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RIGHTS  
WATCH

# “Only ‘Instant Noodle’ Unions Survive”

Union Busting in Cambodia’s Garment and Tourism Sectors



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**Union Busting in Cambodia’s Garment  
and Tourism Sectors**

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# Only “Instant Noodle” Unions Survive

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## Glossary

<b>BFC</b>	Better Factories Cambodia
<b>CATU</b>	Cambodian Alliance of Trade Unions
<b>C.CAWDU</b>	Coalition of Cambodian Apparel Worker Democratic Unions
<b>CCDA</b>	Cambodia for Confederation Development Association
<b>CEACR</b>	Committee of Experts on the Application of Conventions and Recommendations (by the International Labour Organization)
<b>CENTRAL</b>	Center for Alliance of Labor and Human Rights
<b>CFA</b>	Committee on Freedom of Association (by the International Labour Organization)
<b>CFSWF</b>	Cambodian Food and Service Workers Federation
<b>CIWA</b>	Cambodian Informal Economy Workers Association
<b>CLC</b>	Cambodian Labor Confederation
<b>CNRP</b>	Cambodian National Rescue Party
<b>CPP</b>	Cambodia People's Party
<b>CTWF</b>	Cambodian Transport Workers' Federation
<b>CTWUF</b>	Cambodian Tourism Workers' Union Federation
<b>CUF</b>	Cambodian Union Federation
<b>DCM</b>	Direct Contacts Mission (by the International Labour Organization)
<b>EBA</b>	"Everything But Arms," European Union's trade preference arrangement for Least Developing Countries, covering the export of all products except arms and ammunition.
<b>EU</b>	European Union
<b>FTUWKC</b>	Free Trade Union of Workers of the Kingdom of Cambodia

<b>FUFI</b>	Free Independent Trade Union Federation
<b>GMAC</b>	Garment Manufacturers Association in Cambodia
<b>GSP</b>	Generalized System of Preferences
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organization
<b>ITUC</b>	International Trade Union Confederation
<b>IUF</b>	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
<b>JICA</b>	Japanese International Cooperation Agency
<b>LRSU</b>	Labor Rights Supported Union of Khmer Employees
<b>MoLVT</b>	Ministry of Labor and Vocational Training
<b>MRS</b>	Most Representative Status: status given to majority unions
<b>NSSF</b>	National Social Security Fund
<b>OHCHR</b>	Office of the UN High Commissioner for Human Rights in Cambodia
<b>Prakas</b>	A ministerial or inter-ministerial decision signed by the relevant ministers of the Cambodian government
<b>TUL</b>	Trade Union Law
<b>UN</b>	United Nations
<b>USTR</b>	United States Trade Representative



## Summary

The authorities try to scare us. I am not scared to be rearrested. Even when I am not in prison, I cannot freely exercise my right to be a union leader. I cannot give up because of the threat of prison. I have to stand up for workers' rights.

— Chhim Sithar, president, Labor Rights Supported Union of Khmer Employees (LRSU), April 2022

For many years, Cambodian workers, particularly workers in the garment industry, gained international recognition for their vibrant union movement. During the 2000s it acted as a front line for the larger human rights movement in Cambodia by taking to the streets to fight for higher minimum wages, better working conditions, and respect for other human rights, democracy, and justice.

Cambodia's government under longtime Prime Minister Hun Sen openly repressed the labor movement, along with the political opposition, the media, and other civil society activism. Since the onset of the Covid-19 pandemic in early 2020, the government intensified its crackdown on independent unions, using public health and other arguments as ostensible justifications. Many employers adopted retrenchment measures, making mass layoffs for jobs that no longer existed, which facilitated the government clampdown on independent unions.

This report is primarily based on Human Rights Watch interviews between March and June 2022 with 32 independent union leaders and activist members in Cambodia's garment and tourism sector, and exchanges with international and local labor rights advocates, and outreach to companies.

Human Rights Watch found widespread violations of workers' rights to register, form, and join independent unions at garment factories, a casino, and other places of business. We documented five cases of unfair dismissals and mass layoffs targeting union leaders and activist members, which add to Cambodia's longstanding and pervasive problems of union-busting.

In a union case resulting from a mass layoff by NagaWorld casino in Phnom Penh, Human Rights Watch documented the use of pandemic-related health restrictions to thwart workers ability to exercise their right to strike. Authorities deemed virtually any strike to be “illegal,” and police, non-uniformed police, and other security forces confronted strikers with excessive use of force, and forcibly removed them from picket lines onto city buses to transport them to the outskirts of the capital.

Strikers were left to find their way back to the center of the city or were brought to sub-par quarantine centers for Covid-19 testing where they had to stay overnight without being able to socially distance or access basic hygiene.

In four documented cases, Human Rights Watch found that authorities and employers used or threatened resort to Cambodia’s politicized criminal justice system to silence union leaders and activist members by arbitrarily arresting, detaining, and prosecuting them, or threatening to do so if union actions did not stop. They cited bogus charges such as “incitement to commit a felony” and unsubstantiated violations of Cambodia’s problematic Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases (“Covid-19 Law”), which imposes disproportionately high penalties on persons deemed to violate Covid-19 measures.

Cambodia’s garment, footwear, and travel goods as well as tourism and entertainment sectors were hit hard by the pandemic. Reduced demand for garments due to the closure of fashion stores because of lockdowns around the world and the economic impact of the pandemic resulted in international brands that sourced their products from Cambodian factories and elsewhere, stop, reduce, or suspend their orders. Hotel brands in Cambodia’s tourism and entertainment sector, which resorted to mass layoffs during the pandemic, did not effectively respond to freedom of association and other labor rights violations by their affiliates.

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The trade movement in Cambodia has been deeply divided since its inception in the 1990s between independent unions, and yellow or so-called “instant noodle” unions.

Yellow unions are affiliated with or controlled by Prime Minister Hun Sen’s ruling party, the Cambodia People’s Party (CPP), or by employers. They typically enjoy a comparatively faster and easier registration process, popularly likened to making a two-minute cup of instant noodles.

Over the years, unions that neither sought political affiliation nor received support from the then main opposition Cambodian National Rescue Party (CNRP) have been widely perceived as being independent in the Cambodian context. As with the political opposition, these independent unions have come under attack from the Cambodia People’s Party, which has accused them of being part of a so-called Color Revolution that Prime Minister Hun Sen baselessly alleges the opposition is fomenting to overthrow the government. The union registration process, made mandatory by the 2016 Trade Union Law, lacks transparency, and exacerbated abuse by the authorities, further slowing down union registration and increasing arbitrary denial of registrations of independent unions.

The government and those employers that prefer unions controlled by the government or aligned with businesses, have long targeted independent unions. This pattern has continued since the Covid-19 pandemic. Independent unions with complaints of union-busting or seeking to represent workers who experience labor abuses effectively have no access to justice at any of the existing state-based dispute settlement mechanisms.

In cases in which union leaders and activist members are arrested and released on bail from pretrial detention, charges remain pending, and they risk rearrest. When independent unions strike or criticize the government or employers, Cambodian authorities and their employers have often retaliated with baseless arrests and pretrial detention, threats of injury, death and prosecution, and other forms of intimidation.

For example, Chhim Sithar, leader of the Labor Rights Supported Union of Khmer Employees (LRSU), spent 74 days in pretrial detention based on fabricated charges of “incitement to commit a felony” between January and March 2022 when she and her union organized a strike demanding reinstatement of 365 dismissed workers and fair compensation from NagaWorld in Phnom Penh, which had announced mass layoffs of 1,329 casino workers in April 2021.



Foreign governments, the International Labour Organization (ILO), and international union federations condemned Chhim Sithar's prosecution and detention, and that of 10 other LRSU union leaders and activists. However, the labor dispute remains unresolved, and rights abuses at NagaWorld and by the government continue.

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Since 2015, the Cambodian government has adopted an array of laws that significantly restrict the rights to freedom of expression, peaceful assembly, and association. These include the Trade Union Law (TUL), which imposes restrictive and burdensome requirements around registering unions, and restrictions on independent unions on the right to strike and collectively bargain. The law makes registering unions mandatory.

The Ministry of Labor and Vocational Training (MoLVT) frequently rejects applications for registering independent unions based on small errors or misspellings to obstruct collective worker action. Employers have also threatened to fire workers participating in union elections.

In March 2021, authorities added new draconian laws under the guise of a public health crisis triggered by Covid-19. These further infringed and criminalized peaceful assembly and association. The Covid-19 Law contains overly broad provisions, without independent oversight or procedural safeguards, that allow for abuse by authorities when determining that assembly and association can be restricted based on public health reasons.

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Cambodia's Labor Law allows employers to employ workers on fixed-duration contracts (FDCs)—typically for two to six months—that can be renewed for up to two years. After that, the law requires that workers be employed on undetermined duration contracts, with greater protections and benefits. But some factories repeatedly renew fixed-duration contracts beyond the two-year limit, leaving workers to constantly fear non-renewal of their contracts if they are perceived to act against their employer's wishes.

Misuse of fixed-duration contracts remains a serious problem in Cambodia, as many employers use them to discourage workers from unionizing and to avoid paying legally

owed severance payments. Union leaders alleged that FDCs are often discontinued without cause or notice in response to workers' union activities.

Rather than curb the misuse of FDCs and enforce the provisions of the Labor Law, the MoLVT in 2019 issued Instruction 050 that derogates from article 67 of the Labor Law by providing that the maximum duration of an initial FDC cannot be more than two years and the duration of the renewal of the FDC cannot exceed two years, allowing for employers to engage a worker on successive FDCs for a four-year period.

In the five cases of alleged unfair dismissals and mass layoffs affecting independent union leaders and activists, Human Rights Watch learned only of two cases in which employers reinstated all or some of the dismissed union leaders and activist members. In all interviews with dismissed union leaders in the garment sector, they told Human Rights Watch that they believed their names to be blacklisted, preventing them from getting hired at other garment factories.

Cambodia does not have designated labor courts, although Cambodian labor law requires them. As a result, the Arbitration Council is the only labor-specific alternative dispute settlement body.

From conciliation by the MoLVT to arbitration by the Arbitration Council, Cambodian independent unions have widely been denied effective access to justice by way of legal barriers and other tactics.

The MoLVT has misclassified collective labor disputes affecting more than one union member as individual labor disputes, preventing them from being heard by the Arbitration Council, which until recent Labor Law amendments only had jurisdiction to hear collective labor disputes.

The MoLVT has additionally refused to forward issues concerning the reinstatement of union leaders and severance to the Arbitration Council, denying unions the ability to have their complaints heard and ruled on.

Local independent unions also said that their union federation was not allowed to represent them in conciliation and arbitration hearings on the grounds that they lack

“most representative status”—which majority unions receive based on a threshold of 30 percent support by all workers, a high bar that independent unions almost never achieve. Where independent unions succeed to have their disputes heard by the Arbitration Council, increasingly the Arbitration Council refuses to rule on issues that contradict the MoLVT’s misinterpretation of Cambodia’s Labor Law.

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These various state practices threaten the existence of Cambodia’s independent unions, which face administrative and legal barriers that prevent them from conducting their activities as well as harassment of their individual members. Freedom of association, including the right to strike and collective bargaining of independent unions, as enshrined in Cambodia’s obligations under international law, is under attack.

The Cambodian government’s failure to take sufficient measures to address these serious labor rights issues has led to greater international scrutiny.

The International Labour Organization has responded to inadequate implementation of ILO conventions related to freedom of association and protection of the right to organize (Convention No. 87), the right to organize and collectively bargain (Convention No. 98), and to complaints of rights abuses raised by Cambodian independent unions by twice requesting in the past five years a Direct Contacts Mission to implement ILO recommendations.

These include recommendations to investigate the murders of trade union leaders Chea Vichea (January 2004), Ros Sovannareth (May 2004), and Hy Vuthy (February 2007), and impunity for acts of violence against trade unionists.

The government has repeatedly dismissed allegations of abuses of the right to freedom of association. The authorities claim that the Trade Union Law aims to promote and protect freedom of association and that union leaders and activists are not arrested or convicted for legitimate union activities, but rather because of criminal offenses they have committed.

Other countries have taken notice of the Cambodian government's abuses and poor record on labor rights, and condemned the crackdown at the United Nations Human Rights Council in Geneva. The European Union, its member states, and the United States all pressed for actions against Cambodia to end rights abuses.

The EU, the United Kingdom, and the United States are among Cambodia's largest export markets. All three have trade preference programs for lower income countries like Cambodia, providing for tariffs on imports to be reduced or removed. But these privileges also contain criteria related to human rights that countries need to meet to receive the benefits.

In 2020, the EU partially suspended Cambodia's "Everything But Arms" (EBA) trade preferences. The European Commission based its determination on findings that Cambodia had seriously violated civil, political, and labor rights.

The United Kingdom, upon leaving the EU on January 31, 2020, automatically placed Cambodia within the UK's post-Brexit version of trade preferences but ended the suspension of trade privileges it had previously imposed while part of the EU. The UK, which in 2023 will change the name of its trade preference program to the Developing Countries Trading Scheme (DCTS), will relax some of its conditions on eligibility but will retain provisions similar to the EU's EBA, which could allow the UK to suspend privileges upon determination of serious human rights violations.

The US maintains a trade preference program called the Generalized System of Preferences (GSP). The program lapsed at the end of 2020, subjecting Cambodia to standard tariffs and duties, and requires reauthorization by the US Congress to resume. Notable in the context of Cambodia, the GSP program does not cover garment products, which comprise the largest share of exports from Cambodia to the US.

In November 2021, with the GSP program still lapsed, the Biden administration announced that the US Trade Representative (USTR) would conduct a new assessment of Cambodia's GSP eligibility. The review is presumably set to commence when Congress reauthorizes the GSP program, but USTR officials are already actively reviewing Cambodia's rights record and visited Cambodia in August 2022.

Together with the announcement of a USTR review, the US Departments of State, Treasury, and Commerce issued a business advisory that cautioned US businesses operating in Cambodia “to be mindful of interactions with entities and sectors potentially involved in human rights abuses, criminal activities, and corrupt business practices.” The advisory noted that “businesses with potential exposure to entities in Cambodia that engage in human rights abuses, criminal activities, or corruption should be aware of the reputational, economic, and possible legal risks.”

The Cambodian government’s intensified crackdown on independent unions brings both a human and an economic cost.

The Cambodian government should amend laws and measures that impose legal and administrative barriers to the free exercise of the rights to unionize, collective bargaining and strike, without workers’ fear of reprisal. Reforms of access to justice need to render dispute settlement mechanisms free of government interference and accessible to independent unions. The ILO should monitor and sanction Cambodia’s non-compliance with its obligations under international labor conventions.

International garment, footwear, and travel goods as well as hotel brands should press for legal reforms to the Trade Union Law and the need for maintaining the independence of the Arbitration Council. In the interim, these companies should enhance their scrutiny of violations related to freedom of association and collective bargaining in Cambodia and prioritize the creation of in-country operational level grievance redress mechanisms, developed in consultation with civil society organizations and independent unions.

## Key Recommendations

See the Full Recommendations section at the end of this report.

### To the Ministry of Labor and Vocational Training (MoLVT)

- Ensure that workers can register trade unions through a simple, objective, swift and transparent process, while taking necessary measures to ensure that registration operates as a formality that does not entail discretion on the part of the authorities or prior authorization.
- Remove barriers to collective bargaining, including requiring prior Most Representative Status (MRS) certification, which is subject to burdensome, discretionary, and politicized procedures that prevent independent unions from obtaining such status to defend their members' rights in dispute settlement processes.
- Stop issuing instructions that contain misinterpretations of Cambodia's Labor Law, ultimately denying workers of their rights.
- Classify labor disputes involving unions as collective labor disputes by default to protect unions' right to have their labor dispute effectively heard.

### To the Ministry of Interior and Ministry of Justice

- Stop the use of court injunctions and sweeping arrests, detention, and criminal prosecutions of independent union leaders and activist members to restrict the rights to strike and freedom of association.

### To the Royal Government of Cambodia

- Amend or repeal, in consultation with civil society, all laws that restrict the rights to freedom of expression, peaceful assembly, and association in contravention of Cambodia's international human rights obligations, including but not limited to the Trade Union Law, the Law on Associations and Non-Governmental Organizations (LANGO), draconian public health-related laws (Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases, and the Law on the Management of the Nation in a State of Emergency),

and vague criminal code provisions that criminalize “incitement to commit offenses,” “public insult” or “insult of a public official.”

## **To the International Labour Organization’s Regional Office for Asia and the Pacific, and as Part of the UN Country Team in Cambodia**

- Publicly condemn Cambodia’s continued non-compliance with key ILO conventions that protect freedom of association.
- Press for the ILO’s role as third-party observer in labor disputes to ensure fair and swift resolution of protracted labor disputes.

## **To the European Union**

- Continue to urge the Cambodian government to meet the benchmarks set in the context of the partial suspension of Cambodia’s “Everything But Arms” trade preferences, and publicly condemn the government’s non-compliance with its human and labor rights obligations.
- Ensure the adoption of a strong EU Corporate Sustainability Due Diligence Directive (CS DDD) with civil liability for companies doing business in the EU and sourcing from countries like Cambodia, in line with their responsibilities under the UN Guiding Principles on Business and Human Rights.

## **To Employer Associations, including Chambers of Commerce and Sectoral Associations**

- Monitor and intervene to ensure members of employer associations fully comply with orders from the MoLVT, particularly letters from the Department of Labor Disputes, or arbitral awards issued by the Arbitration Council, ordering reinstatement of trade union leaders. Publicly condemn and sanction, including by expelling, members who refuse to end anti-union discrimination.

## **To International Brands and Retailers**

- Introduce business incentives for suppliers that respect workers’ freedom of association and collective bargaining; and prioritize the creation of in-country



grievance redress mechanisms, including through legally binding agreements with credible local civil society groups and independent unions.

## Methodology

This report was researched and written by a Human Rights Watch researcher between March and June 2022 in Phnom Penh, the capital, and Kampong Speu province.

Thirty-two interviews with 15 female and 17 male interviewees were conducted with local and federation union leaders, rank-and-file union members, and civil society representatives involved in supporting workers and unions. Twenty-three of the interviews were with local union leaders and rank-and-file members. Representatives of the Center for Alliance of Labor and Human Rights (CENTRAL), the Workers' Rights Consortium, Solidarity Center and the Clean Clothes Campaign were also interviewed and provided information.

Human Rights Watch wrote letters to eight employers in eight key labor rights cases featured in the report (see appendix) and began engagement with brands that were currently or previously sourcing from factories where rights abuses occurred. We also wrote letters to the International Labour Organization (ILO) and the Garment Manufacturers Association of Cambodia (GMAC).

Participants were informed of the purpose of the interview, its voluntary nature, the ways in which data would be collected and used, and their ability to refuse to answer any questions. All interviewees orally consented to be interviewed. Participants did not receive compensation of any kind. Interviews were carried out in safe, private locations, and were conducted in Khmer, using an interpreter translating the answers into English.

Given that workers face potentially serious repercussions from the government for providing information about their workplaces to human rights organizations, some interviewees expressed fears for their security and well-being, and requested not to be named. In such instances, Human Rights Watch has honored their request and removed other identifying characteristics.

# I. Background

The authorities don't want unions that fight on behalf of workers and support workers. They want unions that think like the government.

—Nov Chantha, former local union president of Free Independent Trade Union Federation (FUI) affiliate at Monopia factory, April 2022<sup>1</sup>

Workers' struggles to join unions of their own choosing, especially where such unions are not aligned with the government or employers, has been a central feature of Cambodia's larger human rights movement since the early 2000s.

In 1997, the Cambodian government adopted the Labor Law, giving effect to the constitutionally protected right to freedom of association and associated rights, such as the right to collective bargaining.<sup>2</sup>

Workers in the garment industry spearheaded unionization in Cambodia in the early 2000s, which a few years later spilled over to other industries, such as the hotel and tourism sector.<sup>3</sup> Political parties, both opposition parties and Hun Sen's ruling Cambodia People's Party (CPP), were involved in establishing major unions.<sup>4</sup>

Unions affiliated with the CPP or that employers strategically deployed to prevent the emergence of independent workers' representatives at workplaces are commonly referred to as "yellow," or as recently coined by a local union, the Labor Rights Supported Union of

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<sup>1</sup> Interview with Nov Chantha, former local FUI president, Kampong Speu city, April 9, 2022.

<sup>2</sup> Cambodia's Constitution in article 37 guarantees the rights to strike and to hold non-violent demonstrations. Articles 266, 271, and 280 of Cambodia's Labor Law guarantees workers the right to form unions of their choice and protects workers against interference from employers—for example, employers cannot offer workers incentives to join or leave unions. The law also has protections against discrimination based on union membership.

<sup>3</sup> Veasna Nuon and Melisa Serrano, "Building Unions in Cambodia – History, Challenges, Strategies," Friedrich-Ebert-Stiftung Office for Regional Cooperation in Asia, 2010, pp. 1-2, <https://library.fes.de/pdf-files/bueros/singapur/07907.pdf> (accessed October 18, 2022).

<sup>4</sup> Ibid.

Khmer Employees, “instant noodle” unions<sup>5</sup>—a reference to their speedy registration process (akin to making a quick cup of noodles).

In contrast, unions not aligned with the ruling CPP or employers and that operate independent of the ruling party or employers must undergo lengthy and burdensome procedures that often result in denial of registration.<sup>6</sup>

At the factory level, where there is more than one union, the power balance between independent unions and yellow unions is determined by the union that has the “Most Representative Status” (MRS)—a position that independent unions find very hard, and often impossible, to attain. Cambodian law requires the support of 30 percent of workers at the workplace to become eligible to apply for union registration.<sup>7</sup> Even where an independent union has 30 percent membership from among factory workers, the rules governing MRS only recognize a union with majority membership at the workplace and allows only a union with MRS to drive collective bargaining with the employer to provide for workers’ protection.

Overall, the independent union movement has long fought for living wages and better working conditions.<sup>8</sup> With unions’ efforts, the country’s only sectoral minimum wage in the garment and footwear sector has doubled over the years, from 2013 to 2019. Yet labor advocates have repeatedly criticized the fact that Cambodia’s minimum wage remains far below a living wage and unions’ demands.<sup>9</sup> Even before the onset of the Covid-19 pandemic and related inflation, living wage estimates for the garment industry in

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<sup>5</sup> Interview with Chhim Sithar, LRSU president, Phnom Penh, April 28, 2022. See also International Trade Union Confederation (ITUC), ‘ITUC submission to the UPR on Cambodia,’ January 2008, [https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session6/KH/ITUC\\_KHM\\_UPR\\_So6\\_2009.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session6/KH/ITUC_KHM_UPR_So6_2009.pdf) (accessed October 18, 2022).

<sup>6</sup> Interview with Chhim Sithar, LRSU president, in Phnom Penh, on April 28, 2022.

<sup>7</sup> Trade Union Law, articles 54 and 55.

<sup>8</sup> Amnesty International, “Cambodia: Chea Vichea, Urgent Appeal,” February 2005, AI Index: ASA 23/001/2005, <https://www.amnesty.org/es/wp-content/uploads/2021/08/asa230012005en.pdf> (accessed October 18, 2022).

<sup>9</sup> Radio Free Asia, “Cambodia ‘Raises’ Minimum Wage by Two Dollars, Leaving Workers as Poor as Before,” September 28, 2021, <https://www.rfa.org/english/news/cambodia/wage-09282021185111.html> (accessed October 18, 2022).

Cambodia varied between US\$317 and \$595 per month.<sup>10</sup> In 2021, local unions in Cambodia demanded \$214 per month as minimum wages in the garment industry.<sup>11</sup>

In 2022, the minimum wage in the garment and footwear sector was \$194 per month, an increase of only \$2 compared to the previous year, leaving workers struggling to survive and pay off mounting micro-loan debts accumulated during the pandemic.<sup>12</sup> During the pandemic, the average loan size of Cambodians rose to about \$4,200, almost three times the country's average annual household income and amounting to the world's highest average micro-loan.<sup>13</sup> Independent unions have criticized negotiations on minimum wage as lacking true union representation.<sup>14</sup>

Since the Law on Minimum Wage was adopted in 2018, consultations have occurred within the framework of the National Minimum Wage Council, a tripartite mechanism comprised of one-third union representatives and two-thirds employer and government representatives.<sup>15</sup> Among union representatives, independent unions make up just 2 out of 17 elected trade union representatives in the wage council.<sup>16</sup>

## Systematic “Legal” Crackdown on Independent Unions

The Cambodian government uses multiple methods to crack down on independent unions. Over the years, government authorities have turned a blind eye to the assassinations of

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<sup>10</sup> The Industry We Want, “The Industry Wage Gap,” <https://www.theindustrywewant.com/wages> (accessed October 20, 2022).

<sup>11</sup> Sam Sophich and Khy Sovuthy, “Industry, government representatives propose minimum wage decrease for garment workers,” *CambolA News*, September 14, 2021, <https://cambolajnews.com/industry-government-representatives-propose-minimum-wage-decrease-for-garment-workers/> (accessed October 18, 2022).

<sup>12</sup> Ministry of Labor and Vocational Training, “Prakas 264/21 on Determination of Minimum Wage for Workers/Employees in the Textile, Garment and Footwear Industries for 2022,” September 28, 2021. See also Ministry of Labor and Vocational Training, ‘Prakas 303/20 on Determination of Minimum Wage for Workers/Employees in the Textile, Garment and Footwear Industries for 2021,’ September 10, 2020, <https://ibccambodia.com/wp-content/uploads/2021/05/Prakas-303-on-Minimum-Wage-2021-EN.pdf> (accessed October 18, 2022); Ministry of Labor and Vocational Training, “Prakas No. 389/19,” September 20, 2019 on Determination of Minimum Wage for Workers/Employees in the Textile, Garment and Footwear Industries for 2020, [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=110694&p\\_country=KHM&p\\_count=160&p\\_classification=12&p\\_classcount=20](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110694&p_country=KHM&p_count=160&p_classification=12&p_classcount=20) (accessed October 18, 2022).

<sup>13</sup> Cambodia Microfinance Association, <https://www.cma-network.org/>

<sup>14</sup> CENTRAL, “Labor and Human Rights in Cambodia” – Statement of Toal Moeun Executive Director, CENTRAL, Press Statement, September 9, 2019, <https://www.central-cambodia.org/archives/3125> (accessed October 18, 2022).

<sup>15</sup> Cambodia’s Law on Minimum Wage, adopted on July 6, 2018, article 17.

