union leaders, the Court quashed the guilty verdicts of the Phnom Penh Municipal Court and acquitted all six union leaders of all charges. The judges commented that, if the six union leaders had been at the scene of the alleged crimes at the time, the authorities and police should have found them and talked to them to find solutions to the violent protests.

Analysis

The case against the six activists violated fundamental principles of the right to a fair trial and reveals a judiciary lacking independence from the executive branch. The flawed decisions made in this case, both procedural and substantive, can be explained as having been motivated by a desire to instrumentalize the criminal justice system to intimidate and silence critical voices in the run up to the 2018 National Assembly elections.¹³⁶ The prosecution of the six individuals, which appears to have targeted them based on their work as trade union leaders,¹³⁷ constitutes discrimination on the grounds of political opinion, in violation of Article 31 of the Cambodian Constitution and Article 26 of the ICCPR in particular, as well as ILO Conventions 87 and 98 and domestic provisions that outlaw discrimination against individuals on the basis of their trade union activity.

The period of criminal process against the six union leaders, including the years in which the threat of criminal prosecution remained hanging over them before an official investigation was opened, lasted nearly five and a half years from the occurrence of the events in question until their acquittal on appeal, clearly violating the individuals' right to be tried without undue delay. In particular, replicating a method that the Government has employed against civil society and trade union activists in previous cases, the delay of more than four and a half years before the charges were brought to trial appears to have deliberately served to keep the threat of prosecution hanging over the union leaders to deter their activism.¹³⁸

130 Appeals decision, Paragraph 11–12.

131 *Id.* at pp. 7, 9, 11–12.

132 *Id.* at pp. 8, 12.

133 *Id.*

134 *Id.*

135 *Id.* at 13.

136 Int'l Comm'n of Jurists, "Cambodia: Ongoing misuse of law to silence opponents further deepens impunity and undermines the rule of law," (Oct. 18, 2017), <https://www.icj.org/cambodia-ongoing-misuse-of-law-to-silence-opponents-further-deepens-impunity-and-undermines-the-rule-of-law/>; AMNESTY INT'L, *COURTS OF INJUSTICE: SUPPRESSING ACTIVISM THROUGH THE CRIMINAL JUSTICE SYSTEM IN CAMBODIA*, (2017), p. 5, <https://www.amnesty.org/download/Documents/ASA2360592017ENGLISH.PDF>.

137 HUMAN RIGHTS WATCH, *supra* note 22.

138 In July 2017, human rights defender and land activist Tep Vanny was convicted on previously dormant charges dating back to a 2013 protest. Press release, CCHR, "CSOs call on Appeal Court to overturn the unjust conviction of land activist and human rights defender Tep Vanny; for an end to judicial harassment against her, and for her release from prison, #FreeTepVanny," (July 26, 2017), https://cchrcambodia.org/index_old.php?title=-CSOs-call-on-Appeal-Court-to-overturn-the-unjust-conviction-of-land-activist-and-human-rights-defender-Tep-Vanny&url=media/media.php&p=press_detail.php&prid=668&id=5.

The threat of prosecution has particularly weighty consequences for trade unionists as, under Article 20 of the Trade Union Law in effect at the time, an individual is ineligible to act as leader of a trade union if they have been convicted of a criminal offence. Such laws and deliberate abuse of process have been repeatedly condemned as incompatible with the principles of freedom of association.¹³⁹

Given the extremely limited evidence presented by the prosecution at trial, and that the investigation was not officially opened until July 2, 2018, it does not appear that the lengthy delay was necessary to gather evidence, nor is the case of a complexity that would require such an extended period before trial. The delay in this case served rather to undermine the interests of justice, as the recollections of witnesses may have become dimmed by time and any material evidence may no longer have been available. The activation of the charges in July 2018, ahead of the July 29, 2018 National Assembly elections strongly suggests that the intention was to further intimidate the independent labor movement as part of the wider restriction of civil society space.

The rights of the six union leaders to be present at trial, to adequate time and facilities in which to prepare their defense, and to legal representation and the right to confront witnesses were infringed by the irregularities in issuing the summonses and notifications ahead of both the first instance and appellate hearings, the absence of prosecution witnesses to cross-examine, and the conviction on charges other than those received. One defendant, Rong Chhun, did not receive a summons to appear at the first instance trial and none of the defendants received a summons for the appeal. Five of the six had no legal representation on appeal due to lack of notice of the hearing. At the appeal, only the representative of Ath Thorn participated, the other lawyers not having been notified of the hearing. During the trial at the court of first instance, only two victims and civil parties were present, while only one victim and civil party was present at the hearing of the Appeal Court,

restricting the ability of the defendants, through their lawyers, to challenge witness statements through cross-examination.¹⁴⁰

Based on the evidence presented both by the defense and the prosecutor, it is impossible to see how the first instance judges could have reached the conclusion, beyond reasonable doubt, that the six union leaders were guilty either of the crimes with which they were charged, or those of which they were convicted. Neither the witnesses in their statements nor the victims who appeared at trial were able to place any of the individuals at the location of the alleged crimes at the relevant time. In the absence of any logical basis on which the judges could have reached their conclusion as to guilt, which appears to exclude even a profound error on the part of the trial judges, one is again left with the inference that the conviction flowed from political rather than legal motivations.

One particularly egregious feature of the first instance procedure was the modification of charges by the judges during their deliberation, with the result that the six union leaders were convicted of different offences from those with which they were charged.¹⁴¹ Where the conviction does not match the indictment, the essential procedures for a fair trial are violated, including the right to be informed of the charge. By convicting the six on different charges, the trial judges radically transformed the nature of the case against them from that of a principal perpetrator to a separate offence based on secondary accessory liability. As well as violating the right of the individuals to be informed of the nature of the charge against them, this remarkable procedural step by the trial judges completely deprived the union leaders of their right to adequate time to prepare a defense that addressed the new charges. Rebutting charges of instigation would likely have required different arguments and evidence from those produced by the accused at trial. Had the judges considered that the prosecution's charges should be recharacterized, there is no reason why proceedings could not have been adjourned

139 CFA Digest, *supra* note 72, ¶ 625.

140 ICCPR, art. 14(3)(e).

141 HUMAN RIGHTS WATCH, *supra* note 22.

to allow the six accused time to prepare their defense to the new charges.¹⁴²

The evidence presented at trial was, in any case, still insufficient to make out the elements of instigation under Article 28 of the Criminal Code. For an individual to be convicted of instigation of an offence, it is necessary to show that they:

- Gave instructions or an order to commit a felony or misdemeanor; or
- Provoked the commission of a felony or misdemeanor by means of a gift, promise, threat, instigation, persuasion or abuse of authority or power; and
- The felony or misdemeanor was committed or attempted.

None of the evidence provided, either in the written witness statements or in the victim testimony, was sufficient to show beyond reasonable doubt that any of the six union leaders had given instructions or provoked the primary charged offences in this way. Moreover, there was no attempt made by the prosecution to establish who the perpetrators of the primary offences may have been, nor any attempt to demonstrate that the elements of commission or attempt to commit the alleged offences occurred.

The trial judges' vague statement that they found the defendants guilty based mainly on the witness statements and the testimonies of the victims does not satisfy the individuals' right to a reasoned judgment, as it provides insufficient detail for them to effectively appeal the conviction. Given the lack of any evidence supporting the prosecution's case, the first instance court was obliged to explain why it considered that there was evidence sufficient to justify conviction. Furthermore, the judges' statement failed to address the important question of why the charges were recharacterized to charges of instigation, and how the elements of this crime were fulfilled by the evidence presented. Given that these issues had not even

been raised at trial, it was virtually impossible for the accused or their legal representatives to understand the reasoning on which the convictions were based.