<sup>16</sup> CENTRAL, “Labor and Human Rights in Cambodia” – Statement of Toal Moeun Executive Director, CENTRAL, Press Statement, September 9, 2019, <https://www.central-cambodia.org/archives/3125> (accessed October 18, 2022).

national union leaders Chea Vichea, Ros Sovannareth, and Hy Vuthy, and brutally suppressed wage protests in 2013 and 2014 with the deaths of at least seven people and injuries to dozens of others.<sup>17</sup>

The government has also used the law to crack down on independent unions by resorting to legislation and regulations related to union registration and rights of unions that severely restrict the rights to freedom of expression, association, and peaceful assembly in Cambodia and violate the rights of workers to collectively protect their livelihoods.<sup>18</sup>

One of these laws was the 2016 Trade Union Law (TUL) that introduced mandatory registration of unions and imposed restrictions on unions' access to justice and collective bargaining by requiring Most Representative Status (MRS) (TUL, art. 54). Over the past seven years, access to justice for independent unions has been made virtually impossible.<sup>19</sup>

Cambodia's politicized court system, controlled by the ruling CPP, has facilitated these efforts to bust Cambodia's independent unions by prosecuting union leaders.<sup>20</sup> Where unionists are not or no longer jailed, these cases remain active, with most cases seeing prosecutions and convictions resulting in disproportionate prison sentences.<sup>21</sup> Dozens of

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<sup>17</sup> Radio Free Asia, "Cambodian Union Leader Gunned Down," May 7, 2004, <https://www.rfa.org/english/news/politics/135381-20040507.html> (accessed October 18, 2022); Andrew Nachemson and Yon Sineat, "15 years on, justice elusive in Cambodia union leader's murder," Al Jazeera, January 22, 2019, <https://www.aljazeera.com/news/2019/1/22/15-years-on-justice-elusive-in-cambodia-union-leaders-murder> (accessed October 18, 2022); Human Rights Watch, "Cambodia: Bring Killers of Trade Unionist to Justice – Six Major Human Rights and Trade Union Groups Condemn Recent Killing," January 27, 2007, <https://www.hrw.org/news/2007/02/27/cambodia-bring-killers-trade-unionist-justice> (accessed October 18, 2022).; Human Rights Watch, "Cambodia: End Political Prosecution of 6 Unionists - Donors Should Press Government to Drop Cases," September, 2014, <https://www.hrw.org/news/2014/09/03/cambodia-end-political-prosecution-6-unionists> (accessed October 18, 2022).

<sup>18</sup> See the Law on Associations and Non-Governmental Organizations (LANGO), the Trade Union Law, and other laws discussed in the report.

<sup>19</sup> Examples are the Trade Union Law, amendments to the Labor Law, ministerial orders on minimum wage or fixed-duration contracts and many more. See relevant sections in this report for more information.

<sup>20</sup> Amnesty International, "Cambodia: Courts of injustice: Suppressing activism through the criminal justice system in Cambodia," May 30, 2017, Index Number: ASA 23/6059/2017, <https://www.amnesty.org/en/documents/asa23/6059/2017/en/> (accessed October 18, 2022).

<sup>21</sup> Human Rights Watch, "Cambodia: Proposed Union Law a Rights Disaster – Make New Bill Public, Revise to Meet International Standards," June 7, 2015, <https://www.hrw.org/news/2015/06/08/cambodia-proposed-union-law-rights-disaster> (accessed October 18, 2022).

independent unionists have dormant or active criminal charges against them that risk their arrest or rearrest, criminal convictions, and imprisonment based on bogus charges.<sup>22</sup>

The president of the Cambodian Labor Confederation (CLC), Ath Thorn, is among over 50 unionists with seven pending lawsuits for engaging in legitimate strike actions.<sup>23</sup>

According to Ath Thorn, “Fourteen out of 58 criminal cases [against union leaders] have had charges dropped, and all 41 cases brought by civil parties remain unresolved.”<sup>24</sup>

In December 2018, the government set up a working group to review pending criminal and civil lawsuits against union leaders and activist members.<sup>25</sup> Representatives of the local labor rights group, the Center for Alliance of Labor and Human Rights (CENTRAL), alleged that progress in purported expedited resolution of these cases has been slow, with most cases against smaller local unions still lacking resolution.<sup>26</sup>

Politically motivated trials of union leaders and activist members have been riven with serious violations of fair trial rights. Positive outcomes in politically motivated cases have largely only resulted from international pressure or intervention.<sup>27</sup>

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<sup>22</sup> Human Rights Watch, “Joint Statement, Cambodia: End Criminalization of Unionists,” December 24, 2018, <https://www.hrw.org/news/2018/12/24/cambodia-end-criminalization-unionists> (accessed October 18, 2022).

<sup>23</sup> Prak Chan Thul, “Cambodia’s Hun Sen eases pressure on unions, as EU sanctions threat looms,” November 7, 2018, <https://www.reuters.com/article/us-cambodia-unions-idUSKCN1NC15J> (accessed October 18, 2022).

<sup>24</sup> Khuon Narim, “Court cases continue to hang over union leaders’ heads,” August 25, 2021, <https://cambojanews.com/court-cases-continue-to-hang-over-union-leaders-heads/> (accessed October 18, 2022).

<sup>25</sup> Hul Reaksmey, “Cambodia Forms Group to Settle Lawsuits Against Unionists,” December 7, 2018, <https://www.voacambodia.com/a/cambodian-government-forms-a-working-group-to-settle-lawsuits-against-unionists/4689594.html> (accessed October 18, 2022).

<sup>26</sup> Human Rights Watch interview with CENTRAL, Phnom Penh, June 24, 2022.

<sup>27</sup> Prak Chan Thul, “Cambodia’s Hun Sen eases pressure on unions, as EU sanctions threat looms,” November 7, 2018, <https://www.reuters.com/article/us-cambodia-unions-idUSKCN1NC15J> (accessed October 18, 2022).



## Systematic Harassment to Virtually Silence Union Leaders

After a four-year delayed trial, the Phnom Penh municipal court in December 2018 convicted six prominent union leaders—Ath Thorn, Yang Sophorn, Rong Chhun, Pav Sina, Mam Nhim and Chea Mony—of “instigation” of the following crimes: Acts of using any means to “obstruct public traffic,” “intentional acts with violence with aggravating circumstances,” “intentionally causing damage with aggravating circumstances,” and “threats to destroy followed by an order” (Criminal code, articles 28, 78, 218, 411 and 424).

The judge handed down two-years and six-months’ suspended prison sentences. The case related to garment workers’ minimum wage protests in Phnom Penh in 2013 and 2014, which the authorities responded to with lethal force. The trial against the six had been riddled with lack of evidence and irregularities.<sup>28</sup>

The court changed the charges against the defendants on the day of the trial hearing, the same day on which their verdict was delivered, denying them their right to prepare their defense.<sup>29</sup> In May 2019, Prime Minister Hun Sen directed the Court of Appeal to set aside the prison sentences but not their convictions.

In May 2019, the Court of Appeal acquitted the six unionists, a concession that appeared aimed at appeasing European Union officials arriving in Cambodia to decide whether the EU should investigate rights abuses — that later saw EU trade preferences partially suspended.<sup>30</sup>

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<sup>28</sup> IndustriALL, “Unjust sentencing of Cambodian union leaders must be quashed,” December 14, 2008, <https://www.industriall-union.org/unjust-sentencing-of-cambodian-union-leaders-must-be-quashed-o> (accessed October 18, 2022).

<sup>29</sup> American Bar Association, “Cambodia: Report on Prosecution of Six Independent Trade Union Leaders,” November 9, 2020, [https://www.americanbar.org/groups/human\\_rights/reports/cambodia-report-on-prosecution-of-six-independent-trade-union-l/](https://www.americanbar.org/groups/human_rights/reports/cambodia-report-on-prosecution-of-six-independent-trade-union-l/) (accessed October 18, 2022).

<sup>30</sup> Prak Chan Thul, “In rare move, Cambodia Appeal Court acquits union leaders of instigating anti-government protests,” Reuters, May 29, 2019, <https://www.reuters.com/article/us-cambodia-garments-unions-idUSKCN1SZoXO> (accessed October 18, 2022).

Apart from hindering union leaders from conducting union activities, these criminal charges have created a sense of fear, causing unionists to be more cautious or have difficulties recruiting new members at work.<sup>31</sup>

## Use of Force at Union Protests

Union and worker strikes, which have a long history in Cambodia, have been met with violence and bans by the authorities, similar to protests over land disputes.

Between 2010 and 2018, the nongovernmental organization the Armed Conflict Location & Event Data Project (ACLED)<sup>32</sup> recorded 642 worker protests in Cambodia, of which 59 percent were protests by garment workers.<sup>33</sup> Protests between 2010 and 2015 related predominantly to demands for increased minimum wage and better working conditions.<sup>34</sup>

After 2017 and before the onset of the pandemic, there was a significant drop in protests due to an array of repressive measures that the Cambodian government adopted that restricted workers' and unions' right to strike, and significantly restricted protests.<sup>35</sup>

### Crackdown on Worker and Union Protests

In January 2014, tens of thousands of workers demonstrated, demanding higher wages for garment workers in response to minimum wage negotiations in 2013 that they claimed were far below their desired target of US\$160 (they only achieved \$95).<sup>36</sup>

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<sup>31</sup> Worker Rights Consortium, "Crackdown in Cambodia - Workers Seeking Higher Wages Meet Violent Repression," March 24, 2014, p. 35, <https://www.workersrights.org/wp-content/uploads/2016/06/WRC-Report-Crackdown-in-Cambodia-3.24.14.pdf> (accessed October 18, 2022).

<sup>32</sup> Armed Conflict Location & Event Data Project (ACLED) is a US-based nongovernmental organization (NGO) that collects data around political violence and protest around the world.

<sup>33</sup> ACLED, "Increased Repression, Declining Demonstrations: An Analysis of Cambodian Demonstrations (2010-2018)," 2019, <https://acleddata.com/2019/02/22/increased-repression-declining-demonstrations-an-analysis-of-cambodian-demonstrations-2010-2018/> (accessed October 18, 2022).

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Global Nonviolent Action Database, "Cambodian garment workers protest corporations for '\$177 monthly wages, 2014,'" January 3, 2014 to September 17, 2014, <https://nvdatabase.swarthmore.edu/content/cambodian-garment-workers-protest-corporations-177-monthly-wages-2014> (accessed October 18, 2022)

These protests took place in defiance of a government ban on protests after contentious elections in 2013, which international observers had called neither free nor fair.<sup>37</sup> The protesters were met by riot police and military police armed with batons and electric cattle prods.<sup>38</sup> Tension between protesters and authorities escalated when military police opened fire on several hundred workers who were blocking a road in Phnom Penh, leaving at least four dead and dozens more arrested and injured.<sup>39</sup> Eight years later, those responsible for unlawful use of force have not been brought to justice.<sup>40</sup>

In another example, violent clashes in February 2017 between members of the Cambodia for Confederation Development Association (CCDA), which is widely perceived as acting at the behest of employers, and dozens of former drivers of the Capitol Bus Company protesting their dismissal for trade union activities.<sup>41</sup>

Witnesses said police at the scene failed to prevent or stop the violence. At least 14 people were injured.<sup>42</sup> Authorities arrested two protesters, and charged them with intentional violence, obstructing public officials and obstructing traffic. They also charged four trade union leaders for “incitement,” although none of them were present at the protest.<sup>43</sup>

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<sup>37</sup> Kyle James, “New protest crackdown in Cambodia,” Deutsche Welle, January 27, 2014, <https://www.dw.com/en/new-protest-crackdown-in-cambodia/a-17388999> (accessed October 18, 2022).

<sup>38</sup> Kevin Ponniah, “Fears over human rights in Cambodia as crackdown on protests continues,” February 11, 2014, <https://www.theguardian.com/global-development/2014/feb/11/cambodia-human-rights-crackdown-protests> (accessed October 18, 2022).

<sup>39</sup> Business and Human Rights Resource Center, “Cambodia: Violent crackdown on garment workers protesting for higher wages - Jan 2014,” last updated January 29, 2014, <https://www.business-humanrights.org/en/latest-news/cambodia-crackdown-on-garment-workers-protesting-for-higher-wages-jan-2014/> (accessed October 18, 2022).

<sup>40</sup> Amnesty International, “Cambodia: Victims of protest crackdowns denied justice,” June 4, 2015, <https://www.amnesty.org/en/latest/news/2015/06/cambodia-victims-of-protest-crackdowns-denied-justice/> (accessed October 18, 2022).

<sup>41</sup> Pech Sotheary, “Protesting Capitol bus drivers attacked,” Phnom Penh Post, February 8, 2016, <https://www.phnompenhpost.com/national/protesting-capitol-bus-drivers-attacked> (accessed October 18, 2022).

<sup>42</sup> CSO Joint Statement, “Boycott of Capitol Tours Following Brutal Suppression of Trade Union Activity Grows as 50 Civil Society Groups Declare Support,” February 24, 2016, <https://www.central-cambodia.org/archives/160> (accessed October 18, 2022).

<sup>43</sup> Ibid.

The four leaders arrested were: then-CLC president, Ath Thorn; then-general secretary of CLC, Kong Athit; president of the Cambodian Informal Economy Workers Association (CIWA), Sok Chhun Oeung; and the secretary of the Cambodian Transport Workers Federation (CTWF), Ean Kim Hong.

Police arrested a former bus driver affiliated with CTWF and a union member of CIWA, who were charged with aggravated intentional violence, obstructing public officials, and obstructing a public road.<sup>44</sup> Members of the employer-friendly CCDA were not prosecuted.<sup>45</sup>

## Impact of Crackdown on Cambodia's Economy

The garment, footwear, and tourism sectors have been among Cambodia's main drivers of economic growth, with the World Bank estimating their contributions to be 17 and 19 percent, respectively, of Cambodia's real gross domestic product (GDP) growth in 2019. Together with construction, the three sectors provided 39 percent of total paid employment in 2019.<sup>46</sup>

According to the World Bank Group, garments, footwear, and travel goods are among five of Cambodia's top exported products, accounting for 80 percent of Cambodia's total exports.<sup>47</sup> As a result, the number of garment, footwear, and travel goods factories in Cambodia rose from 64 in 1997 to 1,218 in November 2020.<sup>48</sup>

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<sup>44</sup> ITUC, "Cambodia - Two protesting bus drivers arrested and many injured," <https://survey.ituc-csi.org/Two-protesting-bus-drivers.html?lang=es> (accessed October 18, 2022).

<sup>45</sup> Ibid.

<sup>46</sup> Three sectors are driving economic growth in Cambodia. Aside from garment, footwear, and tourism, construction contributed 35.7 percent to GDP growth in 2019. World Bank Group, "Cambodia in the Time of Covid-19 – Special Focus," Cambodia Economic Update, May 2020, p.5, <https://documents1.worldbank.org/curated/en/165091590723843418/pdf/Cambodia-Economic-Update-Cambodia-in-the-Time-of-COVID-19-Special-Focus-Teacher-Accountability-and-Student-Learning-Outcomes.pdf> (accessed October 18, 2022). More recent comparative statistics are not available.

<sup>47</sup> World Bank Group, "Productivity, Diversification, Domestic Investment Are Key to Cambodia's Economic Recovery," press release, January 31, 2022, <https://www.worldbank.org/en/news/press-release/2022/01/31/productivity-diversification-domestic-investment-are-key-to-cambodia-s-economic-recovery> (accessed October 18, 2022).

<sup>48</sup> Royal Government of Cambodia, "Cambodia Garment, Footwear and Travel Goods (GFT) Sector Development Strategy 2022 – 2027," prepared by the Supreme National Economic Council, February 2022, p. 2 (table 1).

Cambodian exports of garments, footwear, travel, and other goods are heavily reliant on access to United States and European Union markets, which take 69 percent of merchandise exports.<sup>49</sup> Yet tariff-free access to both markets is at risk due to the Cambodian government clampdown on the rights to freedom of expression, peaceful assembly, and association.

The ILO showed that in 2018, the garment and footwear sector employed over 800,000 workers, of whom 80 percent were women.<sup>50</sup> According to the Asian Development Bank, in 2019 the tourism sector employed 630,000 people, of whom 60 percent were female.<sup>51</sup>

The US, Japan, EU, Canada, the United Kingdom, China, and South Korea are among the largest importers of Cambodian garments, footwear, and travel goods, with export relations covered by bilateral trade agreements or preferential trade schemes.<sup>52</sup> As discussed below, both the US and EU generalized systems of trade preferences are, in theory, contingent on respect for human rights, including labor rights standards.

The Cambodian government's intensified crackdown since 2015 resulted in the consideration or implementation of partial suspension of trade preferences by the EU and the consideration of a review of GSP preferences by the US.

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<sup>49</sup> World Bank Group, "Productivity, Diversification, Domestic Investment Are Key to Cambodia's Economic Recovery," press release, January 31, 2022, <https://www.worldbank.org/en/news/press-release/2022/01/31/productivity-diversification-domestic-investment-are-key-to-cambodia-s-economic-recovery> (accessed October 18, 2022).

<sup>50</sup> International Labor Organization, "Living conditions of garment and footwear sector workers in Cambodia," Cambodia Garment and Footwear Sector Bulletin, Issue 8, December 2018, p. 1, available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_663043.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_663043.pdf) (accessed October 18, 2022).

<sup>51</sup> Asian Development Bank, "Community-Based Tourism COVID-19 Recovery Project (GAR CAM 532443) – Sector Assessment Summary: Tourism in Cambodia," August 2021, <https://www.adb.org/sites/default/files/linked-documents/53243-001-ssa.pdf> (accessed October 18, 2022).

<sup>52</sup> World Bank, "World Integrated Trade solutions, Cambodia Textiles and Clothing Exports by country in US\$ Thousand 2019," [https://wits.worldbank.org/CountryProfile/en/Country/KHM/Year/LTST/TradeFlow/Export/Partner/by-country/Product/50-63\\_TextCloth](https://wits.worldbank.org/CountryProfile/en/Country/KHM/Year/LTST/TradeFlow/Export/Partner/by-country/Product/50-63_TextCloth) (accessed October 18, 2022).

## Relevant Economic or Trade Preferences Important for Garment, Footwear, and Travel Goods Exports

- EU: The “Everything But Arms” (EBA) trade preferences regulated by Regulation (EU) No. 978/2012<sup>53</sup> granted to 49 least-developing countries, which have tariff-free access to the EU market for all their exports with the exception of arms and armaments.<sup>54</sup> A country can (temporarily) have its EBA preferences withdrawn if it violates the principles of 15 human rights and labor rights conventions underlying the EBA mechanism.<sup>55</sup> The commission has so far only decided to temporarily and partially withdraw Cambodia’s EBA preferences (see below).<sup>56</sup>
- US: The Generalized System of Preferences (GSP) program offered to Cambodia as a less economically developed country, providing preferential duty-free import of travel goods such as luggage, backpacks, handbags, and wallets, but not garments.<sup>57</sup> Cambodia must meet eligibility criteria established by the US Congress, including, but not limited to, respecting internationally recognized worker rights.<sup>58</sup> The program expired at the end of 2020 and needs reauthorizing legislation to come back into force.

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<sup>53</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, October 31, 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0978#d1e32-60-1> (accessed October 18, 2022).

<sup>54</sup> European Parliament, 'Everything but Arms': The Case of Cambodia,' At a Glance, 2019, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/637931/EPRS\\_ATA%282019%29637931\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/637931/EPRS_ATA%282019%29637931_EN.pdf) (accessed October 18, 2022).

<sup>55</sup> European Parliament, 'Everything but Arms': The case of Cambodia,' At a Glance, 2019, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/637931/EPRS\\_ATA%282019%29637931\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/637931/EPRS_ATA%282019%29637931_EN.pdf) (accessed October 18, 2022).

<sup>56</sup> European Commission, “Joint Staff Working Document: Report on EU Enhanced Engagement with three Everything But Arms beneficiary countries: Bangladesh, Cambodia and Myanmar Accompanying the document Report from the Commission to the European Parliament and the Council Report on the Generalised Scheme of Preferences covering the period 2018-2019,” February 10, 2020, [https://ec.europa.eu/transparency/documents-register/api/files/SWD\(2020\)19\\_o/de0000000002278?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/SWD(2020)19_o/de0000000002278?rendition=false) (accessed October 18, 2022).

<sup>57</sup> US Embassy in Cambodia, “Duty Free Access for Travel Goods Made in Cambodia,” July 6, 2016, <https://kh.usembassy.gov/duty-free-access-travel-goods-made-cambodia/> (accessed October 18, 2022).

<sup>58</sup> The statutory authorization of the GSP program is found in Title V of the Trade Act of 1974 (19 U.S.C. §§ 2461 – 2467) and USTR Regulations Pertaining to Eligibility of Articles and Countries for the GSP Program (15 CFR Part 2007), See USTR, “U.S. Generalized System of Preferences,” Guidebook, November 2020, p. 17, [https://ustr.gov/sites/default/files/gsp/GSPGuidebook\\_o.pdf](https://ustr.gov/sites/default/files/gsp/GSPGuidebook_o.pdf) (accessed October 18, 2022).

- Japan: The ASEAN-Japan Comprehensive Economic Partnership (AJCEP) Agreement signed in 2008 to eliminate 92 percent of tariff rates on garments and textiles from ASEAN countries.<sup>59</sup>
- Canada: The Market Access Initiative for Least Developed Countries entered into force in 2003, allowing quota-free and duty-free access to the Canadian market of Cambodian products (except dairy, poultry and eggs)<sup>60</sup>; A separate Canada-ASEAN Free Trade Agreement is currently being negotiated with ASEAN members, including Cambodia.
- China: The ASEAN-China Free Trade Agreement, signed in 2020 to increase exports from Cambodia and investment in raw material supply for garment, footwear, and travel goods.<sup>61</sup>
- UK: Post-Brexit, EBA-like trade preferences exist under the General System of Preferences, which grant tariff-free access of goods into the UK, but subject to conditions and criteria, including provisions related to labor rights.<sup>62</sup> In 2023, the UK government is changing the name of its GSP program to the Developing Countries Trading Scheme (DCTS).
- South Korea: Bilateral free trade agreement signed in June 2022 to boost Cambodian exports of garments, textiles, and footwear to South Korea.<sup>63</sup>

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<sup>59</sup> Ministry of Foreign Affairs of Japan, “Notification of the Entry into Force of the Japan-ASEAN Comprehensive Economic Partnership Agreement by Cambodia,” November 27, 2009, [https://www.mofa.go.jp/announce/announce/2009/11/1197603\\_1146.html](https://www.mofa.go.jp/announce/announce/2009/11/1197603_1146.html) (accessed October 18, 2022).

<sup>60</sup> Government of Canada, Canada-Cambodia relations, <https://www.international.gc.ca/country-pays/cambodia-cambodge/relations.aspx?lang=eng> (accessed October 18, 2022).

<sup>61</sup> “Cambodia, China sign free trade agreement,” Fibre2Fashion, press release, October 13, 2020, <https://www.fibre2fashion.com/news/apparel-news/cambodia-china-sign-free-trade-agreement-270359-newsdetails.htm> (accessed October 18, 2022).

<sup>62</sup> Department of International Trade, “Information Pack on the UK’s Generalised Scheme of Preferences – Background information on the UK’s GSP policy,” July 2021, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1003574/gsp-consult-information-pack.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003574/gsp-consult-information-pack.pdf) (accessed October 18, 2022).

<sup>63</sup> Timothy Standen, “The Cambodia-South Korea Free Trade Agreement: Increasing Potential for Downstream Sectors,” May 25, 2022, <https://www.aseanbriefing.com/news/the-cambodia-south-korea-free-trade-agreement-increasing-potential-for-downstream-sectors/> (accessed October 18, 2022).



On August 12, 2020, the European Commission announced the partial suspension of tariff-free export privileges that Cambodia derived from the EBA trade preferences. The decision came after the Cambodian government failed to comply with a list of demands by the commission to meet human and labor rights standards.<sup>64</sup>

### Timeline of Suspension of Tariff-Free Export Privileges

February 26, 2018: The EU Council adopts conclusions on the rights situation in Cambodia, urging Cambodia's 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." It invites the commission to enhance monitoring of the situation as delegated to it under the EBA.<sup>65</sup>

February 12, 2019: The commission opens the procedure for withdrawing EBA trade preferences to Cambodia.<sup>66</sup>

November 12, 2019: The commission submits a report to the Cambodian government demonstrating serious and systematic violations of key principles of the International Covenant on Civil and Political Rights (ICCPR) linked to political participation, freedom of expression, and freedom of association.

Prime Minister Hun Sen slams the EU for making "unacceptable demands" and states Cambodia will rather pay tariffs than meet the commission's demands.<sup>67</sup>

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<sup>64</sup> European Commission, "Cambodia loses duty-free access to the EU market over human rights concerns," August 12, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1469](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1469) (accessed October 18, 2022).

<sup>65</sup> Foreign Affairs Council of the European Union, 6416/18, Conclusions - Cambodia, adopted at its 3598th meeting, February 26, 2018, <https://data.consilium.europa.eu/doc/document/ST-6416-2018-INIT/en/pdf> (accessed October 18, 2022).

<sup>66</sup> European Commission, "EU triggers procedure to temporarily suspend trade preferences for Cambodia," Memo, February 11, 2019, [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_19\\_988](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_988) (accessed October 18, 2022).

<sup>67</sup> Ben Sokhean, "Hun Sen slams EU over unacceptable EBA demands," November 22, 2019, <https://www.khmertimeskh.com/663151/hun-sen-slams-eu-over-unacceptable-eba-demands/> (accessed October 18, 2022).

February 12, 2020: The commission adopts a Delegated Regulation on a temporary and partial withdrawal of EBA tariff preferences granted to Cambodia,<sup>68</sup> based on findings the country has committed “serious and systematic violation of principles laid down in the core human and labor rights UN/ILO conventions.”<sup>69</sup> The withdrawal of preferential access to the EU market concerns around 20 percent of Cambodia’s exports to the EU.<sup>70</sup> Affected products include some garment and footwear products and all travel goods.<sup>71</sup>

January 1, 2021: Legal authorization for duty-free treatment under the US GSP program expires for all GSP-eligible countries, including Cambodia. Goods entering the US market from Cambodia become subject to standard duties and tariffs; however, most companies incurring higher duties expect to be compensated retroactively when the program is reauthorized.<sup>72</sup>

November 10, 2021: The US Department of State, the Department of the Treasury, and the Department of Commerce jointly issue a business advisory to “caution U.S. businesses currently operating in, or considering operating in, Cambodia to be mindful of interactions with entities involved in corrupt business practices, criminal activities, and human rights abuses.”<sup>73</sup>

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<sup>68</sup> The Regulation entered into force on April 25, 2020 and took effect on August 12, 2020. See European Commission, ‘Commission Delegated Regulation (EU) 2020/550 of 12 February 2020 amending Annexes II and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No 978/2012 in respect of certain products originating in the Kingdom of Cambodia,’ Official Journal of the European Union, April 22, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0550&from=EN> (accessed October 18, 2022).

<sup>69</sup> European Commission, “Commission Delegated Regulation (EU) 2020/550 of 12 February 2020 amending Annexes II and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No 978/2012 in respect of certain products originating in the Kingdom of Cambodia,” Official Journal of the European Union, April 22, 2020, L 127/11, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0550&from=EN> (accessed October 18, 2022).

<sup>70</sup> European Commission, “Cambodia loses duty-free access to the EU market over human rights concerns,” August 12, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1469](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1469) (accessed October 18, 2022).

<sup>71</sup> European Chamber of Commerce Cambodia, “Partial withdrawal of EBA,” <https://investincambodia-eu.org/partial-withdrawal-of-eba/> (accessed October 18, 2022).

<sup>72</sup> US Trade Representative, 19 U.S. Code Section 2465, US Trade Representative, “GSP Expiration: Frequently Asked Questions,” January 2021, <https://ustr.gov/sites/default/files/gsp/GSPexpiration2021.pdf> (accessed October 18, 2022).

<sup>73</sup> Ned Price, Spokesperson of the US Department of State, “Business Advisory and GSP Assessment for Cambodia,” press statement, November 10, 2021, <https://www.state.gov/business-advisory-and-gsp-assessment-for-cambodia/> (accessed October 18, 2022).

The advisory states that the US Trade Representative (USTR) will conduct an assessment of Cambodia's GSP eligibility as part of a broader GSP evaluation.<sup>74</sup> The advisory claims the USTR aims at better compliance with eligibility criteria by beneficiary countries.<sup>75</sup>

Current eligibility criteria include respecting worker rights including the right of association and to organize and bargain collectively.<sup>76</sup> The USTR's assessment will be conducted "following reauthorization of the program benefits and will include any new or amended eligibility criteria established by US Congress."<sup>77</sup> Until an assessment determines Cambodia is out of compliance with the program, goods can continue to be imported from Cambodia duty-free, with tariffs paid during the period the program lapsed retroactively paid back.

## Lack of Robust Social Protection System

In 2020, the Covid-19 pandemic heavily affected tourism and manufacturing exports. According to the World Bank Group, Cambodia's economy registered its worst performance since 1994, contracting by 3.1 percent.<sup>78</sup> The loss of employment and an inadequate social protection system pushed many people into poverty. According to the national poverty line in Cambodia, which stands at riel 10,951, equivalent to US\$2.70 per person per day, about 18 percent of the population were considered to live in poverty in 2020—with a higher share of poverty in rural areas (23 percent).<sup>79</sup>

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<sup>74</sup> US Embassy in Cambodia, "USTR to Assess GSP Eligibility of Beneficiary Countries," <https://kh.usembassy.gov/ustr-assess-gsp-eligibility-beneficiary-countries/> (accessed October 20, 2022).

<sup>75</sup> Ibid.

<sup>76</sup> Office of the United States Trade Representative, "U.S. Generalized System of Preferences," Guidebook, November 2020, p. 17, [https://ustr.gov/sites/default/files/gsp/GSPGuidebook\\_o.pdf](https://ustr.gov/sites/default/files/gsp/GSPGuidebook_o.pdf) (accessed October 18, 2022).

<sup>77</sup> Ned Price, Spokesperson of the US Department of State, "Business Advisory and GSP Assessment for Cambodia," press statement, November 10, 2021, <https://www.state.gov/business-advisory-and-gsp-assessment-for-cambodia/> (accessed October 18, 2022).

<sup>78</sup> World Bank Group, "Productivity, Diversification, Domestic Investment Are Key to Cambodia's Economic Recovery," press release, January 31, 2022, <https://www.worldbank.org/en/news/press-release/2022/01/31/productivity-diversification-domestic-investment-are-key-to-cambodia-s-economic-recovery> (accessed October 18, 2022).

<sup>79</sup> World Bank, "World Bank in Cambodia, Overview – Context," last updated March 29, 2022, <https://www.worldbank.org/en/country/cambodia/overview> (accessed October 18, 2022).

In early February 2020, Heng Sour, Ministry of Labor and Vocational Training spokesman, warned of garment factory suspensions or closures in March 2020 due to insufficient raw material imports following factory closures in China.<sup>80</sup> By early March 2020, more than 30 factories had suspended operations, affecting approximately 20,000 workers.<sup>81</sup> On April 28, 2020, the MoLVT announced that more than 130 garment factories had suspended operations, affecting nearly 100,000 workers.<sup>82</sup>

The impact on garment workers' livelihoods were exacerbated by brands' unfair purchasing practices in which some brands refused to pay suppliers for orders that were already completed or in production, leaving factories and workers in the lurch.<sup>83</sup>

Similarly, in the tourism sector, by March 2020, eight hotels had already closed in Siem Reap, the location of Angkor Wat, with another 20 not paying salaries to dismissed workers.<sup>84</sup> On March 30, 2020, Prime Minister Hun Sen ordered all casinos to be shut from April 1 to curb the spread of the coronavirus, and said they would receive tax exemptions while they were suspended.<sup>85</sup> In June 2020, the Siem Reap Provincial Department of Tourism reported that 172 hotels in the province had suspended operations.<sup>86</sup>

While announcing the mass layoff of 1,329 workers in April 2021, including union leaders and activist members, the NagaWorld casino also continued to pursue development of a

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<sup>80</sup> Khorn Savi, "Officials say some factories may suspend workers in the future because of the coronavirus, not from EBA," Phnom Penh Post Khmer, February 10, 2020, <https://bit.ly/3zRQvD> (accessed October 18, 2022).

<sup>81</sup> Nandar Chan, "Idle Factories, Empty Trade Zone Highlight Coronavirus Impact on Southeast Asia," Radio Free Asia, March 6, 2020, <https://www.rfa.org/english/news/laos/coronavirus-southeastasia-03062020161747.html> (accessed October 18, 2022).

<sup>82</sup> Sun Narin, "Ministry of Labor: Nearly 100,000 Cambodian workers affected by coronavirus," VOA Khmer, April 28, 2020, <https://khmer.voanews.com/a/some-1-hundred-thousand-workers-lose-jobs-because-of-coronavirus/5394567.html> (accessed October 18, 2022).

<sup>83</sup> Human Rights Watch, "Brands Abandon Asia Workers in Pandemic – Companies Canceling Orders, Adding to Job Loss, Unpaid Wages," April 1, 2020, <https://www.hrw.org/news/2020/04/01/brands-abandon-asia-workers-pandemic> (accessed October 18, 2022); Worker Rights Consortium, "Force Majeure or Farce Majeure?," September 14, 2020, <https://www.workersrights.org/communications-to-affiliates/force-majeure-or-farce-majeure/> (accessed October 18, 2022); Worker Rights Consortium, "Fired, Then Robbed: Fashion brands' complicity in wage theft during Covid-19," report, May 20, 2020, <https://www.workersrights.org/wp-content/uploads/2021/04/Fired-Then-Robbed.pdf> (accessed October 18, 2022).

<sup>84</sup> Eng Kim Hong, "8 hotels in Siem Reap close after tourist drop," RFI, March 4, 2020, <https://bit.ly/3QEKL7G> (accessed October 18, 2022).

<sup>85</sup> Reuters, "Cambodia PM orders casinos shut down as coronavirus cases climb," March 30, 2020, <https://www.reuters.com/article/us-health-coronavirus-cambodia-idINKBN21HoS4> (accessed October 18, 2022).

<sup>86</sup> CENTRAL, "Report on Implementation of Government Allowances in the Covid-19 Pandemic," February 22, 2021, <https://www.central-cambodia.org/archives/5069> (accessed October 18, 2022).

US\$3.5 billion new casino complex in Phnom Penh, called “Naga 3,” after earning \$102.3 million in profits in 2020.<sup>87</sup>

The Cambodian government responded to the economic consequences of the Covid-19 pandemic with a series of relief programs to support furloughed workers.<sup>88</sup> Some furloughed workers received a monthly suspension allowance of \$40 from the government. In the garment sector, workers received an additional monthly allowance of \$30 from the employer.<sup>89</sup> In the tourism and garment sectors, workers also received a skills improvement training program. In addition, all households considered to live in poverty were eligible for a cash transfer program, regardless of work status or sector.<sup>90</sup>

However, the implementation of the relief programs, as well as eligibility criteria and enforcement, lacked transparency. In some cases, eligible workers did not receive the necessary support.<sup>91</sup>

In addition, labor rights advocates found that allowances were not enough for workers to sustain an adequate standard of living and to pay installments of mounting micro-loan debt.<sup>92</sup> As factories closed down during the pandemic, many furloughed workers had taken on more debt to cover lost income and make ends meet.

The failure of effective social protection was felt by all sides, but most acutely by lowest-income workers. The Garment Manufacturers Association in Cambodia (GMAC), for example, claimed that factory owners could not afford to pay co-support of \$30 due to

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<sup>87</sup> Danielle Keeton-Olsen and Keat Soriththeavy, “Cambodian authorities arrest casino workers striking against Hong Kong-listed company,” China Labor Bulletin, January 6, 2022, <https://clb.org.hk/content/cambodian-authorities-arrest-casino-workers-striking-against-hong-kong-listed-company> (accessed October 18, 2022).

<sup>88</sup> Phoung Vantha, “Cambodia Extends Garment and Tourism Workers’ Monthly Support for Three Months,” Cambodianess, December 25, 2020, <https://cambodianess.com/article/cambodia-extends-garment-and-tourism-workers-monthly-support-for-three-months> (accessed October 18, 2022).

<sup>89</sup> Centre for Policy Studies, “The Covid-19 Pandemic and Workers in Cambodia,” Survey, March 2021, [https://www.solidaritycenter.org/wp-content/uploads/2021/06/The-Covid-19-pandemic-and-worker-in-Cambodia\\_EN.pdf](https://www.solidaritycenter.org/wp-content/uploads/2021/06/The-Covid-19-pandemic-and-worker-in-Cambodia_EN.pdf) (accessed October 18, 2022).

<sup>90</sup> Ibid.

<sup>91</sup> Human Rights Watch, “Cambodia: Lockdowns Hit Low-Income Families Hard - Adopt Short-term, Long-term Social Protections to Safeguard Rights,” June 8, 2021, <https://www.hrw.org/news/2021/06/08/cambodia-lockdowns-hit-low-income-families-hard> (accessed October 18, 2022).

<sup>92</sup> Patrick Lee, “Government support for workers during Covid-19 insufficient,” Op-ed, Southeast Asia Globe, May 1, 2020, <https://southeastasiaglobe.com/cambodian-workers-support-covid-19/> (accessed October 18, 2022).

cancelled orders by brands.<sup>93</sup> Union leaders were concerned that GMAC was focusing solely on employers' interests without adequately considering workers' welfare.<sup>94</sup>

Under international human rights law, all workers have the right to social security.<sup>95</sup> However, Cambodia still lacks a comprehensive social protection system, including unemployment benefits.<sup>96</sup> On November 2, 2019, the Cambodian government adopted the Law on Social Security Schemes, which determines general principles, formalities, operational mechanisms and management systems around social security schemes such as unemployment benefits.<sup>97</sup>

The implementing procedures to give effect to unemployment benefits are still lacking. In 2018, the ILO estimated that over seven million Cambodian workers had no access to contributory social protection.<sup>98</sup> It has fragmented social insurance and assistance programs for the formal sector, which means that workers will only receive unemployment benefits from their employers in case of abrupt business shutdown. In 2007, the National Social Security Fund (NSSF) was established to administer basic social insurance schemes covering work injury, health insurance including sickness and maternity for workers in enterprises of more than eight employees, and since 2018, also workers in small-medium enterprises.<sup>99</sup>

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<sup>93</sup> Khan Leakhena, "Factories Can't Afford to Pay Suspended Workers 40 Percent: GMAC," VOD News, April 1, 2020, <https://vodenglish.news/factories-cant-afford-to-pay-suspended-workers-40-percent-gmac/> (accessed October 18, 2022).

<sup>94</sup> Sam Sopich, "Tycoon Kong Sang Selected as New GMAC President," January 19, 2022, <https://cambodianess.com/article/tycoon-kong-sang-selected-as-new-gmac-president> (accessed October 18, 2022).

<sup>95</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19.

<sup>96</sup> Human Rights Watch, "Cambodia: Lockdowns Hit Low-Income Families Hard – Adopt Short-term, Long-term Social Protections to Safeguard Rights," June 8, 2021, <https://www.hrw.org/news/2021/06/08/cambodia-lockdowns-hit-low-income-families-hard> (accessed October 18, 2022).

<sup>97</sup> Ministry of Labor and Vocational Training, Law on Social Security Schemes, NS/RKM/1119/018, adopted November 2, 2019, <https://www.nssf.gov.kh/default/wp-content/uploads/2020/09/2.-Law-on-Social-Security-Schemes.pdf> (accessed October 18, 2022).

<sup>98</sup> ILO, "Practical options for the extension of social protection to workers in the informal economy in Cambodia - The extension of social protection to workers in the informal economy in Cambodia," 2018, [https://www.social-protection.org/gimi/ShowResource.action;jsessionid=Tj1Rn\\_wYgGw6ya9MVD4y4hmHIYu4gVbeOGEDw900WzoXcr3JnMb!-1064472180?id=57403](https://www.social-protection.org/gimi/ShowResource.action;jsessionid=Tj1Rn_wYgGw6ya9MVD4y4hmHIYu4gVbeOGEDw900WzoXcr3JnMb!-1064472180?id=57403) (accessed October 18, 2022).

<sup>99</sup> ILO, "Social Protection – Cambodia," [https://www.social-protection.org/gimi/ShowCountryProfile.action;jsessionid=TnyikExNTTkWiLfleqJf7l1lL66730\\_gPke9QLuhHabTtiBk59-q!445242879?iso=KH&lang=PT](https://www.social-protection.org/gimi/ShowCountryProfile.action;jsessionid=TnyikExNTTkWiLfleqJf7l1lL66730_gPke9QLuhHabTtiBk59-q!445242879?iso=KH&lang=PT) (accessed October 18, 2022).

The government's new Garment, Footwear and Travel Goods Sector Development Strategy 2022-2027,<sup>100</sup> finalized in February 2022, recognizes the importance of social protection, including unemployment benefits, and notes among its objectives the need to:

Review the possibilities to expand the scope of social security scheme, currently provided by the NSSF to workers/employees based on the actual development in this industry, such as the possibilities to provide unemployment benefits insurance to workers/employees.<sup>101</sup>

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<sup>100</sup> Khmer Times, "Cambodia garment, footwear and travel goods (GFT) Sector Development Strategy 2022-2027 to be launched Monday," March 19, 2022, <https://www.khmertimeskh.com/501044129/cambodia-garment-footwear-and-travel-goods-gft-sector-development-strategy-2022-2027-to-be-launched-monday/> (accessed October 18, 2022).

<sup>101</sup> Royal Government of Cambodia, 'Cambodia Garment, Footwear and Travel Goods (GFT) Sector Development Strategy 2022 – 2027, prepared by the Supreme National Economic Council,' February 2022, p. 24.

## II. Repression of Independent Unions

All I am doing is fighting for my rights and exercising these rights. If the authorities come to arrest me, then so be it.

—Chhim Sokhorn, secretary of the independent union, The Labor Rights Supported Union of Khmer Employees of NagaWorld, April 2022

Through repressive laws, old and new, and ostensible responses to the Covid-19 pandemic, Cambodian authorities together with many employers have sought to prevent independent unions from exercising their rights to freedom of association. This repression of independent unions has included threats, intimidation, and criminal prosecution and imprisonment, as well as other forms of harassment.

As with its other critics, the government accused independent unions of being involved in a conspiracy to topple it as part of a so-called Color Revolution, allegedly led by the dissolved opposition party, the Cambodian National Rescue Party (CNRP), and its mostly exiled leaders.<sup>102</sup>

### Criminalization of Independent Unions

Human Rights Watch documented a pattern of cases in which authorities and some employers use Cambodia's courts that lack independence and are government-controlled to bring politically motivated cases against independent union leaders and activist members.

International human rights bodies have long criticized the Cambodian government for severely restricting the rights to freedom of expression, the media, and assembly by resorting to “grounds of defamation, disinformation and incitement,”<sup>103</sup> which prescribe disproportionately harsh criminal sanctions. Agreements or contracts by police forcing

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<sup>102</sup> Interview with Chhim Sithar, LRSU union president, Phnom Penh, April 28, 2022.

<sup>103</sup> OHCHR, “Human Rights Committee considers Report of Cambodia,” treaty bodies, press release, March 18, 2015, <https://www.ohchr.org/en/press-releases/2015/03/human-rights-committee-considers-report-cambodia> (accessed October 18, 2022).



activists to pledge that they will stop their activism or protest activities is strategically used to intimidate other activists from joining them in exercising their rights.

In 2019, factory management at Monopia travel goods factory in Kampong Speu province filed criminal charges against Free Independent Trade Union Federation (FUIF) President Soy Chanthou, and terminated local FUIF leaders Nov Chantha and Oeun Channy, for “incitement to commit a felony” (criminal code, articles 494 and 495) because of their union activities at the factory.<sup>104</sup>

The Kampong Speu provincial court initiated criminal proceedings on December 4, 2019.<sup>105</sup> In 2021, the court summoned the defendants individually for questioning. On August 22, 2022, the court held a trial hearing. The court delayed its verdict to an unspecified date. The court has yet to render a decision.

In August 2021, the prosecutor summoned three additional local FUIF union leaders and activist members—Mao Bunly, Phol Khoeun, and Bun Bros—in relation to yet another criminal complaint that Monopia factory filed, calling them to answer questions about their collection of thumbprint signatures to seek new union members at Monopia factory. This case also remains pending without formal charges, although a hearing can be scheduled, and formal charges imposed at any time. Soy Chanthou, FUIF federation president, said that he did not know what will happen with the case and why they faced incitement charges.<sup>106</sup> Monopia did not respond to Human Rights Watch’s letter and follow-up letters, requesting a response.

### **Employers Seek Criminalization of Local Union Leaders**

On April 2, 2020, Soy Sros, a local union president affiliated with the independent union, The Collective Union of Movement of Workers (CUMW) at Superl Holdings Ltd. factory, Kampong Speu province, was arrested for posting a message on Facebook that commented on dismissals at the company. Her post stated:

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<sup>104</sup> Interview with Soy Chanthou, federation president of FUIF, Kampong Speu city, April 9, 2022.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

Superl is disrespecting the recommendations of Hun Sen, the Prime Minister of Cambodian government, it terminated employment contracts of factory workers including a pregnant worker on the ground of lack of raw material due to Covid-19.<sup>107</sup>

Soy Sros said that factory management asked her to delete the post the next day and demanded that she sign a letter stating her regret and accepting a formal warning, while admitting she had posted “fake news” on Facebook.<sup>108</sup> The factory accused her of “not respecting the principles of the factory because she took time during work hours to do something personal.”<sup>109</sup> She refused to do so.

The following day, factory management called her to the office where police were waiting, and they took her to the police station for questioning.<sup>110</sup> She spent a night in a cell before being brought before a judge.<sup>111</sup> The factory had filed a criminal complaint with authorities based on allegations of “incitement.”

Soy Sros was sent to pretrial detention<sup>112</sup> and spent 55 days in jail before being released on bail on May 28, 2020.<sup>113</sup> The case drew widespread condemnation, including from the international union federation, IndustriALL Global Union.<sup>114</sup> Following public campaigns, on June 13, the factory signed an agreement with the

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<sup>107</sup> IndustriALL, “Cambodian government should immediately release union leader,” April 28, 2020, <https://www.industriall-union.org/cambodian-government-should-immediately-release-union-leader> (accessed October 18, 2022).

<sup>108</sup> Clean Clothes Campaign, “Trade union leader spends 55 days in jail for Facebook post, brands do nothing,” June 23, 2020, <https://cleanclothes.org/news/2020/trade-union-leader-spends-55-days-in-jail-for-facebook-post-brands-do-nothing> (accessed October 18, 2022).

<sup>109</sup> IndustriALL, “Cambodian government should immediately release union leader,” April 28, 2020, <https://www.industriall-union.org/cambodian-government-should-immediately-release-union-leader> (accessed October 18, 2022).

<sup>110</sup> Clean Clothes Campaign, “Trade union leader spends 55 days in jail for Facebook post, brands do nothing,” June 23, 2020, <https://cleanclothes.org/news/2020/trade-union-leader-spends-55-days-in-jail-for-facebook-post-brands-do-nothing> (accessed October 18, 2022).

<sup>111</sup> Ibid.

<sup>112</sup> Business and Human Rights Resource Center, “Lawsuit against labour union president (re inciting social unrest, Cambodia),” December 2, 2020, <https://www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/lawsuit-against-labour-union-president-re-inciting-social-unrest-cambodia/> (accessed October 18, 2022).

<sup>113</sup> Ibid.

<sup>114</sup> Khy Sovuthy, “Garment factories accused of union busting under cover of Covid-19,” May 22, 2020, <https://cambojanews.com/garment-factories-accused-of-union-busting-under-cover-of-covid-19/> (accessed October 18, 2022).

trade union stating that the charges against Soy Sros would be withdrawn, she would be reinstated in her position, receive full back pay for time spent in custody, and the factory would not retaliate against her, and would improve work conditions.<sup>115</sup>

On numerous occasions, Cambodian authorities have used the crime of “incitement to commit a felony” under articles 494 and 495 of the criminal code to target independent unions. For instance, authorities or factory management collected thumbprints of “complaints” from fellow workers to the Ministry of Labor and Vocational Training (MoLVT) or initiated criminal action on trumped-up charges against workers who participated in legitimate union activities, including strikes.

On December 31, 2021, police arrested nine leaders and activist members affiliated with The Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU) involved in leading the union’s strike action based on what they said were baseless allegations that they had affected “public order” and “social security.”<sup>116</sup> Authorities released four of them on January 3, who said they submitted to pressure to sign agreements prepared by the police, pledging they would not conduct any strike action in the future. Six others who refused to sign the pledges remained in jail.<sup>117</sup> The six union activist members were transferred to Phnom Penh’s prison facility, Correctional Center 2 (CC2), and, on January 3, 2022, the Phnom Penh municipal court charged them with “incitement.”<sup>118</sup>

On January 3, 2022, authorities arrested an additional 17 LRSU union activist members, including a pregnant woman, who took part in LRSU’s ongoing strike action.<sup>119</sup> On January 4, authorities released them after they said they signed agreements pledging to refrain

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<sup>115</sup> Clean Clothes Campaign, “Trade union leader spends 55 days in jail for Facebook post, brands do nothing,” June 23, 2020, <https://cleanclothes.org/news/2020/trade-union-leader-spends-55-days-in-jail-for-facebook-post-brands-do-nothing> (accessed October 18, 2022).

<sup>116</sup> Joint CSO statement, “Joint Statement: Government Must Release Nagaworld Unionists and Respect Labour Rights,” January 4, 2022, <https://www.central-cambodia.org/archives/5618> (accessed October 18, 2022).

<sup>117</sup> Letter from Human Rights Watch to NagaWorld and to H.E. Dr. Ith Samheng, Minister of Labor and Vocational Training, dated January 27, 2022 (see appendix).

<sup>118</sup> Joint CSO statement, “Joint Statement: Government Must Release Nagaworld Unionists and Respect Labour Rights,” January 4, 2022, <https://www.central-cambodia.org/archives/5618> (accessed October 18, 2022).

<sup>119</sup> Ibid.

from strike action in the future.<sup>120</sup> On January 4, 2022, authorities arrested LRSU leader Chhim Sithar, former NagaWorld employee Sok Narith, and LRSU member Sok Kongkea. On January 5, authorities granted bail to Sok Kongkea and charged Sok Narith and Chhim Sithar with “incitement,” sending them both to pretrial detention.

As part of the government’s efforts to use the pandemic as a pretext to further clamp down on independent unions, it resorted to the newly adopted draconian Covid-19 Law, overly broad and vague legislation that allows authorities to restrict rights such as ban protests (article 4) and punish alleged violators of Covid-19 measures, without any independent oversight or procedural safeguards.<sup>121</sup>

On February 5, 2022, police arrested six LRSU activist members—Seng Vannarith, Choub Channath, Sao Sambath, Ouk Sophorn, Touch Danet, and Em Kunthea—as they left a Covid-19 testing site, following government orders for strikers to get tested. While the workers were complying with these orders, the authorities nevertheless brought baseless charges against them for allegedly obstructing Covid-19 measures (Covid-19 Law, article 11 ).<sup>122</sup>

The police released three of them later that night, but held Seng Vannarith, Choub Channath, and Sao Sambath at the Phnom Penh police headquarters. On February 9, the Phnom Penh court charged them with “obstruction of Covid-19 measures” (Covid-19 Law, article 11), which carries a penalty of up to five years in prison and ordered their detention at Phnom Penh’s jail, Police Judiciaire.<sup>123</sup>

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<sup>120</sup> CIVICUS, “Crackdown on Union Strike in Cambodia While Repression of Opposition and Critics Continues,” January 5, 2022, <https://monitor.civicus.org/updates/2022/01/05/crackdown-union-strike-cambodia-while-repression-opposition-and-critics-continues/> (accessed October 18, 2022).

<sup>121</sup> Human Rights Watch, “Cambodia: Scrap Abusive Covid-19 Prevention Bill – 20-Year Sentences Wrong Approach to Public Health Challenge,” March 5, 2020, <https://www.hrw.org/news/2021/03/05/cambodia-scrap-abusive-covid-19-prevention-bill> (accessed October 18, 2022).

<sup>122</sup> Mech Dara and Michael Dickson, “Four More NagaWorld Protesters Face Arrest Under Covid-19,” VOD News, February 6, 2022, Law, <https://vodenglish.news/four-more-nagaworld-protesters-face-arrest-under-covid-19-law/> (accessed October 18, 2022).

<sup>123</sup> Human Rights Watch, “Cambodia: Covid-19 Used to Justify Crackdown on Union – UN, ILO, Governments Should Denounce Arrests of Union Leaders, Activists,” March 15, 2022, <https://www.hrw.org/news/2022/02/15/cambodia-covid-19-used-justify-crackdown-union> (accessed October 18, 2022).

On February 5, 2022, authorities issued summonses for four other LRSU activist members, who had complied with Covid-19 testing requirements, to present themselves for questioning about alleged obstruction of Covid-19 measures.<sup>124</sup>

In mid-March 2022, ahead of the Direct Contacts Mission by the ILO's Committee on Application of Standards from March 27 to April 1, the authorities released the 11 LRSU unionists on bail without dropping their charges, risking a trial, a conviction and imprisonment at the whim of the government and prosecutors.

The Phnom Penh prosecutor summoned two LRSU activist members, Net Chakrya and Sok Thavuth, for questioning on October 18 and 19 based on charges of alleged “trespassing,” “aggravated intentional damage” and “false imprisonment.” This summons followed a criminal complaint submitted by NagaWorld. The summons fails to specify when NagaWorld submitted the complaint, what actions by the two union activist members this relates to, or the exact provisions in the criminal code forming the basis of these charges.<sup>125</sup>

## Threats against Independent Unions

Threats, including death threats and threats of imprisonment, against union leaders and activist members have been common and continued during the pandemic.<sup>126</sup> They are often privately communicated via social media and personal messages. Chhim Sithar, president of the LRSU, said that union members had been intimidated since the announcement of their strike action at the end of 2021:

Most of our activists are being followed by uniformed men and Facebook accounts of our members who post footage from our strike on Facebook Live are falsely being reported [to Facebook to remove content]. One of our members' brothers received a death threat via Facebook messenger saying

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<sup>124</sup> Mom Kunthear, “NagaWorld protesters summonsed over ‘obstruction’ of Covid measures,” Phnom Penh Post, February 5, 2022, <https://www.phnompenhpost.com/national/nagaworld-protesters-summonsed-over-obstruction-covid-measures> (accessed October 18, 2022).