The interventions of the Prime Minister in relation to the case infringed the right of three of the six leaders to be presumed innocent until proven guilty. While the Prime Minister did not comment on the convictions of Yang Sophorn, Mam Nhem, or Rong Chhun, juxtaposed with his statement that the other three individuals were innocent, the inevitable implication was that the defendants not mentioned by him had been rightly found guilty. Given that their convictions were not yet final and were subject to appeal, and given the influence enjoyed by a senior elected official, the Prime Minister's comments clearly failed to show the restraint required of public authorities to respect the presumption of innocence.

More fundamentally, the Prime Minister's publicized attempts to influence the timing of the hearings and outcome of the appeal, as well as his calls to drop the charges against the six, demonstrate a clear disregard for the actual and perceived independence of the judicial branch, and cast serious doubt on the independence of the Cambodian criminal justice system generally and the Court of Appeal in this case in particular. The conduct of the appeal hearing, apparently organized at such short notice that there was insufficient time to notify either the defendants or their lawyers, and its hastily delivered acquittal verdict, suggest that the Prime Minister's calls were heeded. While in this case, the external influence may have served the interests of the defendants in the latter stages of the case, such attempts by the executive branch to exert pressure on the judiciary are completely unacceptable. The increased incidences of judicial harassment of human rights defenders and activists ahead of the 2018 elections show that, more often than not, the criminal justice system tends to deal harshly with the government's political opponents.¹⁴³ The

142 In a similar case before the European Court of Human Rights (ECHR), the domestic Court of Appeal had found two defendants guilty not of criminal bankruptcy, the offence with which they were charged, but of the separate offence of aiding and abetting criminal bankruptcy. *Pélessier & Sassi v. France*, *supra* note 102, at 298. The ECHR held that even if the Court of Appeal had the right to recharacterize the offences, it "should have afforded the applicants the possibility of exercising their defense rights on that issue in a practical and effective manner and, in particular, in good time." *Id.* The Strasbourg Court concluded that the applicants' right to be informed in detail of the nature and cause of the accusation against them and their right to have adequate time and facilities for the preparation of their defense had been infringed. *Id.*

143 *FORST*, *supra* note 5, at 301–05.

right to be tried by an independent tribunal is a fundamental component of the right to a fair trial under Article 14, paragraph 1 of the ICCPR. A situation in which the executive is able to control or direct the judiciary is incompatible with the notion of an independent and impartial tribunal within the meaning of Article 14 of the ICCPR,¹⁴⁴ and any conviction arising from a process in which the independence of the tribunal is in doubt will be fatally flawed.

Where trade unionists are detained or face criminal charges, their due process rights to a fair trial by an independent and impartial tribunal take on special meaning in light of the potential serious interference with the exercise of the fundamental right to freedom of association.¹⁴⁵ Taking into account the right to be presumed innocent until found guilty, it is incumbent upon the government to show that the measures it has taken are in no way occasioned by the trade union activities of the individual concerned.¹⁴⁶ The government is also responsible to ensure that freedom of association is respected by all state authorities, and that trade unionists, like anyone else, benefit from the right to due process and a fair trial.¹⁴⁷ Arrests and imprisonment in connection with trade union organization or participation in peaceful trade union activity alone constitute arbitrary detention and a serious infringement of the principles of freedom of association.¹⁴⁸

Developments in 2020

In December 2019, the Constitutional Council of Cambodia approved amendments to the 2016 Law on Trade Unions, which were previously passed unanimously by the National Assembly.¹⁴⁹ The provisions went into effect in January 2020.¹⁵⁰ The requirements for eligibility for union leadership, set forth in articles 20, 21, and 38, had been amended to remove the Khmer literacy requirement and the criminal record declaration requirement.¹⁵¹ Foreign nationals are also now permitted to lead unions without making a criminal record declaration, although Khmer literacy tests and minimum age requirements remain.¹⁵² Other amendments allow for mandatory audits if five percent of union donors request it and automatic dissolutions of unions if employers resolve wage or benefit disputes.¹⁵³ The amendments have been criticized by various civic and advocacy organizations.¹⁵⁴

However, these amendments have not ended the harassment of union leaders. Yang Sophorn, one union leader, was warned by the Labor Ministry that she was breaking the law for joining protests at a garment factory that unexpectedly closed operations.¹⁵⁵ During the COVID-19 pandemic, garment factories have been accused of targeting layoffs at workers involved with union activity.¹⁵⁶ It is also clear that the Cambodian government has not stopped the practice of catch and release. In 2020, one such leader who was arrested, detained

144 Human Rights Comm., *Olé Bahamonde v Equatorial Guinea*, U.N. Doc. CCPR/C/49/D/468/1991, ¶ 9(4) (1993).

145 CFA Digest, *supra* note 72, ¶¶ 161, 169-89.

146 *Id.* at ¶ 158.

147 *Id.* at ¶¶ 136, 166-67 (invoking the ICCPR and UDHR, and particularly noting the right to be informed of the charges brought against them, the right to have adequate time and facilities for the preparation for their defense, the right to communicate freely with counsel of their own choosing, and the right to a prompt trial before an independent judicial authority).

148 *Id.* at ¶¶ 119-125.

149 Khoun Narim, "Union Law amended," *KHMER TIMES* (Nov. 27, 2019), <https://www.khmertimeskh.com/50664409/national-assembly-approves-trade-union-law-amendments/>; Niem Chheng, "CCC passes amendments on 10 articles of Trade Union Law," *PHNOM PENH POST* (Dec. 19, 2019), <https://www.phnompenhpost.com/national/ccc-passes-amendments-10-articles-trade-union-law>.

150 DFDL, "Cambodia Legal Update, January 2020," (Jan. 31, 2020), <https://www.dfdl.com/resources/legal-and-tax-updates/cambodia-monthly-legal-update-january-2020/>.

151 *See Id.*

152 CENTER FOR ALLIANCE OF LABOR AND HUMAN RIGHTS (CENTRAL), *Analysis on the Law on Trade Unions and the Law Amending Articles 3, 17,20, 21, 27, 28, 29, 54, 55 and 59 of the Law on Trade Unions*, (Jan. 2020), https://www.central-cambodia.org/wp-content/uploads/2020/01/EN_Final_Analysis-of-TUL.pdf.

153 *Supra* note 149. *See* Chheng, *supra* note 148.

154 Amnesty International, Letter from Amnesty Int'l et. al., to Prime Minister Hun Sen, (Dec. 18, 2019), <https://www.amnesty.org/download/Documents/ASA2316042019ENGLISH.pdf>.

155 Khy Sovuthy, "Labor Ministry warns union leader for allegedly inciting workers," *CAMBOJA NEWS* (July 3, 2020), <https://cambojanews.com/labor-ministry-warns-union-leader-for-allegedly-inciting-workers/>.