<sup>125</sup> Information provided by CENTRAL on October 11, 2022.

<sup>126</sup> CIVICUS, “Journalists, Opposition Activists and Unionists Targeted During Pandemic in Cambodia,” July 23, 2020, <https://monitor.civicus.org/updates/2020/07/23/journalists-opposition-activists-and-unionists-targeted-during-pandemic-cambodia/> (accessed October 18, 2022).

that if we don't stop striking, someone will be killed and 20 more people will be put in jail.<sup>127</sup>

The intimidation and harassment take a toll on their families and worries them.<sup>128</sup> Sun Sreypich, an LRSU activist, said she worried about her mother who is an older person and who had called her every day since Sreypich's release from jail in mid-March 2022: "I am not scared but my family is, and that has an impact on my mental state."<sup>129</sup>

National federation leaders expressed fears about the security of their local union affiliate members. Soy Chanthou, FUI federation president, said in relation to pending criminal cases against union leaders that "everything can happen," and that he worried about the safety of his union members more than his own.<sup>130</sup>

These threats, while frequently not carried out and where online, are often anonymous or conducted through fake Facebook accounts.

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<sup>127</sup> Interview with Chhim Sithar, LRSU union president, Phnom Penh, April 28, 2022.

<sup>128</sup> Interview with Hai Sopheap, LRSU union activist, Phnom Penh, April 28, 2022.

<sup>129</sup> Interview with Sun Sreypich, LRSU union activist, Phnom Penh, April 28, 2022.

<sup>130</sup> Interview with Soy Chanthou, FUI federation president, in Phnom Penh, April 9, 2022.

### III. Government and Employer Union-Busting

Hotel managers call me an anti-government person who incites workers to go on strike. Hotel managers don't want workers to have a relationship with me.

—Touch Kosal, president of independent union federation, Cambodia Tourism Workers' Union Federation, March 2022

The Trade Union Law of 2016 has had a chilling effect on the ability of workers to unionize, which intensified during the Covid-19 pandemic. In addition to other barriers to freedom of association, Human Rights Watch documented cases that show that under the guise of Covid-19 retrenchment measures, government and many employers in the garment, tourism, and entertainment sectors violated the special legal protection enjoyed by unions during dismissals.

Employers alleged, without credible or at times any evidence, that union leaders and activist members were guilty of misconduct, which resulted in employers terminating their contracts without following due process-related protections outlined in the labor law. Employers also filed criminal complaints against union leaders and activist members based on trumped-up charges. Employers continued to overuse fixed-duration contracts to avoid union protection that requires prior authorization of any dismissal of union leaders or shop stewards by the Cambodian government.

Meanwhile, the government clamped down on independent unions, constraining their right to strike. District police and plainclothes officials frequently used violence against strikers, misusing public health measures to end legitimate, peaceful strikes.<sup>131</sup>

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<sup>131</sup> Human Rights Watch, “Cambodia’s Government Should Stop Silencing Journalists, Media Outlets – Free Arbitrarily Detained Media Workers, Restore Media Licenses,” November 2, 2020, <https://www.hrw.org/news/2020/11/02/cambodias-government-should-stop-silencing-journalists-media-outlets> (accessed October 18, 2022).

## Undue Burden or Denial of Right to Form, Register, Join Unions

The Trade Union Law allows only registered unions to operate, making barriers to registration a tool to obstruct workers ability to form unions and target independent unions that are deemed to violate regulations.

Rights groups criticized the TUL as being both unconstitutional and contrary to international labor rights treaties that Cambodia has ratified.<sup>132</sup> Twenty-one global apparel and footwear brands including adidas, New Balance, Nike,<sup>133</sup> and other companies sourcing from Cambodia<sup>134</sup> also advocated for the TUL to be amended and brought into compliance with ILO standards.

Article 12 of the TUL imposes burdensome bureaucratic requirements for union registration, including several documents such as the submission of addresses for keeping of financial books and records, affidavits guaranteeing provision of bank account details within 45 days of receipt of registration, and minutes of the election establishing the union and lists of members.

Implementing ministerial order (“Prakas”) 249/16 on Registration of Trade Unions and Employer Associations also requires that unions submit photos and personal information of leaders, and declarations of literacy and absence of criminal convictions, as well as information regarding detailed biographical information of leaders, and grants a high degree of discretion to the MoLVT’s Department of Labor Disputes, which handles union registration requests, to reject union registration requests based on arbitrary grounds.<sup>135</sup> Touch Kosal, president of union federation, Cambodia Tourism Workers' Union Federation (CTWUF), said the nearly two dozen pages of forms and documents were “too much,” with “requirements too strict—when you write a letter wrong, the application is rejected.”

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<sup>132</sup> Daniel de Carteret, “Cambodian Opposition, Activists Slam New Trade Union Law,” VOA, April 5, 2016, <https://www.voanews.com/a/cambodian-opposition-activists-slam-new-trade-union-law/3269693.html> (accessed October 18, 2022).

<sup>133</sup> Fair Labor Association, “Leading Apparel and Footwear Brands Meet with Cambodian Government to Express Concerns About Worker Rights,” October 23, 2018, <https://www.fairlabor.org/leading-apparel-and-footwear-brands-meet-with-cambodian-government-to-express-concerns-about-worker-rights/> (accessed October 18, 2022).

<sup>134</sup> Fair Labor Association, “21 Companies Sourcing from Cambodia Express Concerns about Labour and Human Rights,” May 2, 2019, <https://www.fairlabor.org/21-companies-sourcing-from-cambodia-express-concerns-about-labor-and-human-rights/> (accessed October 18, 2022).

<sup>135</sup> International Trade Union Confederation, “Survey of violations of Trade Union Rights – Freedom of Association, Collective Bargaining, Strike,” <https://survey.ituc-csi.org/Cambodia.html?lang=en#tabs-2> (accessed October 18, 2022).



Article 18 of the TUL also empowers the MoLVT to file a lawsuit in court to revoke the registration of a union the MoLVT claims has not fulfilled its TUL obligations.

Independent unions told Human Rights Watch the process to form and register a union had become much harder since the TUL's adoption.<sup>136</sup> The discretion of authorities during the union registration process allows for arbitrary refusals of registration of independent unions.<sup>137</sup>

In March 2017, the ILO conducted a Direct Contacts Mission (DCM) to Cambodia.

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) thereafter formulated recommendations in 2021, in which it highlighted concerns around "allegations of arbitrary denial of [union] applications and of introducing through regulations new requirements not set out in the law."<sup>138</sup> It noted that the Cambodian government had acknowledged "the existence of confusion in relation to the registration process and the need to issue instructions (including to clarify that the registration forms issued were not obligatory) and adequately train the responsible officials."<sup>139</sup>

The International Trade Union Confederation (ITUC) in 2017, noted that the government continued "to stop trade unions from performing their normal duties, by imposing excessive requirements on the obtaining and maintenance of registration (alluding, for example, to administrative hurdles for minor issues such as grammatical mistakes in the documents—and claiming that a very large percentage of trade unions were not able to meet the requirements to maintain registration)."<sup>140</sup>

The CEACR recommended that the Cambodian government amend the TUL, in consultation with the social partners, to "ensure that workers are able to register trade unions through a

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<sup>136</sup> Human Rights Watch interview with Ou Tephalin, president of CFSWF, Phnom Penh, May 11, 2022.

<sup>137</sup> Joint CSO Submission to the United Nations Universal Periodic Review, 32<sup>nd</sup> Session of the Working Group on the UPR, Human Rights Council, p. 4, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=6162&file=EnglishTranslation> (accessed October 18, 2022).

<sup>138</sup> Direct Request (CEACR) - adopted 2021, published 110th ILC session (2022), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Cambodia (Ratification: 1999), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4122258,103055:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122258,103055:NO) (accessed October 18, 2022).

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

simple, objective and transparent process,”<sup>141</sup> and recommended that the government take “necessary measures to ensure that registration operates as a simple and swift formality that does not entail any discretion or prior authorization.”<sup>142</sup>

In its March/April 2022 DCM, the ILO reiterated that “practical hurdles to the formation and functioning of trade unions particularly on trade union registration or recognition of their Most Representative Status (MRS), should be rapidly addressed. This would include simplifying the forms and ensuring that clear instructions are given to Ministry officials that only the requirements that are specifically set out in the law can be requested in order to grant registration.”<sup>143</sup>

The Cambodian government maintains that it had responded to the ILO’s recommendations by facilitating procedures and formalities of trade union registration by shortening the registration period from 60 to 30 days.<sup>144</sup> The government also pointed to numbers from March 2021 of “5,546 registered trade unions, of which 290 trade unions were registered after the amendment to the TUL [Trade Union Law], despite the COVID-19 pandemic,”<sup>145</sup> which it argues shows that unions were able to register. However, due to continued lack of transparency around the registration process, subsequent to its 2022 DCM, the ILO suggested that “an online database showing requests for registration, pending issues and final resolution can help for the transparency of the process and demonstrate the consistency of their application.”<sup>146</sup>

Touch Kosal, federation president of the independent CTWUF said that the MoLVT system for union registrations makes it difficult for unions to register because there are so many

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<sup>141</sup> Observation (CEACR) - adopted 2021, published 110th ILC session (2022), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Cambodia (Ratification: 1999), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4122256,103055:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122256,103055:NO) (accessed October 18, 2022).

<sup>142</sup> Ibid.

<sup>143</sup> ILO, Direct Contacts Mission - Cambodia (28 March to 1 April 2022), Conclusions and recommendations, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_845705.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_845705.pdf) (accessed October 18, 2022).

<sup>144</sup> Individual Case (CAS) - Discussion: 2017, Publication: 106th ILC session (2017), [https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101\\_COMMENT\\_ID:4056429](https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4056429) (accessed October 18, 2022).

<sup>145</sup> Individual Case (CAS) - Discussion: 2021, Publication: 109th ILC session (2021), [https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101\\_COMMENT\\_ID:4056429](https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4056429) (accessed October 18, 2022).

<sup>146</sup> Ibid.

documents to prepare.<sup>147</sup> He recounted instances in which the MoLVT had gone through applications one page at a time, instead of the entire union application, requesting unions resubmit applications when they detect an “error.”<sup>148</sup> Kosal said the MoLVT told him that they are too busy to read through the whole application at once.<sup>149</sup>

Unions registering at businesses with more than 100 workers located in the provinces must submit their applications with the MoLVT in Phnom Penh, instead of provincial labor departments, a particularly burdensome process when documents need to be resubmitted.<sup>150</sup> This rule is not laid out in any ministerial orders yet is enforced by the MoLVT.

Ou Tephalin, president of Cambodian Food and Service Worker Federation (CFSWF), said that union registration processes have sometimes taken longer than a year, obstructing the union’s ability to represent workers.<sup>151</sup>

In addition to bias against independent unions and bureaucratic back and forth, the registration process is rendered more cumbersome by prohibiting federations to submit registration requests on behalf of their local, much smaller, affiliate unions.<sup>152</sup>

The bureaucratic process for union registration disproportionately impacts unions not affiliated with the ruling CPP and employers.<sup>153</sup>

Union leaders alleged that employers pressured activist union members who participated in union elections to “resign” from employment.<sup>154</sup> Touch Kosal said that Rosewood Phnom Penh Hotel management allegedly forced one worker to resign from the union after having participated in a union election organized by a CTWUF affiliate.<sup>155</sup> Subsequently, the MoLVT

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<sup>147</sup> Interview with Touch Kosal, federation president of CTWUF, on the phone, March 25, 2022.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid. Also interview with Solidarity Center Cambodia.

<sup>151</sup> Human Rights Watch interview with Ou Tephalin, president of CFSWF, Phnom Penh, May 11, 2022.

<sup>152</sup> Human Rights Watch interview with representatives of CENTRAL, Phnom Penh, June 24, 2022.

<sup>153</sup> Ananth Baliga and Keat Soriththeavy, ‘NagaWorld Union Leader: ‘I Didn’t Understand the Feelings of the Members’,’ VOD News, March 16, 2022, <https://vodenglish.news/nagaworld-union-leader-i-didnt-understand-the-feelings-of-the-members/> (accessed October 18, 2022).

<sup>154</sup> Human Rights Watch phone interview with Touch Kosal, CTWUF president, March 25, 2022.

<sup>155</sup> Interview with Touch Kosal, federation president of CTWUF, on the phone, on March 25, 2022.

cited that person's resignation as the basis to deny the union's registration.<sup>156</sup> Workers were afraid to take part in subsequent union elections.<sup>157</sup> On May 25, 2022, Human Rights Watch wrote to Rosewood Phnom Penh Hotel seeking comment, but has not received a reply.<sup>158</sup>

Soy Chanthou, federation president of FUI, shared similar experiences with respect to FUI union elections in 2021, which prompted management at Monopia factory to pressure workers to "resign." Chanthou said this was done to prevent the renewal of the union's registration after its three-year mandate expired in February 2021.<sup>159</sup>

Human Rights Watch wrote to Monopia factory but had not received a response.<sup>160</sup> According to FUI, such pressure from factory management targeting workers participating in the union's four attempts to hold elections between February and October 2021 were directly responsible for the union's inability to renew its mandate. Pol Khoeun, FUI secretary at Monopia factory, said:

There are two ways for management to go about it. One, the management says to workers that if they don't resign, they will find a reason to fire them. Or two, the factory gives the workers money. Factory management has pressured me to stop my union activities with FUI, but the factory has understood that I cannot be bought.<sup>161</sup>

Mandate renewals of independent unions have created difficulties when union leaders have come under attack from employers and the government. Unions set their own mandate terms in their statutes, ranging usually between three and five years.

In April 2022, Chhim Sithar was reelected union president of the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU), after the union leadership's mandate had

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<sup>156</sup> Interview with Touch Kosal, federation president of CTWUF, on the phone, on March 25, 2022.

<sup>157</sup> Interview with Touch Kosal, federation president of CTWUF, on the phone, on March 25, 2022.

<sup>158</sup> Letter from Human Rights Watch to Rosewood Phnom Penh Hotel, dated May 25, 2022 (see appendix).

<sup>159</sup> Union statutes set out the term of the union's mandate, which usually extends to a period of between three and five years.

<sup>160</sup> No response by Monopia to letter by Human Rights Watch to Monopia, dated May 30, 2022 (see appendix).

<sup>161</sup> Interview with Pol Khoeun, newly elected secretary of FUI, in Kampong Speu city, on April 9, 2022.

expired.<sup>162</sup> On June 6, 2022, the Department of Labor Disputes delayed the union's registration, claiming it contradicted the TUL and the union's statutes because a number of elected candidates and union members participating in the election were no longer employees of NagaWorld, including Chhim Sithar and other dismissed union activist members.<sup>163</sup> At time of writing, the MoLVT had not approved the union's registration, and instructed NagaWorld to temporarily withhold union dues until LRSU's new union mandate was registered.<sup>164</sup>

Human Rights Watch also received information from other union federations that experienced difficulties registering their local union affiliates during the pandemic. The Cambodian Alliance of Trade Union's (CATU) attempts to register unions at Tripos International (Cambodia) Co. factory in Kampong Chhnang province were only successful after four or more union elections.<sup>165</sup> In all these cases, CATU reported that factory management threatened workers by calling them into the office and forcing them to thumbprint documents stating that they resigned from the union. Factory management then uses such documents as evidence to object to union registrations.<sup>166</sup>

## Denial of Right to Strike

Since the passage of the TUL in 2016, labor advocates stated that the number of worker strikes has dropped, as it restricts organizing activities by unions on vaguely defined grounds, for instance making it illegal for a union to organize for “purely political purposes” or for “personal ambitions.”<sup>167</sup>

The UN Office of the High Commissioner for Human Rights (OHCHR) in Cambodia noted in its analysis of the TUL in 2016 that the term “for purely political purposes” is “dangerously

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<sup>162</sup> Keat Soriththeavy and Mam Sampichida, “Exactly 1,000 Votes Cast in NagaWorld Union Vote, Chhim Sithar Re-Elected: Union,” VOD News, May 2, 2022, <https://vodenglish.news/exactly-1000-votes-cast-in-nagaworld-union-vote-chhim-sithar-re-elected-union/> (accessed October 18, 2022).

<sup>163</sup> Information provided to Human Rights Watch by Solidarity Center and CENTRAL. Human Rights Watch never received a response from NagaWorld to three letters in July 2020, January 2022, and May 2022.

<sup>164</sup> Interview with CENTRAL, Phnom Penh, August 10, 2022.

<sup>165</sup> Interview with CENTRAL, Phnom Penh, June 24, 2022.

<sup>166</sup> See the case of Rosewood (interview with Touch Kosal, CTWUF federation president), Monopia (interview with FUI).

<sup>167</sup> Law on Trade Unions, art. 65: “It shall be considered as unlawful for a union or its representatives to commit any of the following practices: [...] f) To agitate for purely political purposes or for their personal ambitions, or to commit acts of violence at the workplace and other places;”.

susceptible to abuse, putting at risk the ability of unions to promote a position in the interest of their members if it should coincide with the platform of political actors.”<sup>168</sup>

The TUL strictly regulates the right to strike by requiring an absolute majority (at least 50 percent + 1 member) quorum for a decision and vote for a decision to go on strike or that an absolute majority of union members voting in a balloting process to call a strike (TUL, article 13).

The ILO Committee on Freedom of Association (CFA) has repeatedly held that a requirement that an absolute majority of union members is needed for calling a strike is onerous, seriously limiting the right to organize.<sup>169</sup> The Labor Law also requires that workers first take recourse to arbitration or engage in long and complex conciliation and mediation procedures before they can call for a strike.

The Cambodian government claims in its latest “Cambodia Garment, Footwear and Travel Goods Sector Development Strategy 2022-2027” that “very often” labor disputes “have led to illegal strikes and demonstrations causing the loss for both workers/employee,”<sup>170</sup> which shows government officials’ general reluctance to safeguard the right to strike.

Given the hugely onerous legal requirements under Cambodian labor law, which violate international labor rights standards, Human Rights Watch believes that Cambodian authorities have made it nearly impossible for workers to call for strikes.

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<sup>168</sup> Office of the United Nations High Commissioner for Human Rights in Cambodia, “A Human Rights Analysis of the Draft Law on Trade Unions,” p. 26, [https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/TUL\\_Analysis-Eng.pdf](https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/TUL_Analysis-Eng.pdf) (accessed October 18, 2022).

<sup>169</sup> ILO, “Freedom of association - Compilation of decisions of the Committee on Freedom of Association,” June 20, 2018, paras. 806, 807, 808, and 810, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_632659.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf) (accessed October 18, 2022).

<sup>170</sup> Royal Government of Cambodia, ‘Cambodia Garment, Footwear and Travel Goods (GFT) Sector Development Strategy 2022 – 2027, prepared by the Supreme National Economic Council,’ February 2022, p. 13.

Cambodia's longest industrial action in recent history, despite the ongoing clampdown on unions, was organized by the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU) in response to the months of failed negotiations to resolve their labor disputes.

On December 18, 2021, the LRSU went on strike to demand reinstatement of 365 dismissed casino workers as part of a mass layoff of 1,329 workers announced in April 2021—also affecting union leaders—and fair compensation in accordance with the labor law. NagaWorld said the decision to lay off workers was due to economic losses,<sup>171</sup> at a time when the casino reported it was generating millions of US dollars in net profit.<sup>172</sup> Workers established their picket line outside NagaWorld casino in central Phnom Penh. Soon after the strike began, the Phnom Penh municipal court issued a court injunction declaring the strike action “illegal,” and ordered striking workers to resume work.<sup>173</sup>

The court did not give the LRSU an opportunity to contest or respond to Naga World's request to prohibit the strike prior to the court's decision.<sup>174</sup> Police arrested more than 35 striking LRSU unionists between December 31, 2021 and mid-February 2022, with activists jailed on spurious charges. Police also raided the LRSU's offices on December 31, 2021 without warrants, and confiscated union documents, computers, and the union leaders' mobile phones were taken upon arrest.<sup>175</sup>

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<sup>171</sup> IUF Asia/Pacific, “Striking workers denounce NagaWorld management's misinformation campaign, call for release of arrested leaders and restoration of union rights,” January 29, 2022, <https://iufap.org/2022/01/29/striking-workers-denounce-nagaworld-managements-misinformation-campaign-call-for-release-of-arrested-leaders-and-restoration-of-union-rights/> (accessed October 18, 2022).

<sup>172</sup> NagaCorp Ltd., “Announcement of Final Results for the Year Ended 31 December 2020,” Stock Code: 3918, March 8, 2021, <https://doc.irasia.com/listco/hk/nagacorp/annual/2020/res.pdf> (accessed October 18, 2022).

<sup>173</sup> LICADHO, “Flash Info: NagaWorld Workers Protest as Court Rules Strike ‘Illegal’,” December 18, 2021, <https://www.licadho-cambodia.org/flashnews.php?perm=303> (accessed October 18, 2022).

<sup>174</sup> Joint CSO statement, “Joint Statement on Strike Action by NagaWorld Employees,” December 18, 2021, <https://www.central-cambodia.org/archives/5585> (accessed October 18, 2022).

<sup>175</sup> IUF-AP, “Union office raided, striking NagaWorld workers arrested, as management and authorities respond with repression,” January 1, 2022, <https://iufap.org/2022/01/01/union-office-raided-striking-nagaworld-workers-arrested-as-management-and-authorities-respond-with-repression/> (accessed October 18, 2022).

The ITUC has denounced the authorities' use of court injunctions to preclude industrial action where unions have followed all required procedures.<sup>176</sup>

The Cambodian government has said they are justified due to an alleged “increase in illegal strikes by opportunist trade union leaders for their personal benefit.”<sup>177</sup>

On January 4, 2022, authorities used excessive force, beating and roughly moving LRSU leader Chhim Sithar, pushing her into a police car when she arrived at the strike site. Police said their use of force was necessary.<sup>178</sup>

UN rights experts,<sup>179</sup> international labor rights groups,<sup>180</sup> international trade union federations,<sup>181</sup> and foreign governments widely condemned the arrests of LRSU strikers.<sup>182</sup>

As part of compliance with Covid-19 precautionary measures and laws, LRSU strikers wore masks and maintained social distancing, according to numerous observers, including Human Rights Watch. On February 4, 2022, the Ministry of Health ordered several hundred strikers to take a Covid-19 test, after one striking union activist member, who had last participated in the strike on January 15, tested positive.<sup>183</sup> Cambodian authorities prevented several hundred strikers from moving to the strike site and ordered they board

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<sup>176</sup> Direct Request (CEACR) – adopted 2021, published 110<sup>th</sup> ILC session (2022), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia, [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4122258,103055:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122258,103055:NO) (accessed October 18, 2022).

<sup>177</sup> Ibid.

<sup>178</sup> Gerald Flynn and Phoung Vantha, “NagaWorld Union Leader Arrested in Chaotic Scenes Outside Australian Embassy,” *Cambodianess*, January 4, 2022, <https://cambodianess.com/article/nagaworld-union-leader-arrested-in-chaotic-scenes-outside-australian-embassy> (accessed October 18, 2022).

<sup>179</sup> UN experts, “Cambodia: Arrests of strikers may be breach of human rights law,” January 5, 2022, <https://www.ohchr.org/en/press-releases/2022/01/cambodia-arrests-strikers-may-amount-breach-human-rights-law-un-experts> (accessed October 18, 2022).

<sup>180</sup> Solidarity Center, “Striking Casino Workers in Cambodia Protest Union Leaders’ Arrests,” January 24, 2022, <https://www.solidaritycenter.org/striking-casino-workers-in-cambodia-protest-union-leaders-arrests/> (accessed October 18, 2022).

<sup>181</sup> IUFAP, “More union leaders arrested as Cambodian government violates human rights to protect NagaWorld profits,” February 10, 2022, <https://iufap.org/2022/02/10/more-union-leaders-arrested-as-cambodian-government-violates-human-rights-to-protect-nagaworld-profits/> (accessed October 18, 2022).

<sup>182</sup> Reuters, “US says troubled by Cambodian action against striking casino workers,” January 4, 2022, <https://www.reuters.com/world/asia-pacific/us-says-troubled-by-cambodian-action-against-striking-casino-workers-2022-01-04/> (accessed October 18, 2022).

<sup>183</sup> Teng Yalirozy, “NagaWorld Strikers Are Arrested as They Were Returning from Being Tested for COVID-19,” *Cambodianess*, February 6, 2022, <https://cambodianess.com/article/nagaworld-strikers-are-arrested-as-they-were-returning-from-being-tested-for-covid-19> (accessed October 18, 2022).



buses to be taken for compulsory Covid-19 tests at a makeshift testing site. Officials told the strikers that anyone who tested negative would have to self-isolate for seven days,<sup>184</sup> and that if they tested positive, they would be sent to a Covid-19 treatment center.<sup>185</sup>

Between February 5 and 6, over 400 protesting workers appeared as ordered at the designated testing site on Phnom Penh's Diamond Island (Koh Pich).<sup>186</sup> Six union activists were arrested when leaving the testing site, with four other workers summoned for questioning, despite having complied with Covid-19 government measures by getting tested and isolating at home.<sup>187</sup>

The ILO tripartite CFA held that prohibitions of strikes during a national emergency, such as the Covid-19 public health crisis, should be limited in time, strictly necessary, and proportionate.<sup>188</sup> The committee also stated that the "responsibility for suspending a strike on the grounds of public health should not lie with the government, but with an independent body which has the confidence of all parties concerned."<sup>189</sup>

On February 15, 2022, Phnom Penh city hall ordered striking workers to move to a location outside Phnom Penh city, far from the NagaWorld casino premises and management.<sup>190</sup>

Five international human rights experts<sup>191</sup> raised serious concerns around the misuse of public health measures as a disguise to crack down on peaceful and lawful labor action:

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<sup>184</sup> In Cambodia, current testing protocol does not commonly require isolation for those who test negative from a Covid-19 test.

<sup>185</sup> Tran Techseng and Michael Dickson, "NagaWorld Strikers Instructed to Stay Home for 7 Days," VOD News, February 5, 2022, <https://vodenglish.news/nagaworld-strikers-instructed-to-stay-home-for-7-days/> (accessed October 18, 2022).

<sup>186</sup> Keat Soriththeavy and Ananth Baliga, "Health Order Shuts Down NagaWorld Rallies, Global Unions Show Support," VOD News, February 7, 2022, <https://vodenglish.news/health-order-shuts-down-nagaworld-rallies-global-unions-show-support/> (accessed October 18, 2022).