156 Khy Sovuthy, "Garment factories accused of union busting under cover of Covid-19," *CAMBOJA NEWS* (May 22, 2020), <https://cambojanews.com/garment-factories-accused-of-union-busting-under-cover-of-covid-19/>.

without due process, and released, was Ms. Soy Sros. On April 2, 2020, Ms. Sros, a local union leader, was arrested for speaking out about union suspensions due to COVID-19, with the official charges being “provocation”¹⁵⁷ and “incitement to commit felonies.”¹⁵⁸ On Facebook, she posted criticisms of the factory for terminating union employment against government recommendations.¹⁵⁹ She was arrested the next day.¹⁶⁰ After being jailed for two months without trial, Ms. Sros was released due to great effort by IndustriALL Global Union.¹⁶¹

After the exoneration of the six union leaders, Rong Chhun was arrested and reincarcerated on July 31, 2020.¹⁶² The following day, Chhun was charged with “incitement to commit a felony” under Article 495 of the Cambodian Penal Code, presumably linked to statements he made about new border demarcations on the border with Vietnam.¹⁶³ After visiting the Tbong Khom province of Cambodia in July 2020, Rong Chhun shared his findings about the border demarcations on social media, finding that Cambodian farmers had lost hundreds of hectares of farming land due to new border demarcations.¹⁶⁴ On July 31, the day of his arrest, Chhun spoke with Radio Free Asia about the issue.¹⁶⁵ A group of protestors has petitioned the U.N. Office of the High Commissioner for Human Rights to intervene in the case.¹⁶⁶ Chhun’s request for bail was denied on August 26, allegedly due to concerns that he would repeat the offense that led to his imprisonment.¹⁶⁷ Chhun’s attorneys plan to appeal the case to the Supreme Court, but he remains imprisoned as of September 2020.¹⁶⁸

157 “Jailed union leader in Cambodia must be released immediately!”, INDUS. GLOB. UNION (May 18, 2020), <http://www.industrialunion.org/jailed-union-leader-must-immediately-be-released>.

158 Sovuthy, *supra* note 156.

159 *Id.*

160 “Cambodian unionist released from jail,” INDUS. GLOB. UNION (May 29, 2020), <http://www.industrialunion.org/cambodian-unionist-released-from-jail>.

161 *Id.*

162 “Cambodia: Free prominent trade union leader,” HUMAN RIGHTS WATCH (Aug. 4, 2020), <https://www.hrw.org/news/2020/08/04/cambodia-free-prominent-trade-union-leader>.

163 “Human Rights Defender Rong Chhun Arrested and Charged,” FRONTLINE DEFENDERS (Aug. 6, 2020), <https://www.frontlinedefenders.org/en/case/human-rights-defender-rong-chhun-arrested-and-charged>.

164 “Cambodia: Free prominent trade union leader,” *supra* note 162.

165 *Id.*

166 “Activists demand Rong Chhun’s release despite Hun Sen’s arrest threat,” *THE CAMBODIA DAILY* (Aug. 25, 2020), <https://english.cambodiadaily.com/politics/activists-demand-rong-chhuns-release-despite-hun-sens-arrest-threat-168303/>.

167 Kim Saron, “Rong Chhun Denied Bail,” *THE PHNOM PENH POST* (Aug. 26, 2020), <https://www.phnompenhpost.com/national/rong-chhun-denied-bail>; Radio Free Asia, “Cambodia’s Appeals Court denies bail for union leader Rong Chhun,” *THE CAMBODIA DAILY* (Aug. 27, 2020), <https://english.cambodiadaily.com/politics/cambodias-appeals-court-denies-bail-for-union-leader-rong-chhun-168365/>.

168 Saron, *supra* note 167.

VI. CONCLUSIONS AND RECOMMENDATIONS

While the acquittal of the six union leaders on appeal is welcome, they should never have been prosecuted in the first place, much less convicted at first instance. The unexplained delay in investigating the case, conviction in the absence of any persuasive evidence on charges that were changed at the last minute, and the Prime Minister's undisguised efforts to influence the timing and outcome of the case all point toward a criminal process that was politically motivated, verdicts that were a foregone conclusion, and serious interference with trade union rights. Having served their purpose of further intimidating the independent labor

movement and civil society generally ahead of the July 2018 elections, the convictions were overturned by a compliant Court of Appeal when the judicial harassment of union activists had become too politically inconvenient for the government, considering the increasing criticism from the international community and foreign investors. In part, the calculation by the Prime Minister concerning the political viability of continuing the criminal prosecution of trade union leaders may have been impacted by the European Commission's looming EBA decision concerning Cambodia's trade status.



RECOMMENDATIONS TO THE ROYAL GOVERNMENT OF CAMBODIA

As to unions and civil society activists, including the six leaders:

- Compensate the six leaders involved for any loss of income, damage to reputation, and pain and suffering, and clear them of criminal records based on wrongful convictions;
- Resolve all remaining open cases against trade union leaders without delay, including the investigation of the murders of trade union leaders committed in 2004 and 2007;
- Ensure that no criminal charges or sanctions are imposed in relation to peaceful exercise of trade union activities;
- Cease all judicial harassment of labor activists, human rights defenders, and other members of civil society.

As to judicial and law reform:

- Undertake a review of the Trade Union Law (TUL) and Law on Association and Non-governmental Organizations (LANGO) in consultation with workers' and employers' organizations with a view to identifying, and proposing for adoption, legislative amendments to bring the law into conformity with Cambodia's obligations to protect freedom of association and the right to organize and bargain collectively under international human rights law and international labor standards;
- Amend the law to authorize judges to dismiss charges promptly if they improperly criminalize protected activities involving freedoms of association and expression, and to sanction any complainant who brings a criminal complaint in bad faith, e.g. by requiring the complainant to pay the costs of the defense;
- Refrain from any action that seeks to exert influence over the judiciary, including by seeking to influence the outcomes in particular cases;
- Refrain from any statements that may compromise the appearance of independence of the judiciary or the right of the accused to be presumed innocent;
- Cease the practice of charging individuals with criminal offences that are not brought to trial within a reasonable time.

As to international cooperation:

- Engage meaningfully with the European Commission and European Union Member States with a view of agreeing on and swiftly implementing concrete reforms to ensure respect for labor rights and fundamental freedoms, notably concerning Articles 19, 21, 22, and 25 of the ICCPR; Articles 2, 3, 4, and 7 of ILO Convention 87; Articles 1 and 3 of ILO Convention 98, and Articles 7 and 8 of ICESCR;¹⁶⁹
- Implement all outstanding Universal Periodic Review (UPR) recommendations, in particular as relates to freedom of association and civil society space and ensure timely reporting for Cambodia's mid-term report in July 2021;
- Continue technical cooperation with the U.N., the ILO, and other international organizations, respond to the ILO Committee of Experts' requests for information, and cooperate with the ILO Committee on Freedom of Association with a view to resolving all pending cases.
- In concluding future bilateral trade agreements or revising existing agreements, ensure that provision is made for the protection of human rights, including labor rights.

¹⁶⁹ Discussed in EU Commission delegated Regulation amending Annexes II and IV to Regulation (EU) No 978/2012, with regard to the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No 978/2012, with respect to certain products originating in the Kingdom of Cambodia (Feb. 12, 2020), paragraphs 70–1.

RECOMMENDATIONS TO THE EUROPEAN UNION

- In the context of the ongoing review of Cambodia's EBA preferences, continue to engage with the RGC with a view to identifying concrete reforms to ensure respect for labor rights and fundamental freedoms in line with U.N. and ILO conclusions and recommendations as noted in the EU decision, and in particular, develop a monitoring system to ensure their effective implementation;
- In the context of the review of Cambodia's EBA preferences, continue to monitor the need of Cambodia to diversify its export base and the potential negative socio-economic impact of the temporary withdrawal of Cambodia's trade preferences on certain Cambodian-origin products, and make every effort to reach a solution that promotes respect for human rights and Cambodia's sustainable development;
- Building on EU Regulation 2017/821, expand legally binding supply chain due diligence obligations beyond the extractives sector to encompass all business activities in which a risk of human rights abuses is present;
- Regarding development assistance, consider greater provision of funding for judicial reform and training programs.

RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

- In bilateral contacts with the RGC or in the context of intergovernmental organizations, ensure to defend the rights and fundamental freedoms of labor activists, protect civil society space, and fair trial rights as a matter of priority;
- Continue to engage with the RGC in support of the outstanding recommendations from its UPR, in particular in the interim before its mid-term review in July 2021, and the recommendations of the ILO Committee of Experts and Committee on Freedom of Association;
- In concluding future bilateral trade agreements or revising existing agreements, ensure that provision is made for the protection of human rights, including labor rights, and monitor compliance with rights protections in bilateral agreements in effect, where they exist;
- Introduce domestic legislation to provide for legally binding supply chain due diligence obligations encompassing all business activities in which a risk of human rights abuses is present;
- Regarding development assistance, consider greater provision of funding for judicial reform and training programs.

RECOMMENDATIONS TO ALL ENTREPRISES WITH A LINK TO BUSINESS ACTIVITIES IN CAMBODIA

- Continue to engage with the RGC and leverage any influence to promote greater respect for fundamental freedoms and labor rights in Cambodia;
- Emphasize the importance to sustainable business of respect for human and labor rights, including the right to freedom of association, and emphasize the potential negative impact on future investment decisions of the continued deterioration of the political and civic environment;
- Take concrete steps to ensure that the corporate responsibility to respect human rights is fully implemented and mitigate negative human rights impacts linked to their business activities by, in particular:
 - Developing and enforcing a company policy on human rights in the supply chain;
 - Carrying out human rights due diligence to identify risks of negative human rights impacts in their supply chain, including in consultations with global and local trade unions and human rights defenders;
 - Mitigating risks of negative human rights impacts when they arise and, if necessary, withdrawing from situations in which the risk of negative human rights impacts is high;

In relation to partnerships between multinational and local business partners, firms, and other links, engage in dialogue together and use combined leverage to promote respect for labor rights and facilitate the functioning of trade unions, going beyond the requirements of Cambodian legislation, in line with international labor principles and best practices.

VII. ANNEX I:

COURT OF APPEALS DECISION (UNOFFICIAL TRANSLATION)



COURT OF APPEAL

KINGDOM OF CAMBODIA
NATION RELIGION KING

ON BEHALF OF CAMBODIAN PEOPLE
PHNOM PENH COURT OF APPEAL

Established in accordance with the Law on the Organization of Courts promulgated by Preah Reach Kram (Royal Code) No. NS/RKM/0714/015 dated July 16, 2014,

Held a public hearing on May 28, 2019 with the following participants:

Criminal Case File
No.: 1527
Dated 12-27-2018
Decision
No.: 35KrorII "Nho"
Dated 05-28-2019

The Trial Council

1. H.E. Nhuong Thul, chairman of the Council;
2. Mr. Yun Narong, counseling judge;
3. Mrs. Yet Molin, counseling judge;

REPRESENTATIVE OF THE PROSECUTION

Mr. Oem Sophan
The Hearing Clerk
Mrs. Pech Sihorn

To hold a trial regarding an appeal of criminal case file No. 1527 dated December 27, 2018 with the following participants:

1. The accused **At Thoan**, male, born on December 8, 1978, Khmer national, president of the Coalition of the Cambodian Apparel Workers Democratic Union (CCAWDU), born in Thlok village, Sdei Khor commune, Bar Phnom district, Prey Veng province, a Buddhist, holding a Master Degree in Law, currently residing at house No. 2-3G, street 26BT, Thnoat Chrum village, Sangkat Boeng Tompun, Khan Meanchey, Phnom Penh; father's name: **Paen Eang** (deceased); mother's name: **Kaen Him** (alive); wife's name: **Koy Narin**, having 4 children; previous punishment: No (not detained in prison);
- Mr. **Chim Kheang**, a defense lawyer;
2. The accused **Pao Sina**, male, born on July 1, 1980, aged 34, Khmer national, president of the Collective Union of Movement of Workers (CUMW), born in Rong Ko village, Samraong Tong commune, Samraong Tong district, Kampong Speu province, a Buddhist, holding a Bachelor Degree, currently residing at house No. 20, Veng Sreng street, Trapiang Thloeng village, Sangkat Chaom Chao, Khan Po Senchey, Phnom Penh, father's name: **Pao Seng** (deceased); mother's name: **Sok Chamroeun** (deceased); wife's name: **Ches Leakhena**, having 3 children; previous punishment: No; not detained in prison (appeal);
3. The accused **Yang Sophorn**, female, born on January 21, 1982, aged 33, Khmer national, president of the Cambodian Alliance of Trade Unions (CATU), born in Chroy Dornng village, Samraong Thom commune, Kien Svay district, Kandal province, a Buddhist, a former grade 11 student, currently

residing at house No. 13, path, Tuol Roka village, Sangkat Chak Angrekaom, Khan Meanchey, Phnom Penh, a legal person, father's name: **Bou Son** (alive); mother's name: **Yosh Pov** (alive); husband's name: **Chhun Sam On**, having 2 children; previous punishment: No; (not detained in prison);

4. The accused **Morm Nhem**, female, aged 43, Khmer national, president of the National Independent Federation of Textile Unions of Cambodia (NIFTUC), born in Russey Srok village, Russey Srok commune, Kampong Trach district, Kampot province, a Buddhist, currently residing along North Bridge street (down a path), Sangkat Toek Thla, Khan Sen Sok, Phnom Penh, father's name: **Morm Yun** (alive); mother's name: **Vaen Roeuk** (alive); husband's name: **Mean Sina**, having 2 children; previous punishment: No; (absconded);
5. The accused **Chea Mony**, male, born on August 28, 1969, aged 45, Khmer national, president of the Free Trade Union of Workers of the Kingdom of Cambodia, born in Po Leu village, Traey Sla commune, S'ang district, Kandal province, a Buddhist, holding a Bachelor Degree in Chemistry, currently residing at house No. 16A, street No. 360, Sangkat Boeng Keng Kang 3, Khan Chamkarmon, Phnom Penh, father's name: **Chea Puth Lang** (deceased); mother's name: **Roas Reth** (deceased); wife's name: **Nguon Ngech Muoy**, having 2 children; previous punishment: No; (not detained in prison);
6. The accused **Rong Chhun**, male, born on 15 August 1969, aged 45, Khmer national, president of the Cambodia Independent Teachers' Association, born in Chong Koh Toch village, Ta Loan commune, S'ang district, Kandal province, a Buddhist, holding a Bachelor Degree in Mathematics, currently residing at house No. 25QE0, streets No. 173+167, Sangkat Tuol Svay Prey 1, Khan Chamkarmon, Phnom Penh, a legal person, father's name: **Lor Rong** (deceased); mother's name: **Doeur Srey** (deceased); single; previous punishment: No; (not detained in prison);

Being charged with: aggravated intentional violence and destruction, threats of destruction, and obstruction of public traffic committed in front of Canadia Industrial Park on Veng Sreng Street, in Trapiang Thloeng village, Sangkat Chaom Chao, Khan Po Senchey, Phnom Penh, between December 25, 2013 and January 3, 2014.

The criminal offenses set forth to be condemned in accordance with Articles 218, 411, 424 of the Criminal Code, and Article 78 of the Traffic Law.