<sup>187</sup> Human Rights Watch, "Cambodia: Covid-19 Used to Justify Crackdown on Union – UN, ILO, Governments Should Denounce Arrests of Union Leaders, Activists," February 15, 2022, <https://www.hrw.org/news/2022/02/15/cambodia-covid-19-used-justify-crackdown-union> (accessed October 18, 2022).

<sup>188</sup> Ruwan Subasinghe, Jeff Vogt, "Will fundamental workers' rights also fall victim to COVID-19?," Equal Times, April 23, 2020, <https://www.equaltimes.org/will-fundamental-workers-rights?lang=en#.Yu7LjexBw-Q> (accessed October 18, 2022).

<sup>189</sup> Ibid.

<sup>190</sup> Meng Seavmey, "Authorities Condemned for Using Health Measures to Restrict NagaWorld Strike," February 16, 2022, <https://cambodianess.com/article/authorities-condemned-for-using-health-measures-to-restrict-nagaworld-strike> (accessed October 18, 2022).

<sup>191</sup> The UN Special Rapporteur on the situation of human rights in Cambodia, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the UN Special Rapporteur on the right to health, and the UN Special Rapporteur on the situation of human rights defenders.

[a]uthorities appear to have dressed up efforts to stifle peaceful and lawful labour action as public health measures. ... The manner that authorities have imposed restrictions on lawful and peaceful strikers based on public health concerns are unjustified, unnecessary and disproportionate in the given circumstances.<sup>192</sup>

To end the strike, Cambodian authorities started to use city buses to transport detained striking workers to the outskirts of Phnom Penh or to remote Covid-19 quarantine sites, and then stranded them there, without means to return.<sup>193</sup> After the visit and monitoring of the strike by the UN special rapporteur on the situation of human rights in Cambodia, Professor Vitit Muntarbhorn on August 17, 2022, Cambodian authorities stopped using buses to forcibly remove strikers, allowing them to strike in front of NagaWorld.<sup>194</sup>

In June 2022, Human Rights Watch wrote to the Japan International Cooperation Agency (JICA) raising concerns about Cambodian authorities using public buses donated by JICA to the Phnom Penh City Bus Authority to transport strikers to the outskirts of Phnom Penh.<sup>195</sup> These donations, provided between 2016 to 2018, were part of a grant program<sup>196</sup> of nearly 1.3 billion yen (US\$9.7 million), involving 80 buses, that was signed on September 27, 2016.<sup>197</sup>

JICA responded on July 28:

The Japanese government and JICA have been in close contact on a daily basis with the Cambodian government, including about the human rights situation, and are working on this matter in an appropriate manner, but

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<sup>192</sup> OHCHR, “Cambodia: Stifling new measures against striking workers are ‘unjustified’ – UN human rights experts,” Special Procedures, press release, February 16, 2022, <https://www.ohchr.org/en/press-releases/2022/02/cambodia-stifling-new-measures-against-striking-workers-are-unjustified-un> (accessed October 18, 2022).

<sup>193</sup> Interview with Chhim Sithar, LRSU union president, in Phnom Penh, on April 28, 2022.

<sup>194</sup> Keat Soriththeavy, “NagaWorld Protestors Let Through Barricade as UN Official Looks On,” August 17, 2022, <https://vodenglish.news/nagaworld-protestors-let-through-barricade-as-un-official-looks-on/> (accessed October 18, 2022).

<sup>195</sup> Letter from Human Rights Watch to the Japan International Cooperation Agency (dated June 24, 2022 (see appendix).

<sup>196</sup> Japan Foreign Ministry, Exchange of letters on two aid grants, September 27, 2016, [https://www.mofa.go.jp/mofaj/press/release/press4\\_003744.html](https://www.mofa.go.jp/mofaj/press/release/press4_003744.html) (accessed October 18, 2022).

<sup>197</sup> JICA, ‘The Project for Improvement of Transportation Capacity of Public Bus in Phnom Penh,’ [https://www2.jica.go.jp/ja/evaluation/pdf/2016\\_1660370\\_1\\_s.pdf](https://www2.jica.go.jp/ja/evaluation/pdf/2016_1660370_1_s.pdf) (accessed October 18, 2022).

considering this is a diplomatic matter, we would like to refrain from commenting on the details of the communication.<sup>198</sup>

LRSU activist members reported several incidents of violence against strikers when forcing them onto buses. A video posted on Twitter on February 24, 2022, shows at least five uniformed police, accompanied by three men in civilian clothing—one of whom is holding a handheld portable two-way radio—pushing and dragging three female strikers onto a bus stairwell. Human Rights Watch verified the video by identifying the exact location it was recorded, searching online to find if earlier versions existed, and matching the bus’s interior with the buses financed by Japan.

Another video posted on Twitter on June 27, 2022, which Human Rights Watch examined and verified, shows uniformed police, assisted by individuals in civilian clothes, next to a crowd of strikers approximately 250 meters from NagaWorld. In the video, uniformed police are grouped at the back entrance of a bus, when a disturbance occurs between the police and strikers that causes the crowd to rush towards the bus. According to reports by civil society groups from this incident, the uniformed police were pulling, beating, and shoving protesters to force them onto buses to transport them from the strike site.<sup>199</sup> On June 27, 2022, security officers blocked UN OHCHR monitors from accessing strikers.<sup>200</sup>

Re Sovandy, a dismissed LRSU member who actively participated in the strikes in 2022, recounted several incidents of violence during the protests, including authorities slapping female strikers, kicking them, shoving them onto the bus that removed them from the picket, and pulling strikers from buses and onto the ground until they fainted.<sup>201</sup>

At Covid-19 quarantine centers, removed strikers were forced to sleep uncovered on the ground, without proper sleeping or bathing facilities. After testing all workers, LRSU activist members said authorities forced them to sign “pledges” that they would comply

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<sup>198</sup> Letter from the Japan International Cooperation Agency to Human Rights Watch, dated July 28, 2022 (see appendix). See also Human Rights Watch, “Japan: Press Cambodia to End Trade Union Crackdown – Tokyo-Provided Buses Used in Forced Removal of Strikers,” August 8, 2022, <https://www.hrw.org/news/2022/08/08/japan-press-cambodia-end-trade-union-crackdown> (accessed October 18, 2022).

<sup>199</sup> Information provided by CENTRAL on June 30, 2022.

<sup>200</sup> Keat Soriththeavy, “NagaWorld Workers Met With Violence Near Casino Complex,” VOD News, June 27, 2022, <https://vodenglish.news/nagaworld-workers-met-with-violence-near-casino-complex/> (accessed October 18, 2022).

<sup>201</sup> Interview with Re Sovandy, LRSU union activist, in Phnom Penh, on April 28, 2022.

with health measures and not violate them again, would cease all illegal gatherings and demonstrations, and that the authorities would take action in case of “illegal activities.” Upon arrival, all workers were tested for Covid-19. Workers who tested positive were transferred to Covid-19 treatment centers.

The authorities fined some workers one million Cambodian riel (US\$250) for allegedly violating Covid-19 measures as they had attempted to resume their strike.<sup>202</sup> LRSU activist member Chem Ratha described conditions at quarantine centers as “very dirty” and resembling a “rubbish dump”:

Only during the evening did they give us some food. The authorities said, if we didn’t sign a contract promising to refrain from protesting in the future, we couldn’t leave the site. So, some strikers signed it to leave because they were scared.<sup>203</sup>

Human Rights Watch wrote twice to NagaWorld management, in January and May 2022, to seek their comment. At time of writing, NagaWorld had not responded.<sup>204</sup>

Human Rights Watch received other reports from local partners about crackdowns on worker protests during the pandemic. The authorities arrested three union leaders at Can Sports Shoe factory in Kampong Chhnang, alleging that the more than 9,000 protesting workers were “inciters” and that they should only be allowed to submit petitions in their labor disputes, but not to protest.<sup>205</sup> Lawyers had not been permitted to meet with the union leaders. The authorities forced the union leaders to thumbprint pledges agreeing not to cause unrest in the factory.

In response to the sudden closure of Violet Apparel factory<sup>206</sup> in Phnom Penh, on July 1, 2020, without prior reasonable notice as required under Cambodian labor law, dismissed

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<sup>202</sup> Interview with Chhim Sithar, LRSU president, in Phnom Penh, on April 28, 2022.

<sup>203</sup> Interview with Chem Ratha, LRSU union activist, in Phnom Penh, on April 28, 2022.

<sup>204</sup> Letter from Human Rights Watch to NagaWorld, dated May 31, 2022 (see appendix).

<sup>205</sup> Ouch Sony, “More Than 1,000 Shoe-Factory Workers Protest, Police Detain Three,” VOD News, May 31, 2022, [https://vodenglish.news/more-than-1000-shoe-factory-workers-protest-police-detain-three/?fbclid=IwAR2jXGoeLmPi1O48K\\_tLq45b-QsaByiYQbAPhRGjzulqwkK6xbiPwPT4NUo](https://vodenglish.news/more-than-1000-shoe-factory-workers-protest-police-detain-three/?fbclid=IwAR2jXGoeLmPi1O48K_tLq45b-QsaByiYQbAPhRGjzulqwkK6xbiPwPT4NUo) (accessed October 18, 2022).

<sup>206</sup> Since the closure of Violet Apparel, reference is made to its parent company, Ramatex Group, including during proceedings at the Arbitration Council.

workers worried about losing their wages and severance payments protested outside the factory demanding payment of outstanding amounts they were legally owed. The MoLVT reacted not by taking action against the factory, but by issuing an official warning to the CATU federation head, Yang Sophorn, claiming that she had conducted illegal activities by organizing a demonstration in front of the factory. These included: “Leading and inciting workers to threaten and pressure the employer in order to receive payment of wages contrary to the spirit of the law and regulations related to the labor sector (Article 83 of the Labor Law),” and “Leading and pushing employees to meet together which is contrary to the guiding principles of the Ministry of Health to prevent the spread of COVID-19.”<sup>207</sup>

The MoLVT threatened CATU with possible deregistration if Sophorn did not cease the protest activities. A similar warning letter issued by head of the Department of Labor Disputes, Ang Sengly, on August 4, 2022, in relation to Sophorn attending a LRSU strike, stated that “the activities which you have previously committed regarding the dispute at NagaWorld are illegal activities.”

It demanded that she cease “illegal actions.”<sup>208</sup> The MoLVT accused her of violating TUL articles 65, 81, and 89, namely by “Leading a strike or demonstration contrary to legal procedures”; “Leading and conducting activities outside the professional or sectoral scope specified in Article 6 of your union federation’s statutes”; and “Leading and forcing workers to participate in a strike.” The threat of legal action continues to hang over Sophorn’s head.

## Non-Renewal of Fixed-Duration Contracts, Unfair Dismissals of Union Leaders

### *Fixed-Duration Contract Used to Hinder Unionization*

Cambodian labor law permits employers to engage workers either on open-ended contracts of undetermined duration (UDC) or on fixed-duration contracts (FDC) that specify

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<sup>207</sup> Ministry of Labor and Vocational Training, Warning letter addressed to Yang Sophorn – Immediately cease illegal union activities conducted at Violet Apparel (Cambodia) Co., Ltd., No. 651 KB/AK/VK, dated July 1, 2020.

<sup>208</sup> Warning Letter, ‘Warning Letter Addressed to Mrs. Yang Sophorn, President of the Cambodian Alliance of Trade Unions,’ No. 530 KB/AK/VK, August 4, 2022; Published on the Facebook page of Ministry of Labor and Vocational Training, <https://www.facebook.com/100057607683328/posts/pfbid0tKJ6RUgssV9rof9jAtcoXujGFbpL9j4S1QQRKBWFGuRuNrfRC2yG68i6zZEFful/?d=n> (accessed October 18, 2022).

an end-date. The Labor Law states that factory managers can issue short-term contracts and renew them one or more times for up to two years.<sup>209</sup>

While workers on FDCs enjoy many of the same benefits that workers on UDCs enjoy, they have lesser protection against dismissals and risk losing their seniority benefits that are calculated based on overall employment tenure.

Workers on UDCs and FDCs who have at least one year's uninterrupted service in a factory are entitled to maternity pay and a seniority bonus. The seniority bonus increases annually and is directly linked to job tenure.<sup>210</sup> A key difference is that workers on FDCs are entitled to least 5 percent of their wages as severance at the end of each contractual period or when they are terminated.<sup>211</sup> Employers pay severance for UDC workers only at the end of their employment.

Workers on UDCs have longer notice periods and heavier penalties assessed against employers for unfair dismissals from work.<sup>212</sup> In contrast, employers can refuse to renew an FDC without having to give any reason.<sup>213</sup>

Employers and the MoLVT have acted contrary to Cambodian labor law and the Arbitration Council's interpretations of article 67 of the Labor Law. Article 67 prohibits employers from engaging workers on FDCs beyond two years and that if they do, such workers are entitled to the same benefits and protections as workers on UDCs.<sup>214</sup> This includes pay in lieu of prior notice of dismissal, indemnity, and, if dismissed without a valid reason, damages.<sup>215</sup>

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<sup>209</sup> Cambodia's Labor Law, art. 67: "A labor contract signed with consent for a specific duration must contain a precise finishing date. The labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule leads the contract to become a labor contract of undetermined duration."

<sup>210</sup> ILO-BFC, "Guide to the Cambodian Labor Law for the Garment Industry," 2014, p.17, [Cambodian-Labour-Law-Guide\\_FINAL-2020\\_16-07-2020.pdf](#) (betterwork.org) (accessed October 20, 2022).

<sup>211</sup> Cambodia Labor Law, art. 73.

<sup>212</sup> Cambodia Labor Law, articles 73 and 74.

<sup>213</sup> Cambodia Labor Law, article 73.

<sup>214</sup> Cambodia Labor Law, article 67. Article 67 states: "The labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule leads the contract to become a labor contract of undetermined duration." Arbitration Council Awards 10/03, 02/04, 155/09(9), 70/11(1), 105/11(3).

<sup>215</sup> Cambodia Labor Law, arts. 75, 89 and 91.

On May 17, 2019, the MoLVT enabled the extended use of FDCs beyond two years by way of “Instruction no. 050/19 on determination of the type of employment contract,” even though it appears to violate Cambodian labor law.<sup>216</sup> Labor advocates told Human Rights Watch that the MoLVT denies that FDCs are used to terminate trade union leaders and weaken the trade union movement.<sup>217</sup> Labor advocates consider the extended use of FDCs beyond two years deliberate anti-union actions by employers, and ultimately “an obstacle to the exercise of trade union rights.”<sup>218</sup>

Human Rights Watch’s 2015 report “*Work Faster or Get Out*”: Labor Rights Abuses in Cambodia’s Garment Industry showed that historically factories overused FDCs in ways that appear to contravene the Labor Law.<sup>219</sup> Employers have used FDCs to discourage workers from unionizing, and to sidestep special protections from dismissal enjoyed by shop stewards and union leaders under the TUL, requiring prior authorization by the MoLVT.<sup>220</sup>

The ILO’s 2018 annual “Better Factories Cambodia (BFC) program” report—the latest available report that provides detailed information on the use of FDCs—illustrated systematic non-compliance by factories owners with the maximum two-year period for FDCs.<sup>221</sup> The BFC report showed that almost 68 percent of examined factories were not in compliance, up from 35 percent non-compliance the previous year.<sup>222</sup>

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<sup>216</sup> MoLVT, Instruction No. 050/19 on determination of the type of employment contract, issued on May 17, 2019, <https://www.arbitrationcouncil.org/download/instruction-no-050-19-k-b-s-n-n-k-b-k-dated-17-may-2019-on-determination-of-type-of-employment-contracts-unofficial-translation-by-gmac/?wpdmdl=9302&refresh=62b71dcce6bbd1656167884> (accessed October 18, 2022).

<sup>217</sup> Interview with CENTRAL, Phnom Penh, June 24, 2022.

<sup>218</sup> Individual Case (CAS) - Discussion: 2017, Publication: 106th ILC session (2017), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3330983](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3330983) (accessed October 18, 2022).

<sup>219</sup> Human Rights Watch, ““Work Faster or Get Out” – Labor Rights Abuses in Cambodia’s Garment Industry,” March 11, 2015, [https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry#\\_ftnref49](https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry#_ftnref49) (accessed October 18, 2022).

<sup>220</sup> Trade Union Law, articles 43 and 67. A shop steward refers to a representative of workers elected directly by workers.

<sup>221</sup> The International Labor Organization’s compliance program conducts annual surveys of garment and footwear exporting factories, covering 548 factories registered with Better Factories Cambodia (BFC).

<sup>222</sup> International Labor Organization, “Better Factories Cambodia Annual Report 2018: An Industry and Compliance Review,” 2018, <https://betterwork.org/wp-content/uploads/2018/12/BFC-Annual-Report-2018.pdf> (accessed October 18, 2022).

While recent comprehensive numbers of how many workers in the garment and tourism or entertainment sectors are on FDCs beyond the legal limit of two-years are unknown, local labor advocates point to continued overuse.<sup>223</sup>

Labor disputes reported to Human Rights Watch that arose out of the pandemic showed violations of the use of FDCs and non-payment of legally owed severance benefits. Representatives from independent union federations and labor advocates claimed that workers on FDCs had been terminated even without legal notice as ostensible retaliation for their participation in union activities.<sup>224</sup>

During the pandemic, independent union leaders spoke about cases where there was no protection from anti-union discrimination during dismissals and their employers accused them of misconduct to avoid paying legally owed severance.<sup>225</sup>

The Free Independent Trade Union Federation (FUPI) is one of two trade unions at the Monopia factory located in Kampong Speu province.<sup>226</sup> With approximately 500 union members, it is the bigger of the two unions.<sup>227</sup>

On November 19, 2019, factory management dismissed seven elected local union leaders affiliated with FUPI, including Nov Chantha, FUPI's local union president, and former vice president, Oeun Channy, based on allegations of unsubstantiated serious misconduct. They had been on six-month FDCs, even though they had already worked at the factory for over two years.

Nov Chantha said factory management falsely accused him and Oeun Channy of violating their employment contracts and internal company regulations by leaving the

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<sup>223</sup> Interview with Bent Gehrt, Southeast Asia director at Workers Rights Consortium, on phone, on August 15, 2022.

<sup>224</sup> ITUC, "Survey of violations of Trade Union Rights – Cambodia, Practice," November 30, 2009, <https://survey.ituc-csi.org/Cambodia.html?lang=en#tabs-3> (accessed October 18, 2022).

<sup>225</sup> Interview with Nov Chantha, former local Free Independent Trade Union Federation (FUPI) president, in Kampong Speu city, on April 9, 2022.

<sup>226</sup> Monopia (Cambodia) Co., Ltd. Krang Svay, Roleang Kreul Samraong Tong, Kampong Speu, 5206, Cambodia.

<sup>227</sup> Interview with Nov Chantha, former local FUPI president, in Kampong Speu city, April 9, 2022.



workplace during working hours, taking leave without notice, and disrespecting factory management.

They asserted that the employer was targeting them based on their union activities.<sup>228</sup> Both had not received any warnings from factory management about these matters before dismissal.<sup>229</sup> Soy Chanthou, federation president of FUI, added that factory management did not let the union leaders enter the factory after their dismissal, simply posting a notice to the factory gate informing them of their dismissals.<sup>230</sup>

The factory would not reinstate Nov Chantha and Oeun Channy. On May 30, 2022, Human Rights Watch contacted Monopia factory for their comment. At time of writing, Monopia had not responded.<sup>231</sup>

Human Rights Watch also contacted the Japanese brand, Fast Retailing Group,<sup>232</sup> which sources from the factory, seeking comment about the dismissals of the two union leaders. In an email, Fast Retailing Group said that Monopia recently joined ILO's project, Better Factory Cambodia, which assesses factories compliance with various standards, including freedom of association.<sup>233</sup>

Fast Retailing Group noted that the company requires “that all our partner factories maintain healthy industrial relations and social dialogue, engaging worker representatives and union representatives where possible to identify sustainable solutions for factory and workers.”<sup>234</sup>

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<sup>228</sup> Interview with Nov Chantha, former local FUI president and Oeun Channy, former vice-president of local FUI affiliate union in Kampong Speu city, on April 9, 2022.

<sup>229</sup> Interview with Ouen Channy, former vice-president of local FUI affiliate union, in Kampong Speu city, on April 9, 2022. Ouen alleged that the factory had falsified a warning letter that he had never received. The factory presented that letter to the Ministry of Labor when applying for the dismissal of both union leaders. Chantha?? never received a warning.

<sup>230</sup> Interview with Soy Chanthou, FUI's federation president, in Kampong Speu city, on April 9, 2022.

<sup>231</sup> Letter from Human Rights Watch to Monopia dated May 30, 2022 (see appendix).

<sup>232</sup> Letter from Human Rights Watch to Fast Retailing Group, dated July 26, 2022 (see appendix).

<sup>233</sup> Email by Yukhiro Nitta, Group Executive Officer, Sustainability at Fast Retailing Group to Human Rights Watch, dated August 12, 2022. See also a union response to the lack of transparency by ILO's BFC project, Solidar Suisse, “Joint Statement on Better Work Transparency Data,” September 29, 2021, [https://solidar.ch/wp-content/uploads/2021/11/Better\\_Work\\_Statement\\_29\\_September\\_2021.pdf](https://solidar.ch/wp-content/uploads/2021/11/Better_Work_Statement_29_September_2021.pdf) (accessed October 18, 2022).

<sup>234</sup> Email by Yukhiro Nitta, Group Executive Officer, Sustainability at Fast Retailing Group to Human Rights Watch, dated August 12, 2022.

Brands have an important role to drive improvements at the factory level using their business leverage. Fast Retailing's response, for example, can be contrasted with the response of adidas and New Balance in a case that involved their supplier Trax Apparel. At the Trax Apparel factory in Phnom Penh, factory management did not renew the three-month fixed-duration contracts of three elected union leaders of the local union affiliated with the Cambodian Alliance of Trade Unions (CATU), Yon Yet, president; Him Rokei treasurer; and Kon Sokoun, secretary.

While the three union leaders had worked at the factory for one year, Yon Yet said that on June 26, 2020, factory management orally informed them they would be dismissed.<sup>235</sup> This followed Trax Apparel's suspension of 620 of its factory workers employed on FDCs in April 2020, citing a lack of orders from brands during the Covid-19 pandemic.<sup>236</sup>

CATU told Human Rights Watch that Trax Apparel gave workers the option to resign immediately or be placed on a two-month suspension with a payment of US\$30 per month, in addition to \$40 promised to be paid by the Cambodian government.<sup>237</sup> In response, 252 workers chose immediate resignation; 368 workers chose the two-month work suspension, including the seven local CATU leaders and activist members to ensure the union's presence at the factory was not affected.<sup>238</sup>

On April 4, 2022, CATU and Trax factory management reached an agreement in which the factory agreed to rehire Yon Yet, Him Rokei, Kon Sokoun, as well as Pom Sreymol, another CATU activist member, while four other unionists would not be reinstated, and to provide severance payments to eight workers.<sup>239</sup> Human Rights Watch wrote to Trax Apparel factory to seek their comment but did not receive a response.<sup>240</sup>

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<sup>235</sup> Interview with Yon Yet, local CATU president, in Phnom Penh, on March 23, 2022.

<sup>236</sup> The majority were on three-months fixed-duration contracts. See Fast Retailing Group, Code of Conduct for Production Partners, [https://www.fastretailing.com/eng/sustainability/labor/pdf/coc\\_en.pdf](https://www.fastretailing.com/eng/sustainability/labor/pdf/coc_en.pdf) (accessed October 18, 2022).

<sup>237</sup> Interview with Yon Yet, local CATU president, in Phnom Penh, on March 23, 2022.

<sup>238</sup> Human Rights Watch conducted interviews with Yon Yet, Him Rokei and Kon Sokoun in April 2022.

<sup>239</sup> Interview with Yon Yet, local CATU president, Phnom Penh, March 23, 2022.

<sup>240</sup> Letter from Human Rights Watch to Trax Apparel factory, dated May 20, 2022 (see appendix).

### *Other Unfair Dismissal Tactics to Bust Unions*

Non-renewal of FDCs or unfair dismissals of independent unionists on FDCs were not the only dismissal tactics that employers used to bust unions during the pandemic.

Mass layoffs or retrenchment in response to the pandemic was also misused to dismiss union leaders and other senior workers. This approach to layoffs contravenes Cambodian labor law, which has also been embedded in BFC's Guidelines on Responsible Retrenchment during the Covid-19 Global Pandemic.<sup>241</sup> The BFC guidelines, which quotes Cambodian labor law, sets out the obligation to inform and consult worker representatives during mass layoffs, the selection criteria during layoffs in light of a workers' professional qualifications, seniority, and family responsibilities, while requiring dismissed workers to have priority at rehires within the following two years.<sup>242</sup>

Kong Atith, president of Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU), stated that during two years of the pandemic, factories dismissed 82 local union leaders and activist members affiliated with C.CAWDU and employed at 16 factories, in what he alleged were clear examples of anti-union discrimination.<sup>243</sup> He told local media that during these layoffs senior union leaders had been dismissed while "junior workers had been retained."<sup>244</sup>

The Collective Union of Movement of Workers (CUMW) similarly told media that more than 1,000 of their union leaders and members had been laid off within a few months of the pandemic based on claimed economic impacts of the pandemic.<sup>245</sup>

Labor group CENTRAL said there were 18 cases at factories around the country between early 2020 and June 2022 involving union leaders and activist members who were unfairly

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<sup>241</sup> Better Factories Cambodia, "Guidelines on Responsible Retrenchment during the Covid-19 Global Pandemic, Cambodian Legal Provisions," 2021, <https://betterwork.org/wp-content/uploads/2021/12/Guidelines-on-Responsible-Retrenchment-during-the-Covid-19-Global-Pandemic.pdf> (accessed October 19, 2022).

<sup>242</sup> Ibid., p. 4, Cambodia Labor Law, art. 95; Trade Union Law, art. 41; Prakas 302/18.

<sup>243</sup> Interview with Kong Atith, president of Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU), phone interview, April 26, 2022.

<sup>244</sup> Khy Sovuthy, "Garment factories accused of union busting under cover of Covid-19," *CamboJA*, May 22, 2020, <https://cambojanews.com/garment-factories-accused-of-union-busting-under-cover-of-covid-19/> (accessed October 19, 2022).