And the civil party named **Khen Lou**, male, born on September 2, 1974, aged 40, Singaporean national, representative of 520 garment and shoe factories, currently residing at house No. 175, Neru street (215), Sangkat Psar Derm Kor, Khan Tuol Kork, Phnom Penh;

The aggrieved party and civil party named **Toem Vuthy**, male, aged 44, a deputy chief of Veal Vong Administrative Police Post;

The aggrieved party and civil party named **Chea Sophany**, male, aged 30, Khmer national, currently residing at house No. 119, street 146, Sangkat Psar Apt. 2, Khan Tuol Kork, Phnom Penh;

The aggrieved party named **Sun Phalla**, male, aged 43, Khmer national, currently residing at house No. 59E₁, street 130, group 40, Sangkat Psar Kandal 1, Khan Daun Penh, Phnom Penh;

The aggrieved party named **Thoeun Bunthorn**, male, aged 30, Khmer national, currently residing in Kruos village, Sangkat Samraong, Khan Prek Phnov, Phnom Penh;

The aggrieved party named **Huot Chann Yarann**, male, aged 54, Khmer national, currently residing at house No. 74C, street 384, Sangkat Tuol Svay Prey 2, Khan Chamkarmon, Phnom Penh;

The aggrieved party named **Pin Sokkheng**, male, born in 1968, Khmer national, currently residing in Kok Khlong, Sangkat Phnom Penh Thmey, Khan Sen Sok, Phnom Penh;

The aggrieved party named **Chhoeun Phalla**, male, born on 18 August 1985, Khmer national, currently residing at house No. 25D, street 227, group 3, Sangkat Boeng Salang, Khan Tuol Kork, Phnom Penh;

The aggrieved party named **Uk Sambath**, male, born on February 1, 1974, Khmer national, currently residing at house No. 36, street 374, Sangkat Tuol Svay Prey 1, Khan Chamkarmon, Phnom Penh; The aggrieved party named **Chhean Sarith**, male, aged 43, Khmer national, currently residing at house No.: N/A, street 21B, Slaeng Roloeung, Sangkat Toek Thla, Khan Sen Sok, Phnom Penh;

The aggrieved party named **Heang Sokchea**, male, born in 1985, Khmer national, currently residing in Neakavoan pagoda;

The aggrieved party named **Hai Vet**, male, born in 1970, Khmer national, currently residing at house No. 477, street 271, Sangkat Psar Derm Thkov, Khan Chamkarmon, Phnom Penh; The aggrieved party named **Moch Sen**, male, born in 1959, Khmer national, currently residing in Samraong Administrative Police Post, Khan Sen Sok, Phnom Penh;

The aggrieved party named **Sok Bunlai**, male, born in 1959, Khmer national, currently residing at house No. 31, path, Sangkat Tuol Snagke, Khan Russey Keo, Phnom Penh;

The aggrieved party named **Saom Dina**, male, born in 1968, Khmer national, currently residing at house No. 295, path, Sangkat Stueng Meanchey, Khan Meanchey, Phnom Penh;

The aggrieved party named **Nguon Moeun**, male, aged 40, an officer of Psar Derm Kor Administrative Police Post;

According to appeal transcripts No. 844 dated December 12, 2018 by **Art Thun**, No. 859 dated December 19, 2018 by **Pao Sina**, No. 69 dated 24 January 2019 by **Morm Nhem**, No. 16 dated 09 January 2018 by **Rong Chhun**, and No. 09 dated 08 January 2019 by **Chea Mony** appealing against criminal judgment No. 3588 “Do” dated 11 December 2018 by Phnom Penh Court of First Instance on the whole content of the Decision;

The facts are as follows:

On December 25, 2013 and on the following days until January 3, 2014, 5 trade unions and 1 association led by **Art Thun**, president of Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU), president of the National Independent Federation of Textile Unions of Cambodia, **Pao Sina**, president of the Collective Union of Movement of Workers, **Chea Mony**, president of the Free Trade Union of Workers of the Kingdom of Cambodia, and **Rong Chhun**, president of the Cambodia Independent Teachers’ Association, incited and led a group of anarchists along with factory workers in the forms of threats and disturbance which affected the right of workers to voluntarily perform their work in the garment factories and used microphones to shout loudly in front of factories and along public roads in front of Canadia Industrial Park located on Veng Sreng street in Trapiang Thloeng village, Sangkat Chaom Chao, Khan Po Senchey, Phnom Penh, which caused traffic jams for several hours. While doing illegal and tumultuous activities by a group of anarchists led by leaders of the above mentioned 5 trade unions and the president of the Cambodia Independent Teachers’ Association, they committed violence and threatened that they would destroy the properties of the employers and the factories if the factories did not agree to increase the monthly minimum wage to 160 dollars and they would not allow the workers to come to work even if those workers voluntarily come to work. After that, because the situation became more and more tense, police forces from all *Khans* [districts] led by their respective superiors led their forces to coordinate and organize the order; however, a group of anarchists led by leaders of the 5 trade unions and the president of the Cambodia Independent Teachers’ Association (CITA) threw stones, pipes, and Molotov cocktails to the police and some of them used slingshots to shoot at the police causing mild

and severe injuries to many of the police. Activities of leaders of the 5 trade unions and the president of CITA association as well as their partisans caused severe damages to these garment and shoe factories that are members of GMAC as below:

1. The factories were closed and were not able to meet their work targets and production chains; the traffic was obstructed making it impossible for the factories to meet the demands to transport goods for their respective orders;
2. The factories were punished and fined by their respective customers;
3. The factories did not receive payments from their orders because they did not deliver the final product orders;
4. The factories lost millions of dollars due to labor costs to be paid to their workers during the demonstration between the days that workers did not come to work and the days that those workers destroyed the factories' properties.

Having seen criminal judgment No. 3588 "Do" dated December 11, 2018 by Phnom Penh Court of First Instance with the content of the decision as follows:

1. Confirm charges against the following accused:
Art Thun, male, aged 36, Khmer national;
Morm Nhem, female, aged 43, Khmer national;
Pao Sina, male, aged 34, Khmer national;
Chea Mony, male, aged 45, Khmer national;
Rong Chhun, male, aged 45, Khmer national;
Yang Sophorn, female, aged 33, Khmer national

For the charges of aggravated intentional violence and destruction, threats of destruction, and obstruction of public traffic to the charges of initiating aggravated intentional violence and destruction, threats of destruction, and obstruction of public traffic committed in front of Canadia Industrial Park on Veng Sreng street, in Trapiang Thloeng village, Sangkat Chaom Chao, Khan Po Senchey, Phnom Penh between December 25, 2013 and January 3, 2014 - the criminal offenses set forth to be condemned in accordance with Articles 28, 218, 411, 424 of the Criminal Code, and Article 78 of the Traffic Law.