<sup>245</sup> Ibid.

dismissed.<sup>246</sup> These cases included dismissals based on unsubstantiated claims of having used drugs in the factory; of union leaders after having just formed a union at the factory; after posting labor dispute complaints on Facebook; after advocating for higher minimum wages; based on alleged claims of poor work performance<sup>247</sup>; and following organizing union strikes.<sup>248</sup>

In mid-April 2020, Roo Hsing Garment factory in Phnom Penh filed for the termination of three elected local union leaders affiliated with Cambodian Alliance of Trade Unions (CATU): Ek Sarun, vice-president; Sok Kong, secretary; and Kon Soch, elected assistant shop steward. Factory management alleged that the union leaders had orchestrated a work stoppage of 400 workers at the factory to counter a postponement of national holidays due to the pandemic. Yang Sophorn, federation president of CATU, and CATU's local union leader at Roo Hsing, Ek Sarun, rejected these accusations, saying the union leaders had not organized, did not know about the strike, and were not among the striking workers.<sup>249</sup> Ek Sarun said:

[I] explained to factory management that I did not incite any workers. CATU did not even have any union members in the section that engaged in the work stoppage and so this has nothing to do with us. But factory management said that they saw me talk with Sok Kong, who only asked me about the postponement of holidays.<sup>250</sup>

CATU said that factory management did not share with the union any of its alleged evidence of wrongdoing.<sup>251</sup> CATU made numerous attempts to meet with factory management to ensure the unionists could present their case. CATU told Human Rights Watch that the factory managers asserted that they were not required to hold a meeting to hear the workers' account before dismissing them because the local union did not have

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<sup>246</sup> Information received by CENTRAL on June 24, 2022.

<sup>247</sup> This case resulted in reinstatement of the union president of a small independent union at ML Intimate Apparel factory, upon the Ministry of Labor's ruling that the allegations lacked evidence; yet the factory dismissed him again two weeks later.

<sup>248</sup> The company reinstated the union leader upon agreement to make a public written apology promising to refrain from these activities again.

<sup>249</sup> Interview with Yang Sophorn, federation president of CATU, Phnom Penh, March 15, 2022 and Interview with Ek Sarun, former local CATU secretary, Phnom Penh, March 15, 2022.

<sup>250</sup> Interview with Ek Sarun, former local CATU secretary, Phnom Penh, March 15, 2022.

<sup>251</sup> In a letter to Roo Hsing, Human Rights Watch, dated July 20, 2020, requested to see the evidence but did not receive a response (see appendix).

“Most Representative Status” at the factory. After a year of negotiation, the company offered to reinstate the unionists if they admitted serious misconduct. The union leaders said that they refused to make such admissions as condition of reinstatement.<sup>252</sup> A solution acceptable to the union had yet to be found.

Since April 2022, Roo Hsing Garment has gradually laid off workers, saying that the factory had to close because of a lack of new orders.<sup>253</sup> According to CATU, they have not yet been informed of a definite closing date for the factory.<sup>254</sup>

Independent union leaders alleged that they are frequently blacklisted, which ultimately prevents them from being rehired at other factories.<sup>255</sup> Chuon Thea, president of a local union at Roo Hsing factory affiliated to CATU, said: “It is difficult to get work at another factory because of our affiliation with CATU. Other factory employers will not hire us.”<sup>256</sup>

Dismissed CATU leaders at Violet Apparel factory expressed similar difficulties to find employment at other factories.<sup>257</sup> Similarly, dismissed local union leaders affiliated with FUI also failed to find employment at other factories based on the assumption that they were blacklisted.

In April 2021, NagaWorld announced a layoff of 1,329 casino workers. Among those dismissed were three elected leaders and several activist members of the independent union at NagaWorld, The Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU). All dismissed unionists were employed on undetermined duration contracts.

According to a NagaWorld statement on January 23, 2022—before the layoff—the company had 8,371 employees, 3,976 of whom were union members (around 47 percent); after the layoff, the company had a total of 6,181 employees, 2,573 of whom were union members

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<sup>252</sup> Interview with Yang Sophorn, CATU federation president, Phnom Penh, March 23, 2022.

<sup>253</sup> Khut Sokun, “Laid-Off Factory Workers Protest for Compensation,” April 12, 2022, <https://vodenglish.news/laid-off-factory-workers-protest-for-compensation/> (accessed October 19, 2022).

<sup>254</sup> Interview with Yang Sophorn, CATU federation president, in Phnom Penh, on March 23, 2022.

<sup>255</sup> Interview with Chuon Thea, local CATU president, Phnom Penh, March 15, 2022.

<sup>256</sup> Ibid.

<sup>257</sup> Interview with Yon Sreymom, local CATU vice president, and Lon Sophal, local CATU secretary at Violet Apparel factory, Phnom Penh, March 13, 2022. Interview with FUI leaders, Kampong Speu city, April 9, 2022.

(around 41 percent)—a drop of around 1,400 union members (around one third).<sup>258</sup> LRSU union president, Chhim Sithar, said that NagaWorld management refused to engage in negotiations with the union to explain criteria by which workers were selected for redundancy or how severance payments were determined.<sup>259</sup>

Starting from May 17, 2021, the 1,329 dismissed workers began receiving termination notices from NagaWorld management, inviting them to meet with management. LRSU claimed that company management demanded terminated workers accept their dismissals and instructed them to write “resignation” letters to receive compensation packages from the company that were less than Cambodian law requires.

LRSU demanded that the method for calculating severance packages and average wages be based on months when workers had worked full hours and received full salaries, instead of basing it on their reduced wages since the Covid-19 pandemic, during the previous 12 months.<sup>260</sup>

On September 10, 2021, the Arbitration Council agreed with LRSU’s method of calculation of benefits.<sup>261</sup> LRSU also repeatedly urged NagaWorld to reinstate union leaders and other dismissed workers.<sup>262</sup> Human Rights Watch contacted NagaWorld in July and September 2021 for comment about repeated failed attempts at resolution of the dispute but did not receive a response.<sup>263</sup> Management formally terminated the workers on June 30, 2021, and union leaders and shop stewards were terminated on November 4, 2021, after the MoLVT authorized their dismissals.<sup>264</sup>

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<sup>258</sup> FreshNews has since removed NagaWorld’s statement that it had shared on January 23, 2022; however, IUF Asia/Pacific had copied a screenshot: IUF Asia/Pacific, “Striking workers denounce NagaWorld management’s misinformation campaign, call for release of arrested leaders and restoration of union rights,” January 29, 2022, <https://iufap.org/2022/01/29/striking-workers-denounce-nagaworld-managements-misinformation-campaign-call-for-release-of-arrested-leaders-and-restoration-of-union-rights/> (accessed October 19, 2022); and Ben Blaschke, ‘NagaWorld denies claims it targeted union members in reducing workforce,’ Inside Asia Gaming, January 25, 2022,, <https://www.asgam.com/index.php/2022/01/25/nagaworld-denies-claims-it-targeted-union-members-in-reducing-workforce/> (accessed October 19, 2022).

<sup>259</sup> Interview with Chhim Sithar, LRSU union president, Phnom Penh, April 28, 2022.

<sup>260</sup> Ibid.

<sup>261</sup> Arbitration Council, 012/21 - Naga World Limited, September 10, 2021.

<sup>262</sup> Interview with CENTRAL in Phnom Penh, June 24, 2022.

<sup>263</sup> Letters from Human Rights Watch to NagaWorld, dated July 17, 2021, and a follow up letter on September 1, 2021 (see appendix).

<sup>264</sup> LRSU asserted that it was never given a copy of the authorization letter.

In another case of unfair dismissal, in July 2020, Le Meridien Angkor Hotel in Siem Reap terminated three union activist members affiliated with the Cambodian Tourism Workers Union Federation (CTWUF) for sharing a Facebook post about Covid-19 assistance provided to employees during the Covid-19 pandemic by another hotel, Angkor Miracle Resort & Spa.<sup>265</sup>

A settlement was reached in November 2020, but the hotel has since suspended its operation, with no date set for reopening.<sup>266</sup> It is not clear if the three unionists would be rehired if and when the hotel reopens.<sup>267</sup>

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<sup>265</sup> The Facebook post had not mentioned Le Meridien Angkor Hotel, or any individual associated with the company. In response to the Facebook post, Le Meridien management accused the union activist members of “incitement.” Human Rights Watch saw a letter addressed to the union activists from Le Meridien Angkor General Manager, Sabreena Jacob, dated July 14, 2020. See also Gerald Flynn, Lay Sopheavatey and Vantha Phoung, “Staff at Le Meridien Angkor Hotel Demand Reinstatement of Union Activists,” *Cambodianess*, August 5, 2020, <https://cambodianess.com/article/staff-at-le-meridien-angkor-hotel-demand-reinstatement-of-union-activists> (accessed October 19, 2022).

<sup>266</sup> Khy Sovuthy, ‘Major hotel brand shuts temporarily but labor dispute remains unresolved,’ November 25, 2020, <https://cambojanews.com/major-hotel-brand-shutters-temporarily-but-labor-dispute-remains-unresolved/> (accessed October 19, 2022).

<sup>267</sup> Human Rights Watch sought a comment from Marriott International, of which Le Meridien Angkor is an affiliate, which responded that the company was closely monitoring the situation, expressing its commitment to human rights. Letter from Human Rights Watch to Marriott International Group, dated May 25, 2022, and response from Andrew Newmark, vice-president, Human Resources, Asia Pacific, dated June 3, 2022 (see appendix).

## IV. Denial of Access to Justice

Independent unions in Cambodia have been systematically denied effective access to independent and impartial justice during conciliation at the Ministry of Labor and Vocational Training (MoLVT) and arbitration at the Arbitration Council.

Despite provisions in the Labor Law calling for the establishment of labor courts, the Cambodian government has never acted to establish them. As a result, the Arbitration Council is the only dispute settlement body that deals with collective labor disputes.

Barriers to accessing grievance redress and justice are manifold, including the restrictions resulting from the Trade Union Law of 2016, apparent misinterpretations by the MoLVT of instructions that the ministry issued, and more recently, the Arbitration Council avoiding ruling on issues that would challenge the MoLVT's apparent misinterpretations or misapplications of the law.

The government's latest "Cambodia Garment, Footwear and Travel Goods Sector Development Strategy 2022-2027" recognizes the need to strengthen available state-level dispute resolution mechanisms, including capacity-building of conciliators at the MoLVT, and strengthening the independence and effectiveness of the Arbitration Council.<sup>268</sup> However, the strategy fails to provide details on how and when these actions will be taken. Consultation with civil society groups has also been lacking in past legislative processes.<sup>269</sup>

### **"Most Representative Status" Hinders Access to Justice**

Under the Trade Union Law (TUL), trade unions must seek "Most Representative Status" (MRS) to engage in collective bargaining—defined as the status given to majority unions.<sup>270</sup>

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<sup>268</sup> Royal Government of Cambodia, 'Cambodia Garment, Footwear and Travel Goods (GFT) Sector Development Strategy 2022 – 2027, prepared by the Supreme National Economic Council,' February 2022, pp. 4, 13 and 23.

<sup>269</sup> Human Rights Watch, "Joint Letter to Prime Minister Hun Sen – Re: Cambodia's Law on Trade Unions and Cases Against Union Leaders," December 18, 2019, <https://www.hrw.org/news/2019/12/18/joint-letter-prime-minister-hun-sen> (accessed October 19, 2022).

<sup>270</sup> Articles 54 to 56 of the Trade Union Law.



Yet independent unions struggle to meet MRS registration requirements, which are notoriously difficult to attain.<sup>271</sup> This left minority unions unable to represent their members in collective labor disputes before the Arbitration Council, “as the Ministry of Labor has refused to refer cases involving non-MRS unions to the Arbitration Council.”<sup>272</sup>

To be recognized as an MRS, a union should apply for certification by the Dispute Department in the Ministry of Labor. These certification procedures create additional barriers because they are subject to wide discretionary powers of government officials who are typically aligned with the ruling CPP.<sup>273</sup> The MoLVT-administered process to acquire MRS lacks transparency and imposes undue administrative burden on unions, often ending in failure to acquire MRS certification.<sup>274</sup>

In June 2021, the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) requested that the Cambodian government take all necessary measures to:

Ensure that organizations that do not have most representative status (MRS) are not deprived of the essential means to defend the occupational interests of their members, such as making representations on their behalf and representing them in grievances (for example, before the Arbitration Council), including through the benefit derived from their affiliation to higher level organizations.<sup>275</sup>

On paper, the MoLVT’s Prakas No. 303 allows minority unions to represent their members in individual and collective labor disputes not arising out of collective bargaining

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<sup>271</sup> Clean Clothes Campaign, UPR Submission, Third Cycle, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=6280&file=EnglishTranslation> (accessed October 19, 2022).  
<sup>272</sup> Ibid.

<sup>273</sup> Ministry of Labor and Vocational Training, Prakas On Most Representative Status of Union and Formality and Procedure to Obtain Most Representative Status, No.: 303 K.B / Br.K.K.B.K, July 2, 2018, <http://www2.ilo.org/dyn/natlex/docs/ELECTRONIC/108887/134812/F-866016378/CAM108887.pdf> (accessed October 19, 2022).

<sup>274</sup> International Trade Union Confederation, ‘Survey of Violations of Trade Union Rights,’ <https://survey.ituc-csi.org/Cambodia.html?lang=en#tabs-2> (accessed October 19, 2022).

<sup>275</sup> ILO, “Direct Request (CEACR) - adopted 2021, published 110th ILC session (2022) – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia,” [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4122258,103055:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122258,103055:NO) (accessed October 19, 2022).

agreements.<sup>276</sup> This was reiterated in an amendment to the TUL, promulgated in January 2020, which explicitly provides that minority worker unions can represent their members in individual disputes, as well as collective disputes not arising out of a collective bargaining agreement.

During conciliation meetings before the MoLVT, employers have tried to thwart workers' representation by minority union leaders and their respective federation representatives, citing a lack of MRS. Similarly, some employers have repeatedly tried to thwart the ability of labor rights groups, such as the Center for Alliance of Labor and Human Rights (CENTRAL), from representing workers during such conciliation meetings stating that "they were not relevant to the dispute."<sup>277</sup>

For example, in 2018, the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU) had over 4,400 members out of a workforce of 8,000 at NagaWorld, making it NagaWorld's largest registered union. In 2015, LRSU submitted its application for MRS to the MoLVT; however, upon repeated rejections of its application, the MoLVT claimed that documents were allegedly missing.<sup>278</sup> LRSU has yet to receive MRS.

NagaWorld management would not engage with the union in collective bargaining and dispute resolution due to its lack of MRS. LRSU said that during meetings with the company and conciliation before the MoLVT, LRSU was not allowed to make representations on behalf of its members. Chhim Sithar, LRSU president, said: "Terminated workers were denied their right to be heard and represented by their union. NagaWorld violated our freedom of association as a registered union with the Ministry of Labor."<sup>279</sup>

There was no indication that NagaWorld made genuine efforts to resolve the labor dispute, according to the complaint that the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) filed on March 17,

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<sup>276</sup> MoLVT, Prakas 303 K.B/Br.K.K.B.K dated 02 July 2018 on Most Representative Status of Union and Formality and Procedure to Obtain Most Representative Status (Unofficial translation by GMAC), <https://www.arbitrationcouncil.org/download/prakas-303-k-b-br-k-k-b-k-dated-02-july-2018-on-most-representative-status-of-union-and-formality-and-procedure-to-obtain-most-representative-status-unofficial-translation-by-gmac/> (accessed October 19, 2022).

<sup>277</sup> Interview with CENTRAL, in Phnom Penh, on June 24, 2022, during which they raised the case at SYHJ Garment factory.

<sup>278</sup> Interview with Chhim Sithar, LRSU president, in Phnom Penh, on April 28, 2022.

<sup>279</sup> Interview with Chhim Sithar, LRSU president, in Phnom Penh, on April 28, 2022.

2022, with the ILO CEACR in response to alleged violations of the right to freedom of association of LRSU.<sup>280</sup>

The complaint alleged the MoLVT had demonstrated a lack of understanding of issues of union representation in the redundancy process and the obligation of NagaWorld to engage in good faith negotiations with the union. The complaint further stated that the MoLVT's refusal to recognize the MRS of the LRSU meant that during proceedings before the Arbitration Council, NagaWorld was not obliged to recognize the union or to respond to any of the evidence concerning anti-union discrimination in the redundancy process.

In the process of reviewing Cambodia's compliance with ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize regulating the right to establish and join a union federation, the ITUC reiterated that the "refusal of the MoLVT to allow upper-level trade unions to represent or provide support to their members in collective disputes" amounted to a violation of articles 5 and 6.<sup>281</sup>

The LRSU case exemplifies the government's efforts to deny MRS for independent unions.

Soy Chanthou, federation president of Free Independent Trade Union Federation (FUIF) said that the local union affiliate at Monopia factory was the biggest union at the factory with over 500 members and qualified for MRS. He believed that the reason for the inability to re-register the local affiliate at the factory is that factory management and the authorities know that they would have to issue MRS to FUIF.<sup>282</sup>

Cambodia's Garment Strategy reflects the need to strength collective bargaining. However, without seriously addressing the issue of MRS certification for unions, it is unlikely to

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<sup>280</sup> The complaint filed by the IUF on March 17, 2022, remains confidential, [https://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001\\_COMPLAINT\\_FILE\\_ID:4141200](https://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:4141200) (accessed October 19, 2022).

<sup>281</sup> ILO, "Direct Request (CEACR) - adopted 2021, published 110th ILC session (2022) – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia," [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4122258,103055:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4122258,103055:NO) (accessed October 19, 2022).

<sup>282</sup> Interview with Soy Chanthou, federation president of FUIF, in Kampong Speu city, on April 9, 2022.

resolve the core of the problem that has resulted in a very low number of collective bargaining agreements in Cambodia and independent unions with MRS.<sup>283</sup>

## Denial of Right to be Heard at Employer-Favoring Conciliation

Independent union leaders affected by employers' anti-union discrimination said employers immediately sought MoLVT permission to terminate their employment, without issuing warnings or seeking to resolve disputes at company-level.<sup>284</sup>

They said that unfounded allegations served as grounds for dismissing union leaders, without respect for their due process rights, or allowing them to be heard, to refute allegations, or have proper representation.

A lack of effective and impartial conciliation by the MoLVT becomes a fait accompli during dispute resolution proceedings.

For example, federation leader of The Cambodian Alliance of Trade Unions (CATU), Yang Sophorn, said that management at Roo Hsing factory never presented any basis for its allegations that the three dismissed union leaders had incited workers to conduct a work stoppage, yet the MoLVT approved the terminations.<sup>285</sup>

Free Independent Trade Union Federation (FUPI) union leaders recounted similar experiences at Monopia factory when factory management dismissed, without due process, two local union leaders based on alleged, unsubstantiated misconduct; the MoLVT approved these dismissals.<sup>286</sup> Soy Chanthou, FUPI's federation president, said that the union had filed a complaint with the MoLVT in response to the unfair termination of the union leaders, "but nothing ever came out of this and our union leaders were never given an opportunity to present their arguments."<sup>287</sup>

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<sup>283</sup> Royal Government of Cambodia, 'Cambodia Garment, Footwear and Travel Goods (GFT) Sector Development Strategy 2022 – 2027,' prepared by the Supreme National Economic Council, February 2022, p. 23.

<sup>284</sup> E.g. in an interview with four current and former FUPI union leaders at Monopia factory in Kampong Speu city, on April 9, 2022.

<sup>285</sup> Interview with Yang Sophorn, federation president of CATU, in Phnom Penh, on March 23, 2022.

<sup>286</sup> Interview with four current and former FUPI union leaders at Monopia factory in Kampong Speu city, on April 9, 2022.

<sup>287</sup> Interview with Soy Chanthou, FUPI's federation president, in Phnom Penh, on April 9, 2022.

Independent unions said MoVLT’s failure to follow procedures has denied them of their right to have their disputes heard, independently, and without bias.<sup>288</sup>

In its “Cambodia Garment, Footwear and Travel Goods Sector Development Strategy 2022-2027,” the Cambodian government admits that the Ministry of Labor “still lacks skilled officials (conciliators).”<sup>289</sup> The strategy sets out short-term measures for 2022-2024, which include to “strengthen the roles of MoLVT and other relevant institutions in dispute resolution mechanism at the factory, enterprise, and ministry levels, and promote the professionalism in participation of dispute parties, especially of the workers/employees’ side in settling labor dispute.”<sup>290</sup>

However, the strategy fails to indicate how these objectives will be achieved, reflecting the government’s lack of political will to improve respect for workers freedom of association and collective bargaining.

Within the context of the protracted NagaWorld labor dispute, LRSU union leader Chhim Sithar said the government allowed management—which rejected all union proposals—to avoid bargaining in good faith: “We had around 20 conciliatory meetings with NagaWorld and there is no sight of a resolution to the labor disputes because NagaWorld rejects all of our proposals to resolve the dispute.”<sup>291</sup>

According to LRSU, NagaWorld reportedly rejected a LRSU proposal that could resolve the labor dispute in a constructive manner. Specifically, LRSU sought the rehiring of approximately 200 laid-off casino workers (including several union leaders and activist members) in exchange for the voluntary resignation of an equivalent number of workers currently employed at NagaWorld.<sup>292</sup>

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<sup>288</sup> CATU, “Statement On The Decision Of The Head Of The Department Of Labour Disputes In Refusing To Resolve The Collective Labour Dispute At Roo Hsing Garment Co., Ltd.,” May 13, 2020, <https://catucambodia.org/tag/roohsing/> (accessed October 19, 2022).

<sup>289</sup> Royal Government of Cambodia, ‘Cambodia Garment, Footwear and Travel Goods (GFT) Sector Development Strategy 2022 – 2027,’ prepared by the Supreme National Economic Council, February 2022, pp. 12-13.

<sup>290</sup> Royal Government of Cambodia, ‘Cambodia Garment, Footwear and Travel Goods (GFT) Sector Development Strategy 2022 – 2027,’ prepared by the Supreme National Economic Council, February 2022, p. 23.

<sup>291</sup> Interview with Chhim Sithar, LRSU president, in Phnom Penh, on April 28, 2022.

<sup>292</sup> Interview with Chhim Sithar, LRSU president, in Phnom Penh, on April 28, 2022.

The ILO intervened at several stages of the NagaWorld labor dispute, including a letter from the director-general of the ILO to Prime Minister Hun Sen on January 5, 2022, condemning the arrests and detention of LRSU union leaders and activist members and calling for their immediate release. Those who were imprisoned were subsequently released but the overall dispute remained unresolved.<sup>293</sup>

According to Chhim Sithar, the continued absence of a resolution to the labor dispute shows “authorities have not shown any interest in helping to resolve the dispute.”<sup>294</sup>

## A Politically Compromised Arbitration Council

The Arbitration Council, established in 2003, plays an important role in resolving collective labor disputes. Under Cambodian labor law on collective disputes, where conciliation by the MoLVT fails to resolve the dispute, the Arbitration Council “legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement.”<sup>295</sup>

The Arbitration Council’s fairness and independence from the MoLVT has been compromised since the TUL was adopted in 2016.<sup>296</sup> Since the TUL passed in 2016, the number of cases that the council has heard has plummeted from 242 in 2015<sup>297</sup> to just 44 in 2021.<sup>298</sup>

Upon failure of conciliation proceedings, the MoLVT determines in its non-conciliation report the issues referred to the Arbitration Council.<sup>299</sup> Around 2015, after numerous strikes and protests by workers and unions for better working conditions in 2013 and 2014 and the

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<sup>293</sup> Letter from head of ILO’s Regional Office in Asia and Pacific in Bangkok, Graeme Buckley, to Human Rights Watch on August 2, 2022.

<sup>294</sup> Interview with Chhim Sithar, LRSU president, in Phnom Penh, on April 28, 2022.

<sup>295</sup> Labor Law, Article 312.

<sup>296</sup> Interview with Yang Sophorn, CATU leader, in Phnom Penh, on March 15, 2022; interview with Chhim Sithar, LRSU president, in Phnom Penh, on April 28, 2022.

<sup>297</sup> Arbitration Council Foundation, “2015 Annual Report,” April 1, 2016, p. 11, <https://www.arbitrationcouncil.org/download/annual-report-%202015/?wpdmdl=2839&refresh=5e05a33d2e03f1577427773> (accessed October 19, 2022).

<sup>298</sup> Arbitration Council Foundation, “2021 Annual Report,” July 1, 2022, p. 2, <https://www.arbitrationcouncil.org/download/annual-report-2021/?wpdmdl=14052&refresh=62f02636e229b1659905590> (accessed October 19, 2022).

<sup>299</sup> Art. 310 of Cambodia’s Labor Law.

adoption of the TUL in 2016, the Cambodian government's intensified crackdown on independent unions also saw a shift in the MoLVT's attitude regarding classification of labor disputes and issues forwarded to the Arbitration Council.<sup>300</sup>

Relevant in this context was also a two-year Memorandum of Understanding (MoU) signed by the garment employer association, Garment Manufacturers Association in Cambodia (GMAC), and eight of union federations and confederations, among others the Cambodian Association of Trade Unions (CATU).<sup>301</sup> The 2012-2014 MoU was a bid to reduce work stoppages resulting from strikes.

The MoU formalized an agreement between the signatories that, on the one hand, unions would only strike as a last resort and not during pending arbitration proceedings and, on the other hand, employers would comply with decisions rendered by the Arbitration Council—which as such are not legally binding.

While employers continued to fail to comply with arbitral awards, the MoU did provide an incentive for the MoLVT to forward union cases, which are inherently collective disputes as they do not only impact individual workers, to the Arbitration Council.<sup>302</sup> After 2014, unions' calls for renewal of the MoU were left answered from the employers' side.<sup>303</sup>

After 2015, the MoLVT stopped forwarding union cases to the Arbitration Council that related to unfair dismissals of union leaders based on the argument that these were individual labor disputes. This was demonstrated by the Roo Hsing factory case, arising in 2020, which prevented a ruling on the reinstatement of three unfairly terminated union leaders.<sup>304</sup> Until the recent amendments to the Labor Law and until these are effectively

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<sup>300</sup> Interview with anonymized labor advocate, in Phnom Penh, on April 11, 2022.

<sup>301</sup> GMAC, NACC, CCTU, CLC, CNC, N:C, CATU, CNCLP, FTUWKC signed the "Memorandum of Understanding On Improving Industrial Relations in the Garment Industry" in Phnom Penh on October 3, 2012, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93337/109083/F-1716635200/KHM93337%20Eng.pdf> (accessed October 19, 2022).

<sup>302</sup> Worker Rights Consortium, "Update on Ongoing Abuse of Temporary Employment Contracts in the Cambodian Garment Industry," April 11, 2014, <https://www.workersrights.org/wp-content/uploads/2019/08/WRC-Update-on-Misuse-of-FDCs-in-Cambodia-041114.pdf> (accessed October 19, 2022).

<sup>303</sup> Zombor Peter, "Unions Want Arbitration Council Deal Renewed," Cambodia Daily, July 31, 2014, <https://english.cambodiadaily.com/news/unions-want-arbitration-council-deal-renewed-65410/> (accessed October 19, 2022).

<sup>304</sup> Interview with Ek Sarun, former local CATU leader at Roo Hsing factory, Phnom Penh, March 15, 2022.

implemented, a classification of a dispute as individual would prevent a case reaching the Arbitration Council.

Labor group CENTRAL illustrated the impact of misclassifications with the example of a labor dispute at Cintri Cambodia waste collection company, following a mass layoff in early 2022 affecting 117 workers. The MoLVT separated the case into 117 individual disputes instead of classifying this as a collective dispute.<sup>305</sup>

While the amendments to the Labor Law adopted in October 2021 will now extend the jurisdiction of the Arbitration Council to allow individual labor disputes to come before it, independent unions are still skeptical about how the process will look.