2. Condemn:

- 2.1 **Art Thun**, male, aged 36, Khmer national, to prison for 2 years and 6 months, but the punishment is without effective imprisonment in accordance with Articles 106, 107, and 108 of the Criminal Code;
- 2.2 **Morm Nhem**, female, aged 43, Khmer national, in prison for 2 years and 6 months, but the punishment is without effective imprisonment in accordance with Articles 106, 107, and 108 of the Criminal Code;
- 2.3 **Pao Sina**, male, aged 34, Khmer national, in prison for 2 years and 6 months, but the punishment is without effective imprisonment in accordance with Articles 106, 107, and 108 of the Criminal Code;
- 2.4 **Chea Mony**, male, aged 45, Khmer national, in prison for 2 years and 6 months, but the punishment is without effective imprisonment in accordance with Articles 106, 107, and 108 of the Criminal Code;
- 2.5 **Rong Chhun**, male, aged 45, Khmer national, in prison for 2 years and 6 months, but the punishment is without effective imprisonment in accordance with Articles 106, 107, and 108 of the Criminal Code;
- 2.6 **Yang Sophorn**, female, aged 33, Khmer national, in prison for 2 years and 6 months, but the punishment is without effective imprisonment in accordance with Articles 106, 107, and 108 of the Criminal Code;

From the charges of initiating aggravated intentional violence and destruction, threats of

destruction, and obstruction of public traffic committed in front of Canadia Industrial Park on Veng Sreng street, in Trapiang Thloeng village, Sangkat Chaom Chao, Khan Po Senchey, Phnom Penh between December 25, 2013 and January 3, 2014 - the criminal offenses set forth to be condemned in accordance with Articles 218, 411, 424 of the Criminal Code, and Article 78 of the Traffic Law,

3. Order **Art Thun, Morm Nhem, Pao Sina, Chea Mony, Rong Chhun, and Yang Sophorn** to collectively pay for the following damages:

3.1 Pay for medical costs and punitive damages to the aggrieved party and civil party named **Chea Sophany** the amount of 5,000,000 Riels (five million Riels). Any claim exceeding this amount shall be rejected;

3.2 Pay for medical costs and punitive damages to the aggrieved party and civil party named **Toem Vuthy** the amount of 30,000,000 Riels (thirty million Riels). Any claim exceeding this amount shall be rejected;

This judgment is publicly tried on December 7, 2018 in the presence of the aggrieved party **Toem Vuthy**, the trail lawyer of the absentee - the accused **Art Thun** (but considered as in praesentia) and in absentia of the accused **Morm Nhem, Pao Sina, Chea Mony, Rong Chhun, and Yang Sophorn**, the aggrieved party and civil party **Chea Sophany**, the civil party **Khen Lou**, representative of garment and shoe factories, and publicly announced on December 11, 2018 without prejudice and appeal in the limitation of the law.

Having seen the case report dated January 8, 2018 by the Court of Appeal;

Having seen the conclusion dated May 27, 2019 by the prosecutor-general of the Court of Appeal;

Having seen the order assigning the composition of the trial council No. 19 Dor.Kor.U.19 dated May 10, 2019 by the Court of Appeal,

AT THE HEARING

Pao Sina, the accused (absent);
Art Thun, the accused (absent);
Yang Sophorn, the accused (absent);
Morm Nhem, the accused (absent);
Chea Mony, the accused (absent);
Rong Chhun, the accused (absent);
Soam Dina, the civil party (absent);
Sok Bunlai, the civil party (absent);
Moch Sen, the civil party (absent);
Hai Vet, the civil party (absent);
Heang Sokchea, the civil party (absent);
Chhean Sarith, the civil party (absent);
Uk Sambath, the civil party (absent);
Pin Sokkheng, the civil party (absent);
Chhoeun Phalla, the civil party (absent);
Huot Chann Yarann, the civil party (absent);
Thoeun Bunthorn, the civil party (absent);
Sun Phalla, the civil party (absent);
Chea Sophany, the civil party (absent);
Khen Lou, the civil party (absent);
Chairman of the council reading the report;

Toem Vuthy responded that “My name is **Toem Vuthy**. I am the chief of Veal Vong Administrative Police Post in Khan 7 Makara. On January 3rd, 2014, at nearly one o’clock. H.E. **Mork Chito** instructed me to organize the traffic flow and organize the order on Veng Sreng Street because demonstrators used a car to block the street which caused a traffic jam for several hours. As soon as I arrived at the place, the demonstrators threw stones and used slingshots to hit me and my co-workers causing an injury in my

eye. At that time, my co-workers took me to Sen Sok Clinic. Because the condition of my eye injury was severe, I was transported to be hospitalized in Vietnam. I was hospitalized for three months until my eye recovered. And my eye remains blind until today. It was about 1 o'clock and I was not sure if there was any of presence of these trade unions leaders. Because I was urgently instructed, I did not contact these trade unions leaders. I have only one case which occurred on [January 3rd, 2014] but I don't have any other cases. I decided to claim for damages the amount of thirty million Riels. I don't have any request but I would like the case to be decided by Phnom Penh Court of First Instance."

Soy Sopheap responded that "I volunteered to be a witness in this hearing. My name is **Soy Sopheap**, aged 45, the owner and director of DAP Media Center, currently residing at house No. 57, street 480, Sangkat Tuol Tompoung, Khan Chamkarmon, Phnom Penh, having phone No. 012819005. At the time this case occurred I was a news reporter. It was the day that **Vorn Pov** was sent to the court. I called Mr. **Art Thun**. At that time he told me that he went to the court to see **Vorn Pov**. I continued calling him both in the morning and in the afternoon. He told me that he was at Phnom Penh Court of First Instance, attending a meeting at the Municipal Hall, and then I stopped calling him. During those days, when I called him, he was at the Phnom Penh Court of First Instance and later at the Municipal Hall. I don't know anything other than this. Regarding **Vorn Pov**, on the day that I called him, he was busy observing the transportation of **Vorn Pov** to the court. The communication between me and **Art Thun** was only for the purpose of collecting news but I was not sure about the relationship between **Art Thun** and **Vorn Pov**; I did not know why he went to see **Vorn Pov**.

The clerk read the responses of the accused **Art Thun**;
The clerk read the responses of the accused **Pao Sina**;
The clerk read the responses of the accused **Chea Mony**;
The clerk read the responses of the accused **Pao Sina**;
The clerk read the responses of the accused **Rong Chhun**;

Representative of the Prosecutor-General concluded that regarding this case, after listening to the responses of all the accused parties, they all denied the charge against them; however, they are all leaders of the trade unions, so they must be responsible for the workers meaning that they should have told those workers to stop. On the other hand, he did not forbid these workers, making it easy for them to carry out a demonstration in an anarchic manner, causing turmoil, insecurity, and severe damages. As a result, the decision of Phnom Penh Court of First Instance is appropriate and should be kept the same.

Mr. **Chim Kheang**, a defense lawyer for **Art Thun**, hereby makes a defensive conclusion as follows: As a matter of fact, my client did not commit an offense as he has been charged with and the decision of the Court of First Instance through Criminal Judgment No. 8588 "Do" because in fact between December 25th, 2013 to January 3rd, 2014 was when workers claimed the increase of their monthly wages according to what was determined by the Ministry. Consequently, this shall be the responsibility of their own groups but not the responsibility of the above mentioned leaders of the trade unions because the actions arose out of the willingness of each of the workers but not due to my client's idea, it was not initiated or led by my client. What is being determined in Article 28? Therefore, my client did not do or initiate any action. In the case file, nothing shows that my client initiated, incited, or led the workers to commit this violence. As mentioned by **Toem Vuthy**, he did not see my client at the place. In short, the decision of the Court of First Instance is made without reviewing the evidence. And now I would like to request the council to review the evidence submitted. The charges so far are all reasonable doubts. According to Article 38 of the Constitution, the accused shall have the benefit of any reasonable doubt and Article 350 of the Criminal Code also means to give the benefit to the accused. The Court is hereby requested to reject the Criminal Judgment No. 3588 "Do" dated December 11, 2018 by Phnom Penh Court of First Instance and decide to drop any charge against my client."