Yang Sophorn, federation president of CATU, said the new amendments to the Labor Law “look good on paper” but, she does not think that the MoLVT will start sending all individual labor disputes to the Arbitration Council, especially those related to unfair dismissals of union leaders.<sup>306</sup>

The government has still not promulgated ministerial orders (“Prakas”) to give effect to the amendments. To date, neither the MoLVT nor the wider Cambodian government has stated clearly when such Prakas may be adopted. Labor leaders also question how the Arbitration Council will be able to address all these individual disputes, creating a backlog of cases.<sup>307</sup> The numbers of cases could rise to 700 individual cases per year, which many observers believe would be impossible for the Arbitration Council to handle.<sup>308</sup>

Independent union leaders also raised concerns that if arbitral awards in individual cases are not legally binding, expansion of the Arbitration Council’s jurisdiction is pointless.<sup>309</sup>

Under Cambodian labor law, the Arbitration Council’s full panel of arbitrators are nominated by unions, employer associations, and the MoLVT and placed on lists by the

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<sup>305</sup> Information provided by CENTRAL on October 11, 2022.

<sup>306</sup> Interview with Yang Sophorn, CATU federation president, in Phnom Penh, on March 15, 2022.

<sup>307</sup> Interview with anonymized labor advocate, in Phnom Penh, on April 11, 2022.

<sup>308</sup> Ibid.

<sup>309</sup> Interview with Yang Sophorn, CATU president, in Phnom Penh, on March 13, 2022.



MoLVT prepared each year by a MoLVT Prakas.<sup>310</sup> There are currently 30 appointed arbitrators.<sup>311</sup> According to article 311 of the Labor Law, parties to the dispute choose two arbitrators from the list of arbitrators, and these two arbitrators choose the third one from the list, providing for three arbitrators per case.<sup>312</sup>

Yang Sophorn, federation president of CATU, said the Arbitration Council was

scared of the Ministry of Labor and that is why unions have been unable to receive justice. The Arbitration Council says that it has no jurisdiction to rule on issues.... I am disappointed with the Arbitration Council for not challenging the Ministry of Labor.<sup>313</sup>

Labor advocates expressed concern that despite Cambodian labor law allowing the Arbitration Council to interpret the law, the Arbitration Council had begun self-censoring and had stopped rendering rulings on specific issues based on alleged lack of jurisdiction.<sup>314</sup>

This had begun in cases related to determinations on fixed-duration contracts. A long-time labor rights advocate, who asked to remain anonymous out of fear of reprisals, said that tension since the 2019 MoLVT instruction No. 050 that allows for renewal of fixed-duration contracts beyond the two-year period—which directly contradicts the Labor Law and other interpretation by the Arbitration Council—has led the council to stop ruling on the issue. The advocate said:

These conundrums of the Arbitration Council having to rule against the Ministry of Labor creates situations where the Arbitration Council decides

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<sup>310</sup> Labor Law, Article 311. Article 311 states “Members of the Council of Arbitration shall be chosen from among magistrates, members of the Labor Advisory Committee, and generally from among prominent figures known for their moral qualities and their competence in economic and social matters. These persons shall be included on a list prepared each year by a Prakas (ministerial order) of the Ministry in Charge of Labor.

<sup>311</sup> Arbitration Council, “About AC – FAQ,” <https://www.arbitrationcouncil.org/about-ac/faq/> (accessed October 19, 2022).

<sup>312</sup> Labor Law, article 311. Article 311 states “Members of the Council of Arbitration shall be chosen from among magistrates, members of the Labor Advisory Committee, and generally from among prominent figures known for their moral qualities and their competence in economic and social matters. These persons shall be included on a list prepared each year by a Prakas (ministerial order) of the Ministry in Charge of Labor.”

<sup>313</sup> Interview with Yang Sophorn, CATU federation president, in Phnom Penh, on March 15, 2022.

<sup>314</sup> Interview with Bent Gehrt, Southeast Asia Director for Worker Rights Consortium, on the phone, April 11, 2022.

not to rule on substantive issues that leave unions without protection and access to justice in their disputes. What arbitrators should do instead of refusing to rule is to issue dissenting opinions.<sup>315</sup>

In the past, there have been a couple of cases before the Arbitration Council in which dissenting arbitrators issued objecting rulings where the majority claimed there was no jurisdiction to rule on issues.<sup>316</sup> The objecting arbitrators would rule that the Arbitration Council did in fact have jurisdiction to rule because the Labor Law provides that the council has jurisdiction to rule on collective disputes forwarded to it by the MoLVT.<sup>317</sup>

In the Violet Apparel case, a factory of roughly 1,300 workers suddenly announced its closure in July 2020. Union leaders from the factory said that none of the workers had received notice of the factory closure as required under the law. Human Rights Watch wrote to Ramatex Textiles Industrial, the parent company of Violet Apparel in May 2022, seeking its comment, but had not received a response.

Following Violet Apparel’s closure, workers raised a collective dispute before the MoLVT. But no conciliation was reached at the MoLVT and the case was referred to the Arbitration Council.

In November 2020, the Arbitration Council claimed a “lack of jurisdiction” and declined to rule on workers’ demand for compensation in lieu of prior notice when factory management informed them of their dismissal with less than 24 hours’ notice.

Cambodian Labor Law expressly requires notice periods according to the length of workers’ continuous employment and for dismissed workers to receive damages if they are dismissed without valid reason to compensate workers with the amount equal to the wages and all kinds of benefits that the worker would have received during the official notice period (Labor Law, article 77).<sup>318</sup>

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<sup>315</sup> Interview with anonymized labor advocate, in Phnom Penh, on April 11, 2022.

<sup>316</sup> Ibid.

<sup>317</sup> Ibid.

<sup>318</sup> Labor Law, articles 75 and 91. Article 75 states “The minimum period of a prior notice is set as follows: Seven days, if the worker’s length of continuous service is less than six months; Fifteen days, if the worker’s length of continuous service is

New article 87 of the Labor Law restricts the ability of workers to receive damages in the event of business closure if the employer complies with the conditions of a ministerial order issued by the MoLVT in 2001 regulating that businesses should notify the MoLVT about all “changes in location, adjustments in production structure, changes in ownership and closure or termination of enterprise activities no longer than 30 (thirty) days after the day of the change or after the day of ceasing enterprise or establishment activities.”<sup>319</sup>

The Arbitration Council has previously ruled that compliance with this instruction is not sufficient to release an employer from their obligations regarding compensation in lieu of prior notice and damages.<sup>320</sup> This reflects Cambodian law, as there is no provision in the law that would relieve employers of these obligations in the event of factory closure, even if they suspended workers prior to closure in accordance with Cambodian law.<sup>321</sup>

In the Violet Apparel case, the Arbitration Council avoided ruling on the issue as it would have had to rule against the MoLVT.

ILO Convention No. 158 on Termination of Employment also requires employers to provide compensation where workers are not provided reasonable notice of termination, and their termination is not on grounds of serious misconduct.<sup>322</sup>

In response to recommendations issued in 2021 by the ILO’s CEACR, the government made commitments “to strengthen the Arbitration Council” and to adopt necessary measures “to ensure that its awards, when binding, are duly enforced.”<sup>323</sup> To date, arbitral awards are

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from six months to two years; One month, if the worker's length of continuous service is longer than two years and up to five years.” Article 91 states “The termination of a labor contract without valid reasons, by either party to the contract, entitles the other party to damages. These damages are not the same as the compensation in lieu of prior notice or the dismissal indemnity.”

<sup>319</sup> Ministry of Labor and Vocational Training, Prakas No. 288/01, signed 5 November 2001 on Declarations of Opening and Closure of the Enterprise and Establishment

<sup>320</sup> See e.g., Arbitration Council Award No. 068/19 – Meta Biomed.

<sup>321</sup> Labor Law, article 71. Art. 71 states “...When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labor Inspector. ...”

<sup>322</sup> ILO, C158 – Termination of Employment Convention, 1982 (No. 158), article 11, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C158](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158) (accessed October 19, 2022).

<sup>323</sup> ILO, Observation (CEACR) - adopted 2020, published 109th ILC session (2021) – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:4056429](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4056429) (accessed October 19, 2022).

binding if neither party objects, or when the parties agree in writing to be bound by it, or if the parties have a collective bargaining agreement that provides for binding arbitration.

Cambodia’s latest Garment Strategy sets out measures for 2022-2024, including to “continue to strengthen the role and provide necessary support to the mechanism and process of the Arbitration Council to continue to remain professional, neutral and independent in settling labor disputes in accordance with the amendment of the Labor Law related to labor dispute resolution, including individual labor disputes.”<sup>324</sup>

While recognizing that there is need for reform, the strategy fails to address how and when these objectives will be achieved.

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<sup>324</sup> Royal Government of Cambodia, ‘Cambodia Garment, Footwear and Travel Goods (GFT) Sector Development Strategy 2022 – 2027,’ prepared by the Supreme National Economic Council, February 2022, p. 23.

## V. Global Solutions Needed to Respect Workers Freedom of Association and Collective Bargaining

During the Covid-19 pandemic, Cambodian workers had been left in vulnerable and precarious situations with respect to their livelihoods when factories suspended or permanently closed their businesses and legally owed severance payments were not paid to workers.

The pandemic has highlighted the need for international brands and global hotel chains to carry out human rights due diligence when conducting business or have a part of their supply chain or affiliates, in Cambodia.<sup>325</sup> Such due diligence should be ongoing, and identify potential adverse human rights impacts and ways to prevent them.<sup>326</sup>

### Human Rights Obligations of Businesses

The basic principle that businesses have a responsibility to respect worker rights has acquired widespread international recognition.<sup>327</sup> The “Protect, Respect and Remedy” framework, articulated most notably in the UN Guiding Principles on Business and Human Rights, reflect the expectation that businesses should respect human rights, avoid complicity in abuses, and adequately remedy them when they occur. The UN Guiding Principles urge businesses to exercise due diligence to identify, prevent, mitigate, and account for the impact of their activities on human rights.<sup>328</sup>

The Organization for Economic Cooperation and Development (OECD) sets out norms for responsible social behavior by multinational firms, incorporating the concept of due

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<sup>325</sup> UN Guiding Principles on Business and Human Rights, Principle 17.

<sup>326</sup> Ibid.

<sup>327</sup> The Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, UN Human Rights Council resolutions on business and human rights, the UN Global Compact, other multi-stakeholder initiatives in different sectors, and many apparel buyers' codes of conduct borrow from international human rights law and core labor standards in guiding businesses on how to uphold their human rights responsibilities.

<sup>328</sup> UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, “Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Protect, Respect and Remedy: A Framework for Business and Human Rights”, A/HRC/8/5, April 7, 2008, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A-HRC-8-5.doc> (accessed October 27, 2022).

diligence and the content of International Labour Organization's (ILO) core labor standards. The OECD guidelines call on enterprises to respect human rights, "avoid infringing on the human rights," and address adverse human rights impacts of their activities. This includes conducting "human rights due diligence" and working to remedy any negative fallout they have caused or to which they have contributed.<sup>329</sup>

To meet their human rights responsibilities, Cambodian suppliers should respect workers' freedom of association and collective bargaining. These include stopping the misuse of fixed-duration contracts (FDCs) and the targeting of independent unions through spurious cases and blacklisting.

Brands sourcing from Cambodia should embed business incentives for suppliers who respect workers freedom of association and collective bargaining, and supplement their codes of conduct with in-country operational grievance redress mechanisms.

In particular in the Cambodian context, brands should engage with the Cambodian government to strengthen and safeguard the independence of the Arbitration Council and ensure that minority unions are able to bring collective disputes before the council. Brands should also recognize that the Trade Union Law (TUL) violates international labor rights standards, and the Arbitration Council is politically compromised.<sup>330</sup>

## Operational Level Grievance Redress Mechanisms

In the Cambodian context, international brands and hotel chains should ensure that grievance mechanisms are in place in their supply chains or their affiliates to ensure freedom of association is respected at the company level, also in country contexts in which access to state-level dispute resolution mechanisms is unavailable.

Brands' human rights due diligence "should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve."<sup>331</sup> Brands also have a responsibility to "establish or participate in effective

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<sup>329</sup> OECD, "OECD Guidelines for Multinational Enterprises," 2011, p. 31, <http://www.oecd.org/investment/mne/1922428.pdf> (accessed October 19, 2022).

<sup>330</sup> UN Guiding Principles on Business and Human Rights, Principles 14 and 15.

<sup>331</sup> UN Guiding Principles on Business and Human Rights, principle 17.

operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”<sup>332</sup> Such grievance mechanisms “support the identification of adverse human rights impacts as part of an enterprise’s ongoing human rights due diligence.”<sup>333</sup> Operational-level grievance mechanisms should reflect the effectiveness criteria outlined in the UN Guiding Principles and should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning to improve the mechanism, and whose design and performance is based on engagement and dialogue with “stakeholders’ groups for whose use they are intended.”<sup>334</sup>

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<sup>332</sup> UN Guiding Principles, principle 29.

<sup>333</sup> Ibid., commentary on principle 29.

<sup>334</sup> UN Guiding Principles, principle 29 commentary read with principle 31.

## VI. International and Domestic Legal Standards

Cambodia is party to numerous international conventions governing human rights and labor rights. Cambodia's Constitution recognizes the right of Cambodian citizens "to create unions and participate as their members." The Constitutional Council of Cambodia interpreted in its decision on June 19, 2007, that international conventions ratified by Cambodia are to be taken into account when applying national law.<sup>335</sup>

### International Legal Standards

Cambodia acceded to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1992. Cambodia has also ratified 13 International Labour Organization (ILO) conventions, including all the core labor conventions: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

#### *Freedom of Association*

The ICCPR protects the right to freedom of association. Both the ICCPR and the ICESCR, along with the relevant ILO conventions, guarantee the right to join trade unions. These, together with the authoritative interpretation of the ILO core conventions overseen by the ILO Committee on Freedom of Association (CFA),<sup>336</sup> obligate governments to ensure that employers do not thwart union formation and participation.

ILO Convention No. 87 provides that workers have the right to join organizations "of their choosing without prior authorization" and authorities should not engage in any interference that would restrict this right or impede its enjoyment.<sup>337</sup>

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<sup>335</sup> Constitutional Council of Cambodia, Decision of July 10, 2007 (Dec. No. 092/003/2007); for an unofficial English translation see OHCHR Cambodia, Public Statement of July 25, 2007 (<http://cambodia.ohchr.org>).

<sup>336</sup> Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949.

<sup>337</sup> ILO Convention No. 87 on Freedom of Association, art. 3(2) and art. 2.



Laws and regulations governing unions should not restrict union formation.<sup>338</sup> States are free to prescribe legal formalities for establishing unions, but they cannot abuse this freedom by prescribing formalities that impair fundamental labor rights guarantees.<sup>339</sup>

The right to organize includes the right to official recognition through registration.<sup>340</sup> But a registrar cannot have absolute discretion to refuse registration, even if the law guarantees workers the right to appeal the registrar's decision. The law should clearly specify the conditions for union registration and the grounds on which the registrar may refuse or cancel registration.<sup>341</sup>

Government procedures that result in undue delays to registration are an infringement of workers' right to organize.<sup>342</sup> Moreover, union registration procedures requiring workers to notify factories about the names of office-bearers are an obstacle in practice, effectively prohibiting union formation.

The ILO CFA has repeatedly said that while it may be desirable to avoid a multiplicity of unions, that fact "does not appear sufficient to justify direct or indirect interference by the State, and especially intervention by the State by means of legislation."<sup>343</sup> A government cannot through legislation seek to impose a monopoly in trade union movement and take away workers' rights to join "organizations of their choosing."<sup>344</sup> Where laws governing minimum number of founder members can be introduced, authorities should not set the number so high that it effectively renders it impossible to set up a union.<sup>345</sup>

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<sup>338</sup> ILO Convention No. 87 on Freedom of Association, art. 7.

<sup>339</sup> ILO Freedom of Association Decisions Digest, 2006 ed., paras. 275-76. [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_090632.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf) (accessed October 19, 2022).

<sup>340</sup> ILO Freedom of Association Decisions Digest, 2006 ed., para. 295.

<sup>341</sup> ILO Freedom of Association Decisions Digest, 2006 ed., para. 302.

<sup>342</sup> ILO Freedom of Association Decisions Digest, 2006 ed., para. 279.

<sup>343</sup> ILO Freedom of Association Decisions Digest, 2006 ed., para. 319.

<sup>344</sup> ILO Freedom of Association Decisions Digest, 2006 ed., para. 318.

<sup>345</sup> ILO Freedom of Association Decisions Digest, 2006 ed., para. 284. In one case, the CFA observed that legislation that had set 50 as the threshold number of founder members was too high.

### *International Guidance on Use of Fixed-Duration Contracts*

ILO Convention No. 158 on Termination of Employment together with Recommendation No. 166 governs the use of fixed-duration contracts. Cambodia has not ratified this convention, but it provides useful guidance.<sup>346</sup>

Convention No. 158 sets out that states should create “adequate safeguards” to ensure that contracts for specified periods are not used to avoid worker protection against unfair termination.<sup>347</sup> Fixed-duration contracts should be limited to situations where the “nature of work,” the “circumstances under which it is to be effected,” or “the interests of the worker” requires them.<sup>348</sup> Where fixed-duration contracts are renewed or not limited to the situations described above, states should deem them to be contracts of indeterminate duration.<sup>349</sup>

States should curb arbitrary dismissals for “unsatisfactory performance” with adequate safeguards such as a written warning, followed by a “reasonable period” for improvement.<sup>350</sup> Where the employer needs to terminate workers due to reasons of “economic, technological, structural or similar nature,” these should be made “according to criteria, established wherever possible in advance, which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.”<sup>351</sup>

### **Domestic Legal Standards**

Cambodia’s Labor Law and the Trade Union Law provide protection to union leaders in dismissal decisions and the latter regulates union registration, reporting, and penalties. The law has been widely criticized, including by national and international human rights

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<sup>346</sup> ILO Convention No. 158 concerning Termination of Employment at the Initiative of the Employer (Termination of Employment Convention), 1982, adopted June 22, 1982, entered into force November 23, 1995, not ratified by Cambodia, art. 3(2)(a), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C158](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158) (accessed October 19, 2022); ILO Recommendation No. 166 on the Termination of Employment Convention, 1982, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R166](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R166) (accessed October 19, 2022).

<sup>347</sup> ILO Recommendation No. 166 on the Termination of Employment Convention, 1982, art. 3(1).

<sup>348</sup> ILO Recommendation No. 166 on the Termination of Employment Convention, 1982, art. 3(2)(a).

<sup>349</sup> ILO Recommendation No. 166 on the Termination of Employment Convention, 1982, art. 3(2)(b) and (c).

<sup>350</sup> ILO Recommendation No. 166 on the Termination of Employment Convention, 1982, art. 8.

<sup>351</sup> ILO Recommendation No. 166 on the Termination of Employment Convention, 1982, art. 23(1).

groups as well as the UN Office of the High Commissioner for Human Rights, as violating Cambodia's obligations under international human rights and labor law.<sup>352</sup>

### *Protection of Union Leaders in Dismissal Decisions*

Cambodian labor law strictly regulates mass layoffs to protect affected union leaders from anti-union discrimination by employers, who must generally seek authorization from the Ministry of Labor's labor inspector when terminating elected union leaders.<sup>353</sup> Article 12 of the Labor Law and article 62 of the Law on Trade Unions prohibit employers from dismissing workers based on union membership. Article 50 of the Law on Trade Unions safeguards the right to union representation for workers, including during mass layoffs.

In the context of mass layoff procedures, article 95 of the Labor Law sets out a hierarchical order for layoffs. The first workers to be laid off are those with the least professional ability, then workers with the least seniority. Seniority must be increased by one year for a married worker and an additional year for each dependent child. Article 182 of the Labor Law prohibits employers from laying off women in labor, during their maternity leave, or at a date when the end of the notice period would fall during the maternity leave.<sup>354</sup>

### *Conciliation and Arbitration Proceedings*

Where a dispute was not resolved at company-level, a labor inspector may decide to initiate conciliation proceedings with the MoLVT's Labor Disputes Department.<sup>355</sup> In the 2015 report, *"Work Faster or Get Out" – Labor Rights Abuses in Cambodia's Garment Industry*, report, Human Rights Watch criticized the collusion and corruption between

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<sup>352</sup> Office of the United Nations High Commissioner for Human Rights in Cambodia, "A Human Rights Analysis of the Draft Law on Trade Unions," p. 26, [https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/TUL\\_Analysis-Eng.pdf](https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/TUL_Analysis-Eng.pdf) (accessed October 19, 2022); CENTRAL, "Analysis of the Law on Trade Unions and the Law Amending Articles 3, 17, 20, 21, 27, 28, 29, 54, and 59 of the Law on Trade Unions," January 2020, <https://www.central-cambodia.org/archives/3426> (accessed October 19, 2022); Human Rights Watch, "Cambodia: HRW Letter to Prime Minister Hun Sen on the Proposed Trade Union Law," June 7, 2015, <https://www.hrw.org/news/2015/06/07/cambodia-hrw-letter-prime-minister-hun-sen-proposed-trade-union-law> (accessed October 19, 2022).

<sup>353</sup> Trade Union Law, arts. 43 and 67.

<sup>354</sup> Anyone six-months' pregnant would fall under this provision

<sup>355</sup> Once the dispute is brought to the attention of the MoLVT, a conciliator must be appointed within 48 hours (article 304 of Labor Law). Conciliation must be carried out within 15 days, and can be extended if the parties so agree, all of whom must attend conciliation meetings when called (article 305 of Labor Law). If the parties reach an agreement, it is recorded, signed by the parties, and certified by the conciliator (article 307 of Labor Law). The agreement is binding on the parties.

government inspectors and factory management, which has reduced the credibility of the labor inspectorate system and local authorities.<sup>356</sup>

Under Cambodia’s Labor Law, a distinction is made between individual disputes, involving individual workers, and collective disputes, involving one or more employers and several employees, as a group or trade union.<sup>357</sup>

If a labor dispute case is referred to a local labor inspector, they will initiate conciliation proceedings—compulsory for collective disputes.<sup>358</sup> If conciliation fails, the conciliator must prepare a report of non-conciliation and submit it to the minister of labor within 48 hours of the conciliation process finishing.<sup>359</sup> The minister of labor must refer the case to the Arbitration Council within three days of receiving the report of non-conciliation.<sup>360</sup>

The Arbitration Council interprets labor regulations in collective disputes, and its mandate is expected to expand to cover individual labor disputes. Due to common misclassifications of collective labor disputes as individual disputes by labor inspectors and conciliators, labor disputes involving more than one worker have been prevented from reaching the Arbitration Council.<sup>361</sup> The council issues so-called arbitral awards as its rulings, which are only binding at the option of both parties. Until the council has decided, workers who are party to the dispute may not strike.

Amendments of Cambodia’s Labor Law of 1997 adopted with Royal Decree No. NS/RKM/1021/011 on October 5, 2021, revising the rules governing individual labor dispute resolution, work shifts, and public holidays, have seen an extension of the

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<sup>356</sup> Human Rights Watch, ““Work Faster or Get Out” – Labor Rights Abuses in Cambodia’s Garment Industry,” March 11, 2015, <https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry> (accessed October 19, 2022).

<sup>357</sup> Robert Heron and Hugo van Noord, “National Strategy on Labour Dispute Prevention and Settlement in Cambodia,” ILO, 2004, p. 10, [https://sithi.org/medias/files/projects/business/law/1393390753\\_en.pdf](https://sithi.org/medias/files/projects/business/law/1393390753_en.pdf) (accessed October 19, 2022).

<sup>358</sup> Cambodia Labor Law, articles 303 to 317. The parties to a collective dispute are required to submit the dispute to a labor inspector.

<sup>359</sup> Cambodia Labor Law, chapter XII.

<sup>360</sup> Cambodia Labor Law, art. 310.

<sup>361</sup> Hugo van Noord, Hans S. Hwang, Kate Bugeja, “Cambodia’s Arbitration Council: Institution-building in a developing country,” Industrial and Employment Relations Department (DIALOGUE), ILO Regional Office for Asia and the Pacific, August 2011, pp. 15-16, <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/cambodiaarbitrationcouncil.pdf> (accessed October 19, 2022).

jurisdiction of the Arbitration Council to cover also individual disputes.<sup>362</sup> Implementing legislation has so far not been adopted.

### *Severance for Dismissed Workers*

Severance under fixed-duration contracts includes at least 5 percent of the wages during the length of employment (Labor Law, article 73).

Where an undetermined duration contract replaces a fixed-duration contract, the workers' employment seniority should be calculated by considering the length of both contracts (Labor Law, article 73, paragraph 7). Calculation of severance payment is based on average earnings over the previous 12 months. The Arbitration Council found that overtime and bonuses the worker received in the 12 months prior to dismissal should also be included in the calculation.<sup>363</sup>

Severance pay is not payable in the case of serious misconduct on the part of the worker. However, it is payable if the employer pushed the worker to resign through their own serious misconduct.<sup>364</sup> An employer must pay damages in addition to severance pay if they terminate an undetermined duration contract without a valid reason. Workers are owed damages if they are dismissed without a valid reason, i.e., to compensate workers with the amount equal to the wages and all kinds of benefits that the worker would have received during the official notice period (Labor Law, article 91).<sup>365</sup>

Separately, Cambodian law requires notice periods before termination of between seven days and three months, depending on the length of worker's continuous employment.<sup>366</sup> Where such notice period is not provided, workers should receive damages (Labor Law, new article 87). However, in the event of business closure, where an employer is deemed

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<sup>362</sup> Pichrotanak Bunthan "Cambodia: Labor Law Amended for Third Time," Global Legal Monitor, Law Library of Congress, 2021, <https://www.loc.gov/item/global-legal-monitor/2021-11-08/cambodia-labor-law-amended-for-third-time/> (accessed October 19, 2022).

<sup>363</sup> Arbitration Council decisions, 068/19 – Meta Biomed; 054/19 – Now Corp; 007/20 – Regency (Great Duke Phnom Penh Hotel).

<sup>364</sup> Cambodia Labor Law, art. 82, according to which parties are released from obligation of giving prior notice in the case the other party commits serious misconduct (e.g., if an employer commits serious misconduct under article 83 of the Labor Law, then the employee can immediately leave). New article 90 (amended 2018) also states that workers can claim damages and seniority indemnities if pushed into resigning because of the employer's bad acts.

<sup>365</sup> Cambodia Labor Law, art. 77.

<sup>366</sup> Cambodia Labor law, art. 75.

to comply with MoLVT ministerial orders (“Prakas”), damages would not apply. The government has yet to adopt such Prakas, which means that employers can decide to pay employees compensation in lieu of prior notice.