After having listened to the responses of the accused party;
After having listened to the responses and request of the aggrieved party;

After having listened to the conclusion of the representative of the Prosecutor-General;
After having listened to the conclusion of the defense lawyer of the accused party;
After having reviewed all relevant documents in detail;
After having discussed properly according to the law,

THE COURT OF APPEAL UNDERSTANDS THAT:

1. a. Appeal dated December 12 , 2018 by **Art Thun**;
- b. Appeal dated January 24, 2019 by **Morm Nhem**;
- c. Appeal dated December 19, 2018 by **Yang Sophorn**;
- d. Appeal dated December 18, 2018 by **Pao Sina**;
- e. Appeal dated January 16, 2019 by **Rong Chhun**;
- f. Appeal dated January 8, 2019 by **Chea Mony**;

Appealing against Criminal Judgment No. 3588 “Do” dated December 11, 2018 by Phnom Penh Court of First Instance on the whole content of the Decision is made within the limitation of law; the Appeal Court can accept to hold a trial according to Article 382 of the Criminal Code of Procedures.

2. The accused **Art Thun, Morm Nhem, Yang Sophorn, Pao Sina, Rong Chhun, and Chea Mony** were absent at the hearing; however, the Appeal Court can hold the hearing in absentia of the accused according to Articles 362 and 369 of the Criminal Code.
3. According to the responses of the accused **Art Thun**, he clarified that “I am a president of Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU). Regarding the facts charged against me leading to the injuries of the police and obstruction of public streets in front of Canadia Industrial Park between December 25, 2013 and January 3, 2014, I did not know about this because on December 28, 2013 I worked in the office and on the morning of January 3, 2014, I was observing the case file of the 13 accused in Phnom Penh Court of First Instance until 11:00 am and attended a meeting with H.E. **Khuon Sreng** at the Phnom Penh Municipal Hall until about 3:00 pm. I have never had a meeting with the 5 leaders of the trade unions including **Rong Chhun, Morm Nhem, Yang Sophorn, Pao Sina, and Chea Mony**; however, I used to meet with them in the meeting at the Ministry of Labor and at Phnom Penh Municipal Hall.”
4. According to the answers of the accused **Pao Sina**, he clarified that “Between December 25, 2013 and January 3, 2014 I was at my workplace located at house No. 15 on Veng Sreng Street in Trapiang Thloeng village, Sangkat Chaom Chao, Khan Po Senchey, Phnom Penh. On December 27, 2013, I attended a meeting at the Office of the Ministry of Labor and talked about the protest for an increase of their monthly wage by workers. On December 28, 2013, I was in front of the Ministry of Labor observing the gathering of workers who were protesting for an increase of their monthly wage. On December 29, 2013 (Sunday), I relaxed at home. On December 30, 2013, I attended a meeting invited by the Ministry of Labor to talk about the same issue of the monthly wage. On December 31, 2013, I was in front of the Ministry of Labor observing the workers who were protesting for the same wage increase. On January 1, 2014, the International New Year’s Day, all workers took a holiday. On January 2, 2014, I and other trade union leaders organized a press conference about the stand of workers in protesting for an increase of their wage at Baitong Restaurant. On the morning of January 3, 2014, I was renewing my passport and in the afternoon, I organized a meeting related to other conferences. I have witnesses such as workers, and representatives of organizations observing my activities. I did not order anyone to use a car to block the street between December 25, 2013 and January 3, 2014 in front of Canadia Industrial Park because I don’t have any members in the place. As for **Art Thun, Rong Chhun, Chea Mony, Morm Nhem, and Yang Sophorn**, I know them because we used to have meetings together at the Ministry of Labor, but we did not gather at the place of the incidents.”
5. According to the answers of the accused **Chea Mony**, he clarified that “I am the president of the Free Trade Union of Workers of the Kingdom of Cambodia located at house No. 16A, street No. 360,

Sangkat Boeng Keng Kang 3, Khan Chamkarmon, Phnom Penh. On December 25, 2013, the Labor Advisory Committee announced that the monthly wage of workers was 95 dollars a month and other radio stations also announced the same, leading workers to protest against the decision. After that, on the December 30 or 31, 2013, H.E. **If Samheng** decided to add another 5 dollars to make it 100 dollars a month; however, the workers still did not agree to this - they wanted it to be 160 dollars a month. All charges against me are not true because between December 25, 2013 and January 3, 2014, I never came to the place of the incidents but I was in my office all the time. I have witnesses this. These witnesses include the staff working with my wife. They knew that I was in the office all the time during that day. My members did not manage those anarchists. During the incidents, I never met with **Art Thun, Rong Chhun, Morm Nhem, Yang Sophorn, and Pao Sina.**”

6. According to the answers of the accused **Rong Chhun**, he clarified that “I am the president of the Cambodia Independent Teachers’ Association. Regarding what the prosecutor is charging me, it is not true because between December 25, 2013 and January 3, 2014 I had never been to Veng Sreng Street and Canadia Industrial Park. I was not involved with these workers and did not incite them to commit any offense. I would like to request not to disclose where I was between December 25, 2013 and January 3, 2014. I joined the workers on behalf of the association president in the protest for a wage increase to 160 dollars a month. I stuck to a stand for non-violence and did not incite those local workers to commit violence against others. I am an advocate who has been observing the garment workers’ protest for wage increase even though I am a president of the Cambodia Independent Teachers’ Association covering teachers from kindergarten level to higher education level. During the incidents, I did not meet with the workers and did not know that the police got injured; however, I knew that there were several workers who got injured, 5 of them were killed, and one of them lost.”
7. According to the answers of the accused **Yang Sophorn**, she clarified that “I am the president of the Cambodian Alliance of Trade Unions (CATU). Regarding what is charged against me, I did not commit this because between December 25, 2013 and January 3, 2014 I had never been to Veng Sreng Street and Canadia Industrial Park. If I want to hold a meeting with my members, I usually hold it at the office but not at a public place. As for what the workers have been protesting for, I have always been observing it and getting involved in resolving the issue with the Ministry of Labor. I did not incite the workers or any of my local members to commit an offense as what is being charged by the prosecutor. I used to have meetings with Mr. **Art Thun**, Mr. **Morm Nhem**, and Mr. **Rong Chhun** for two or three times but I have never seen Mr. **Chea Mony**. I was not present at the scene, and the Cambodian Alliance of Trade Unions does not have any office along Veng Sreng Street and Canadia Industrial Park.”
8. According to the responses of the aggrieved parties and civil parties including **Khen Lou, Chea Sophany, Huot Chann Yarann, Sun Phalla, Thoeun Bunthorn, Pin Sokkheng, Chhoeun Phalla, Uk Sambath, Chhean Sarith, Heang Sochea, Hai Vet, Sok Bunlai, Moch Sen**, they responded similarly that “Between December 25, 2013 and January 3, 2014, in front of Canadia Industrial Park on Veng Sreng street, in Trapiang Thloeng village, Sangkat Chaom Chao, Khan Po Senchey, Phnom Penh, there were representatives of 5 trade unions and the Cambodia Independent Teachers’ Association led by the accused parties including **Art Thun, Morm Nhem, Pao Sina, Chea Mony, Yang Sophorn, and Rong Chhun**, incited and led a group of anarchists and factory workers in the form of threats and disturbance which affected the right of workers to voluntarily perform their work in the garment factories and used microphone to shout loudly in front of factories and along public roads which caused traffic jams for several hours. While doing illegal and tumultuous activities led by leaders of the above accused, they committed violence and destroyed the properties of the employers and the factories in the protest for an increase of a minimum wage of 160 dollars a month and they did not allow the workers to come to work even if those workers voluntarily wanted to come to work. This led to severe violence and damage to a large amount of the factories’ properties. However, because the situation became more and more tense, police forces from all districts led their force to coordinate with groups of workers in order to stop those illegal activities, but all the groups of workers did not listen to the police and they even gathered armed with wooden sticks, pipes, stones, and Molotov

cocktails fighting and throwing at the police causing injuries to many of them.”

By reviewing the responses of the aggrieved parties and civil parties charging all the accused, during the violence, the police came to negotiate with groups of workers, but as those workers were led by the above accused as confirmed by the aggrieved parties, then the police force would have negotiated with the above accused who were the leaders of the trade unions which may have led to solutions; therefore, there is no proof to show that the above accused were present at the scene.

9. The witness **Soy Sopheap** clarified at the hearing by the Appeal Court that “On January 2, 2014, I called Mr. **Art Thun** because I am a news reporter. He told me on the phone that he was at the Phnom Penh Court of First Instance to observe the transportation of the accused **Vorn Pov** to the Phnom Penh Court of First Instance, and on January 3, 2014, I called Mr. **Art Thun** again. He told me that he was busy in a meeting at the Phnom Penh Municipal Hall. This answer is consistent with the answer given by the accused **Art Thun**, so the Council of the Appeal Court may take this into consideration.”
10. According to the responses of the accused **Art Thun, Yang Sophorn, Pao Sina, Rong Chhun, and Chea Mony**, they clarified that “During the event, between December 25, 2013 and January 3, 2014, they were not present at the scene and they did not do any anything to incite the workers or led them to commit any offense charged by the prosecutor.”
11. In the fact regarding the charges to the accused **Art Thun, Morm Nhem, Pao Sina, Chea Mony, Yang Sophorn, and Rong Chhun**, there is no proof or witnesses to charge them. The Phnom Penh Court of First Instance charged the accused based on the answers of the civil parties and the aggrieved parties who clarified that the offense arose under the charges of incitement and leading the workers by the accused; however, based on the above considerations, the Council has already rejected the evidence to charge the accused.
12. As for this case, the representative prosecutor concluded that based on the reading of the answers of all of the accused, they all have denied the charges against them; however, they are all leaders of the trade unions, so they must be responsible for the workers meaning that they should have told those workers to stop. On the other hand, they did not forbid those workers, making it easy for them to hold demonstration in an anarchic manner, causing turmoil, insecurity, and severe damages. As a result, the decision of Phnom Penh Court of First Instance is appropriate and should be kept the same. This decision cannot be reconsidered by the Council because, based on the above consideration, there is no evidence or witnesses to charge the accused **Art Thun, Morm Nhem, Pao Sina, Chea Mony, Yang Sophorn, and Rong Chhun**.
13. The defense lawyer for **Art Thun**, made a defensive conclusion that “As a matter of fact, my client did not commit the offense that he is being charge with and the decision of the Court of First Instance through the Criminal Judgment No. 8588 “Do” because the fact is that between December 25th, 2013 to January 3rd, 2014 was when workers claimed an increase of their monthly wages according to what was determined by the Ministry. Consequently, this shall be the responsibility of their own groups but not the responsibility of the above mentioned leaders of the trade unions because the actions arose out of the willingness of each of the workers but not as my client’s idea, not being initiated or led by my client. What is being determined in Article 28? Therefore, my client did not do or initiate any action. In the case file, nothing shows that my client initiated, incited, or led the workers to commit the violence. As mentioned by **Toem Vuthy**, he did not see my client at the place. In short, the decision of the Court of First Instance is made without reviewing the evidence. And now I would like to request that the council reviews the evidence submitted. The charges so far are all reasonable doubts. According to Article 38 of the Constitution, the accused shall have the benefit of any reasonable doubt and Article 350 of the Criminal Code also gives the benefit to the accused. The Court is hereby requested to reject the Criminal Judgment No. 3588 “Do” dated December 11, 2018 by Phnom Penh Court of First Instance and decide to drop any charges against

my client.” This conclusion will be raised by the Council of the Appeal Court as a foundation to decide in accordance with the law.

14. Based on the facts and evidence considered above, a not guilty judgment should be ruled relating to **Art Thun, Morm Nhem, Pao Sina, Chea Mony, Yang Sophorn, and Rong Chhun** over the charges of initiating aggravated intentional violence and destruction, threats of destruction, and obstruction of public traffic committed in front of Canadia Industrial Park on Veng Sreng Street, in Trapiang Thloeng village, Sangkat Chaom Chao, Khan Po Senchey, Phnom Penh between December 25, 2013 and January 3, 2014 - the criminal offenses set forth to be condemned in accordance with Articles 28, 218, 411, 424 of the Criminal Code, and Article 78 of the Traffic Law.
15. The criminal ruling No. 3588 “Do” dated December 11, 2018 by Phnom Penh Court of First Instance is not made properly according to the law. This should be considered as null and void, and all charges against the accused be dropped from now on.

IT IS HEREBY DECIDED

1. a. Accept that the appeal dated December 12, 2018 by **Art Thun** is appropriate and confirming to the form and practice of law;
b. Accept that the appeal dated January 24, 2019 by **Morm Nhem** is appropriate and confirming to the form and practice of law;
c. Accept that the appeal dated December 19, 2018 by **Yang Sophorn** is appropriate and confirming to the form and practice of law;
d. Accept that the appeal dated December 18, 2018 by **Pao Sina** is appropriate and confirming to the form and practice of law;
e. Accept that the appeal dated January 16, 2019 by **Rong Chhun** is appropriate and confirming to the form and practice of law;
f. Accept that the appeal dated January 8, 2019 by **Chea Mony** is appropriate and confirming to the form and practice of law;
2. Reject the criminal ruling dated December 11, 2018 by Phnom Penh Court of First Instance as null and void;
3. Decide that **Art Thun**, male, aged 36, **Morm Nhem**, female, aged 43, **Pao Sina**, male, aged 34, **Chea Mony**, male, aged 43, **Rong Chhun**, male, aged 45, and **Yang Sophorn**, female, aged 33, shall be free from the charges of initiating aggravated intentional violence and destruction, threats of destruction, and obstruction of public traffic committed in front of Canadia Industrial Park on Veng Sreng Street, in Trapiang Thloeng village, Sangkat Chaom Chao, Khan Po Senchey, Phnom Penh between December 25, 2013 and January 3, 2014- the criminal offenses set forth to be condemned in accordance with Articles 28, 218, 411, 424 of the Criminal Code, and Article 78 of the Traffic Law.
4. This ruling was announced publicly on May 28, 2019 in absentia of the accused **Art Thun, Morm Nhem, Pao Sina, Chea Mony, Yang Sophorn, and Rong Chhun**, and in praesentia of the aggrieved party **Toem Vuthy**, in absentia of the aggrieved parties and civil parties **Khen Lou, Chea Sophany, Huot Chann Yarann, Sun Phalla, Thoeun Bunthorn, Pin Sokkheng, Chhoeun Phalla, Uk Sambath, Chhean Sarith, Heang Sochea, Hai Vet, Sok Bunlai, Moch Sen, Soam Dina, and Nguon Moeun**.

Allow for the right to file a complaint and an appeal in accordance with the law.

Hearing Clerk

Advising Judges

Chairman of Trial Council

Signature: Pech Sihon Signatures: Yun Narong, Yet Molin

Signature and seal: Oem Vannak

“Properly copied from the original script”

Seen, Chairman of Trial Council, [Signed and sealed],

Phnom Penh, May 30, 2019

Nhoung Thul

Clerk, [Signed and sealed], Pech Sihon



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