## Recommendations

### To the Ministry of Labor and Vocational Training (MoLVT)

#### *Registration of Unions and “Most Representative Status”:*

- Ensure that workers can register trade unions through a simple, objective, swift, and transparent process, while taking necessary measures to ensure that registration operates as a formality that does not entail any discretion or prior authorization, in line with the International Labour Organization’s (ILO) recommendations during the review of Cambodia’s compliance with ILO Convention No. 87.
- Promptly process registration of union mandate renewals following union elections, without any undue delays and without political interference.
- Remove barriers to collective bargaining by eliminating the Most Representative Status (MRS) certification requirement, which is subject to burdensome, discretionary, and politicized procedures that prevent independent unions from obtaining MRS to defend their members’ rights in dispute settlements.
- In line with ILO conventions, significantly amend or repeal articles 54 to 56 of the Trade Union Law, regulating the process and certification procedure for MRS by placing the procedure with an independent body to ensure transparency and effectiveness, and allowing minority unions without MRS to represent workers with the filing of grievances, in conciliation meetings at the MoLVT, or in disputes before the Arbitration Council or courts, and to bargain collectively on their behalf.

#### *Independent and Fair Conciliation*

- Ensure labor conciliators work on the resolution of labor disputes in an independent and impartial manner to ensure fair outcomes for affected workers, and closely review performance of officials doing this work.
- Set clear guidelines for labor conciliators to forward all disputes to the Arbitration Council related to shop steward elections, mass layoffs, and dismissals of trade union leaders where prior authorization has been sought from the labor inspector.
- Adopt a ministerial order (“Prakas”) clarifying that labor disputes involving unions are collective labor disputes by default, preventing systemic misclassification of

collective labor disputes as individual labor disputes by the MoLVT, which deny unions their right to have their labor dispute heard effectively.

### *Independent and Fair Arbitration*

- Issue a ministerial order (“Prakas”) that establishes procedures implementing the amendments to the Labor Law that introduce individual dispute resolution at the Arbitration Council.
- Enable the Arbitration Council to review decisions of labor officials upon referral of their actions or decisions from the Minister of Labor.

### *Stop Misuse of Fixed-Duration Contracts:*

- Immediately repeal and/or correct its 2019 instruction 050/19 on determination of the type of employment contract, enabling the extended use of fixed-duration contracts, to align with article 67 of Cambodia’s Labor Law and the legal interpretation issued by the Arbitration Council that the use of fixed-duration contracts cannot extend beyond a two-year period.

## **To the Ministry of Interior and the Ministry of Justice**

### *Harassment of Independent Unions*

- Stop the arbitrary arrests, detention, and criminal prosecutions of independent union leaders and activist members because of their carrying out legitimate union activities to represent workers.
- Stop court injunctions to arbitrarily interfere in the right to strike of workers by labelling virtually all strikes as “illegal.”
- Undertake all necessary efforts to settle the legal proceedings against trade unionists in connection with the incidents during the January 2014 demonstrations.
- Ensure that no criminal charges or sanctions are imposed in relation to lawful trade union activities, including holding peaceful demonstrations, and drop all criminal charges for those trade unionists charged in connection with the January 2014 demonstrations.
- Take all necessary measures to stop arbitrary arrest, detention, and prosecution of trade unionists for undertaking legitimate trade union activity.



- Drop the pursuit of a case against Free Independent Trade Union Federation (FUF) federation president Soy Chanthou and terminated local FUF leaders Nov Chantha and Oeun Channy based on their legitimate union activities.
- Drop “incitement” charges against Labor Rights Supported Union of Khmer Employees (LRSU) leaders and activist members Chhim Sithar, Chhim Sokhorn, Hay Sopheap, Kleang Soben, Ry Sovannody, Sun Sreypich, Touch Sereymeas, and Sok Narith.
- Drop charges against three LRSU activist members, Choub Channath, Sao Sambath and Seng Vannarith based on alleged Covid-19 violations, and stop the criminal cases against Kheng Chenda, Ouk Sopheakmolika, Meng Kanika, and Eng Sreybo based on the same allegations.
- Stop harassment of Cambodian Alliance of Trade Union (CATU) leader Yang Sophorn based on her activities as a union leader, including threats of legal action following her attendance at a strike in Phnom Penh in 2022.
- Stop police and officials from restricting the right to strike by independent unions. End the use of unnecessary and excessive force by all police and plainclothes security officers and other officials against striking workers.
- Investigate and hold accountable officers who used or ordered unnecessary and excessive violence against NagaWorld workers and other strikers.

## To the Royal Government of Cambodia

- Fully comply with Cambodia’s international obligations under ILO conventions, and ensure that all officials’ actions comply with the rights afforded to workers and employers under ILO conventions including the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- Amend or repeal legal provisions in all laws that restrict the right to freedom of association in contravention of Cambodia’s international human rights law obligations (including but not limited to the Trade Union Law, the Law on Associations and Non-Governmental Organizations (LANGO), public health-related laws (Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases, and the Law on the Management of the Nation in a State of Emergency), and provisions in Cambodia’s criminal code

- that violate the right to freedom of expression, such as “incitement,” “defamation,” “public insult” or “insult of a public official,” and “any of the offenses relating to judicial decisions and investigations.”
- Fully and comprehensively implement the government’s recently developed “Cambodia Garment, Footwear and Travel Goods Sector Development Strategy 2022-2027” in an open and transparent manner, engaging inclusively with both workers organizations and employers, and implementing the strategy and timelines. Take action to review and revise the National Social Security Fund to include unemployment insurance benefits to protect all workers, formal and informal, in the event of unforeseen economic crises that could impact their livelihoods.

## To Employer Associations, including Chambers of Commerce and Sectoral Associations

### *End Anti-Union Practices*

- Help end all blacklisting of union leaders and activist members of independent unions by business groups, and publicly condemn such rights-abusing practices.
- Condemn members use of public health crises to restrict the rights to freedom of association of independent unions that prevent their formation, registration, existence, and operation in places of business.
- Publicly oppose the resort to criminal charges against union leaders and union members for their exercise of their legitimate union activities (such as the broadly invoked criminal charge of “incitement to commit a felony”), in line with the internationally protected rights to freedom of expression, association, and peaceful assembly.
- Publicly condemn and sanction members, including through expulsion from membership, who engage in anti-union practices.

### *Compliance with Conciliation Decisions and Arbitration Council Awards*

- Closely monitor and intervene to ensure members of employer associations fully comply with orders from the Ministry of Labor and Vocational Training, particularly letters from the Department of Labor Disputes ordering reinstatement of trade union leaders.

- Negotiate an extension of the previous Memorandum of Understanding between employer associations and union federations to treat Arbitration Council awards as binding.
- Closely monitor and intervene to ensure members of employer associations fully comply with arbitral awards issued by the Arbitration Council.

### *Implementation of New Garment Strategy to Improve Working Conditions, Strengthen Social Protection*

- Proactively engage the government, in collaboration with members of employer associations and other partners, to ensure full implementation of short-and medium-term measures reflected in the government’s “Cambodia Garment, Footwear and Travel Goods Sector Development Strategy 2022-2027,” including but not limited to:
  - Improving working conditions and welfare of workers in the sector;
  - Strengthening dispute resolution mechanisms, including the capacity of conciliators at the Ministry of Labor and Vocational Training;
  - Providing space for negotiating collective bargaining agreements;
  - Strengthening the independence and effectiveness of the Arbitration Council.
- Strongly support government initiatives and efforts to review and revise the National Social Security Fund to include unemployment benefits to protect workers in the event of unforeseen economic crises that will impact their livelihoods.

### *Overuse of Fixed-Duration Contracts*

- Raise awareness among members of employer associations about article 67 of the Labor Law and the Arbitration Council’s decision on fixed-duration contracts, to help curb the misuse of short-term contracts as a tool to intimidate and discourage workers from unionizing.
- Raise awareness among employer association members that fixed-duration contracts heighten the risk of discriminatory practices at the factory-level, including based on pregnancy and other prohibited grounds.
- Raise awareness about the legal protections for union leaders under Trade Union Law, which cannot be overridden using fixed-duration contracts.

### *Severance Payments*

- Create a protocol to intervene and assist workers faced with economic distress following factory closures of member companies.

### *Codes of Conduct*

- Ensure that members of employer associations adopt and actively implement human rights-based corporate policies such as code of conducts to meet their responsibilities under the UN Guiding Principles on Business and Human Rights, including establishing accessible and effective grievance mechanisms to freely report rights abuses committed by employers.

### **To NagaWorld Casino**

- Recognize the Labor Rights Supported Union of Khmer Employees (LRSU) as a registered union at NagaWorld and do not impede the issuance of Most Representative Status for the union.
- Swiftly and in good faith resolve the labor dispute with LRSU, considering the demands made by the union, and invite the ILO as a third-party observer to ensure fair resolution of the labor dispute.

### **To the ILO Regional Office for Asia and the Pacific, as part of the UN Country Team in Cambodia**

#### *ILO Regional Office for Asia and the Pacific/ILO Committee on Freedom of Association:*

- Take concrete, transparent actions in response to Cambodia's continued non-compliance with key ILO Conventions protecting freedom of association, including publicized reviews of Cambodian labor laws and regulations where the ILO provides comments and public condemnations of the government's crackdown on independent unions and the adoption of draconian laws that violate its ILO obligations and other human rights conventions.
- Press for ILO's role as third-party observer in labor disputes to ensure fair and swift resolution of protracted labor disputes.
- Publish findings of Direct Contacts Missions and elaborate steps to engage tripartite partners and other stakeholders in Cambodia with relation to these

findings, while pressing the Cambodian government to implement the recommendations of the Direct Contacts Mission's findings.

*UN Country Team in Cambodia, including the ILO:*

- Press the Cambodian government to stop harassing unions to prevent their ability to represent their members in labor disputes and protect workers' rights. Press for the repeal or revision of laws and other measures used to suppress the right to strike and collective bargaining (including the "Law on Measures to Prevent the Spread of Covid-19 and other Serious, Dangerous and Contagious Diseases" and Trade Union Law), and to end unlawful use of force against strikers.
- Respond to individual freedom of association cases to ensure that workers are protected from arbitrary or discriminatory measures by employers.

**To the European Union**

- Publicly condemn the Cambodian government's undermining the right to freedom of association, harassment of independent unions, and attacks on their rights to strike and collective bargaining, and urge Cambodian authorities to implement the recommendations formulated in this report.
- Continue to urge the Cambodian government to meet the benchmarks set in the context of the partial suspension of Cambodia's "Everything But Arms" trade preferences, and publicly condemn the government's continued non-compliance with its human and labor rights obligations.
- Coordinate with the United States, United Kingdom, and other key trading partners on joint efforts to pressure Cambodia, as specified below.
- Continue to support and engage with Cambodian civil society, including independent unions, and with the UN Office of the High Commissioner for Human Rights, to assess the human rights situation in Cambodia and promote compliance with international human rights standards.
- Ensure thorough implementation of all relevant EU human rights guidelines and of the EU Action Plan on Human Rights and Democracy, including through action by the EU and its member states' diplomatic representations in Cambodia, possibly in coordination with other likeminded partners. In particular:
  - monitor and promptly denounce all cases of abuses of the rights to freedom of association by the Cambodian authorities;

- support the rights of unions to carry out their activities and their access to justice by meeting with them regularly, intervening in individual cases of harassment and anti-union actions by employers;
  - providing funding support that allows for access to justice and strengthening of their activities; and
  - liaising with other foreign governments to coordinate on such strengthening of independent unions.
- Ensure the adoption of a strong EU Corporate Sustainability Due Diligence Directive (CS DDD) with civil liability for companies doing business in the EU and sourcing from countries like Cambodia. The law should require brands sourcing from countries like Cambodia to conduct due diligence over their own purchasing practices and hold them accountable for failing to prevent or remediate human rights abuses in their supply chain, in line with their responsibilities under the UN Guiding Principles on Business and Human Rights.

## To the United States Government

- Adopt a position on the benchmarks that the Cambodian government needs to meet to address labor rights abuses, including ending arbitrary arrests and detention, harassment, and criminal prosecutions of independent union leaders and activist members; ending the misuse of court injunctions to designate union strikes as “illegal”; and undertaking genuine legal reforms.
- Negotiate a joint demarche with the EU, UK, Japan, and other major export markets listing key benchmarks and making their achievement necessary for Cambodia to enjoy increased access to the export market. The demarche should state that punitive measures already taken or currently under consideration, including the EU suspensions of privileges, business advisories published by the US and EU, and possible future suspensions by US when its GSP is renewed, will not be rescinded until the Cambodian government meets the stated benchmarks.
- Encourage the EU to maintain its GSP partial suspensions and continue to communicate with Cambodia about the key benchmarks.
- Strongly urge the UK government to reimpose the partial EU suspensions lifted after Brexit, so that UK suspensions of preferences match the EU’s suspension of trade privileges and are premised on benchmarks like those above.

- Strongly urge Canada to include benchmarks like those above in any trade agreement involving Cambodia.
- Continue to communicate to Cambodia that if the government does not address the labor rights concerns, at the time Congress reauthorizes the GSP program, Cambodia exports will immediately be subject to the review announced in 2021, which could result in Cambodia losing its trade privileges. The US should state that Cambodia will not remain eligible absent changes and reforms.
- Communicate to Cambodia that regardless of all other actions, if the United States determines that the Cambodian government has taken no significant steps toward reform, the US Trade Representative (USTR) will initiate an investigation of Cambodia's labor practices under section 301 of the Trade Act, a process could result in punitive increases in duties and tariffs on all Cambodian goods—including garments, which comprise the largest share of Cambodia exports to the US. In this event, the USTR should also communicate to Cambodia that they will work with Congress to ensure that GSP retroactive benefits for the currently lapsed period will not be provided.
- Urge Congress to include provisions in legislation reauthorizing GSP to block Cambodia and other governments under review from receiving retroactive GSP benefits, regardless of USTR actions, if they do not meet benchmarks like those noted above.

## To the Japanese Government

- Adopt legislation that requires Japanese companies, government agencies, and state-backed financial institutions to conduct human rights due diligence on a rolling basis for both their domestic and international operations, including in Cambodia.
- Ensure that Japan government grants to the Cambodian government are tied to compliance with its obligations under international human rights law, and where there is not compliance, submit these grants for review.
- Take action in response to reports of excessive and unnecessary use of force by Cambodian authorities against striking NagaWorld casino workers; take action to prevent the use of Japan International Cooperation Agency (JICA) funded Phnom Penh city buses to transport away striking workers.

- Call on the Cambodian government to stop violating the right to freedom of association of union leaders and activist members.
- Publicly condemn the Cambodian government undermining the right to freedom of association, the continued harassment of independent unions, and attacks on their rights to strike and collective bargaining.

## **To Other Countries with Economic Ties to Cambodia, including Germany, Canada, UK, Australia, and South Korea**

- Ensure that all economic agreements or trade preferences granted to the Cambodian government are tied to human rights and labor rights criteria, which can be withdrawn if the Cambodian government does not comply with its rights obligations.
- Issue guidance to companies doing business in Cambodia of the reputational, economic, and legal risks from engaging in business with companies in Cambodia involved in human rights abuses.
- Adopt corporate due diligence legislation that holds companies sourcing from or based in Cambodia accountable for committing or failing to prevent human rights abuses in their supply chain.
- Publicly condemn the Cambodian government undermining the right to freedom of association, the continued harassment of independent unions, and attacks on their rights to strike and collective bargaining.

## **To International Brands and Retailers**

- Press for additional legal reforms to the Trade Union Law and registration of unions, including reducing the threshold to form unions and amendments to the threshold for Most Representative Status, as well as the prerequisite of registration for collective bargaining at the factory level.
- Introduce business incentives for suppliers that respect workers' freedom of association and collective bargaining; and prioritize the creation of in-country grievance redress mechanisms, including through legally binding agreements with credible local civil society and independent unions.



## Acknowledgments

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The report was reviewed by Aruna Kashap, associate director in the Economic Justice and Rights Division, Lena Simet, senior researcher in the Economic Justice and Rights Division, and Kyle Knight, health and human rights senior researcher. James Ross, Legal and Policy director, and Danielle Haas, senior Program editor, provided legal and program review respectively.

We are particularly indebted to the external reviewers who commented on sections of an early version of the report. Due to security concerns, their names cannot be identified.

We are very grateful to the many labor law experts, local and international NGOs, independent unions, lawyers, academics and others who assisted our research, in particular the Center for Alliance of Labor and Human Rights (CENTRAL), the Clean Clothes Campaign (CCC), the Solidarity Center, the Worker Rights Consortium (WRC), and independent union federations – the Cambodian Alliance of Trade Unions (CATU), the Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU), the Free Independent Trade Union Federation (FUF), the Cambodian Food and Service Workers Federation (CFSWF), the Cambodia Tourism Workers' Union Federation (CTWUF) and the Labor Rights Supported Union of Khmer Employees (LRSU).

Above all, we thank all the workers who recounted their experiences in the garment, footwear and travel goods as well as tourism and entertainment sectors.

The views expressed in this report are those of Human Rights Watch, which takes full responsibility for any errors or omissions.

## **Appendix I: Human Rights Watch Letters to Employers and Associations, July 20, 2020 – July 25, 2022**

### **Letter to Fast Retailing Co. Ltd., July 25, 2022**

July 25, 2022

**Mr. Tadashi Yanai**

CEO

Fast Retailing Co. Ltd.

Kitanomaru Square, 13-12,

Kudan-kita 1-chome, Chiyoda-ku,

Tokyo 102-0073

Japan

*Via email: [tyanai@uniqlo.co.jp](mailto:tyanai@uniqlo.co.jp) and [FR\\_G\\_frgcsr@fastretailing.com](mailto:FR_G_frgcsr@fastretailing.com)*

**Re: Freedom of Association in Monopia's Kampong Speu (Cambodia) factory**

Dear Mr. Yanai,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world, including Cambodia. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

Human Rights Watch has researched the impact of the Covid-19 pandemic on the garment industry, highlighting brands' unfair purchasing practices and labor rights abuses by factories.

We are investigating workers' complaints linked to the dismissal of seven employees in November 2019 at Monopia's factory in Kampong Speu province. Human Rights Watch learned that one of Fast Retailing's brands, GU, has sourced from the factory.

The seven employees were elected local union leaders affiliated with the Free and Independent Trade Union Federation (FUI): Nov Chantha, Oeun Channy, Din Da, Bang Pov, Suk Chea, Nov Trytoch and Sous Sophorn. These workers were employed on six-month, fixed-term contracts. Several of them had worked at the factory for a total of between two to three years.

Human Rights Watch is also examining the related and ongoing criminal proceedings at the Kampong Speu provincial court initiated by the factory against three union leaders: FUI federation president Soy Chanthou, and terminated local FUI leaders Nov Chantha and Oeun Channy. These proceedings are apparently based on allegations that these workers committed incitement to commit a felony. The prosecutor also summoned three additional local FUI members – Mao Bunly, Phol Khoeun and Bun Bros – in relation to a separate criminal complaint filed by the factory, calling them to answer questions about their efforts to support union organizing by collecting workers' thumbprints on documents as part of an effort to seek new union members at Monopia's Kampong Speu factory.

Human Rights Watch has consistently criticized the Cambodian authorities' arbitrary use of "incitement" as a means to restrict activists' rights to free speech, as protected under the United Nations International Covenant on Civil and Political Rights (ICCPR). Private actors should not invoke criminal provisions to restrict people's exercise of their human rights or conduct of legitimate union activities. Companies should comply with local labor laws and adhere to the principles elaborated in the United Nations Guidelines on Business and Human Rights.

Human Rights Watch understands that FUI has not yet been able to renew their factory-level union's registration, which expired in February 2021. However, a new group of local union leaders at Monopia factory recruited new members and restarted union activities at the factory. On June 28, 2021, the following were elected as new FUI leaders at the factory:

1. Mao Bunly as president
2. Bun Bros as vice-president
3. Phol Khoeun as secretary
4. Yu Yong as treasurer

FUFI alleges that following the election, factory management summoned two workers who were then ordered to resign from the union or face dismissal. The two workers complied with management's demands, and government officials pointed to their resignations in rejecting the FUI's local union registration application. According to FUI, such threats of dismissals made to workers participating in the union's four attempts to hold elections between February and October 2021 resulted in the union's inability to renew its mandate.

The Fast Retailing Group has adopted a Code of Conduct which provides that basic human rights should be respected and that discrimination and harassment undermining a person's dignity are prohibited. More specifically, in its Code of Conduct guideline, while referring to the need to respect the Universal Declaration of Human Rights, international covenants on human rights and other international human rights standards, the Fast Retailing Group commits to "respect freedom of association, right to collective bargaining and other basic human rights of employees." The Guidelines also state that "every effort" should be made to avoid taking part in the infringement of human rights in cooperation with business partners and other stakeholders. In addition, the Fast Retailing Group created a Code of Conduct for Production Partners "to protect labor conditions and human rights at factories." The Code requires that "Production partners shall recognize and respect the right of workers to associate, organize, and bargain collectively. In addition, all production partners shall implement grievance mechanisms to allow all workers to confidentially communicate concerns to the production partner's management and the worker representative without the risk of retaliation and provide effective means [to] remedy such grievances."

Other brands have successfully intervened in cases where union leaders are unfairly dismissed or discriminated, to have them reinstated by the factory. We would be happy to provide you examples of such intervention by brands.

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources, including international brands, to inform our research.

Therefore, we request you to please provide us with written response to the following questions so that we have an opportunity to review them and reflect them in our forthcoming publications:

1. Please provide information on Fast Retailing's engagement with Soy Chanthou, the leader of the Free and Independent Trade Union Federation (FUI), and other senior local FUI leaders to resolve the labor dispute concerning the terminations of seven union leaders as well as ongoing criminal proceedings at the Kampong Speu provincial court based on 'incitement' charges against Soy Chanthou, Nov Chantha, Oeun Channy, Mao Bunly, Bun Bros and Phol Khoeun, which your partner company, Monopia (Cambodia) Co. Ltd., filed based on their union activities.
2. Please explain Fast Retailing's interventions and communications with management at Monopia (Cambodia) Co. Ltd. factory to resolve the labor dispute and to end alleged harassment against Soy Chanthou, Nov Chantha, Oeun Channy, Mao Bunly, Bun Bros and Phol Khoeun, which appears to violate Fast Retailing's policy prohibiting restrictions to the freedom of association.
3. How has Fast Retailing monitored whether Monopia (Cambodia) Co. Ltd. factory and other factories in Cambodia supplying to Fast Retailing have adhered to Fast Retailing's Code of Conduct for Production Partners as well as its general Code of Conduct?

Please feel free to share any additional information about this matter that you think would be relevant.

We look forward to receiving a written reply from you, and welcome any opportunity to discuss this matter further, via conference call. Please do not hesitate to contact Robbie Newton at [newtonr@hrw.org](mailto:newtonr@hrw.org) with any questions regarding this letter, and to provide responses to the information requested by August 15.

We look forward to hearing from you.

Yours sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

CC:

Yukihiro Nitta, Senior Vice President in Charge of CSR

Ayako Uchida, Manager, CSR Department, Japan

## Letter to Monopia (Cambodia) Co., Ltd., May 30, 2022

Mr. Kim Kwang Suk  
Director and CEO  
Monopia (Cambodia) Co., Ltd.  
Krang Svay, Roleang Kreul  
Samraong Tong  
Kampong Speu, 5206  
Cambodia  
*Via email to [ks.kim@monopia.com](mailto:ks.kim@monopia.com)*

May 30, 2022

### Re: Freedom of Association in Monopia's Kampong Speu factory

Dear Mr. Kim Kwang Suk,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

We are researching the circumstances, issues connected to due process, surrounding the dismissal of seven employees at Monopia's factory in Kampong Speu province. The dismissal took effect in November 2019. The employees were seven elected local union leaders affiliated with the Free and Independent Trade Union Federation (FUIF): Nov Chantha, Oeun Channy, Din Da, Bang Pov, Suk Chea, Nov Trytoch and Sous Sophorn. These workers were on six-month fixed-term contracts. Some have worked at the factory for between two and three years.

We are also examining the ongoing criminal proceedings at the Kampong Speu provincial court initiated by your factory against three union leaders, FUIF federation president, Soy Chanthou, and terminated local FUIF leaders, Nov Chantha and Oeun Channy, based on allegations they were involved in incitement to commit a felony. The prosecutor summoned

three additional local FUI members, Mao Bunly, Phol Khoeun and Bun Bros, in relation to a separate criminal complaint filed by the factory, calling them to answer questions about their collection of thumbprints to seek new union members at Monopia's Kampong Speu factory.

Human Rights Watch has consistently criticized the Cambodian authorities' arbitrary use of "incitement" as a means to restrict activists' rights to free speech, which are protected under the United Nations International Covenant on Civil and Political Rights (ICCPR) to which Cambodia is a state party. Furthermore, private actors should neither invoke criminal provisions to restrict people's exercise of their human rights or their legitimate union activities.

Companies should comply with local labor laws and adhere to the UN Guidelines on Business and Human Rights. Disclosing how the company conducted human rights due diligence in accordance with international standards as well as with local labor laws, is critical to demonstrating the company's commitment to labor rights.

Human Rights Watch also understands that FUI has been unable to renew their factory-level union's registration, which expired in February 2021. New local union leaders at Monopia factory recruited new members and restarted union activities at the factory. The following were elected as new FUI leaders at the factory:

5. Mao Bunly, President
6. Bun Bros, Vice-President
7. Phol Khoeun, Secretary
8. Yu Yong, Treasurer

FUI alleges that following the election, factory management summoned two workers who were told to either resign from the union or they would face dismissal. Their resignations resulted in FUI's local union registration application being rejected. According to FUI, these threats of dismissals against workers participating in the union's four attempts to hold elections between February and October 2021 are directly responsible for the union's inability to renew its mandate.



Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. We request that you please provide us with a written response to the following questions so that we have an opportunity to review them and reflect them in our publications:

1. Please provide copies of the factory's notice of termination given to each of the seven workers and outline what steps, if any, the factory took to provide workers with a fair opportunity to respond before they were terminated.
2. Please provide a copy of the factory's final termination order to the seven workers.
3. Please explain the reasons for terminating the seven union leaders: Nov Chantha, Oeun Channy, Din Da, Bang Pov, Suk Chea, Nov Trytoch and Sous Sophorn.
4. Please provide copies of all correspondence the factory sent to the Ministry of Labor and Vocational Training (MoLVT) relating to the request for the dismissal of Nov Chantha, Oeun Channy, Chem Sarun, Hem Thim, Din Da, Bang Pov, Suk Chea, Nov Trytoch and Sous Sophorn.
5. Please explain the reasons for the company's action to file a complaint with the Kampong Speu provincial court, accusing three union leaders – Soy Chanthou, Nov Chantha and Oeun Channy – of “incitement to commit a felony.”
6. Please explain the reasons for the company's action to file a subsequent criminal complaint for “incitement to commit a felony” against unionists Mao Bunly, Bun Bros and Phol Khoeun.
7. Please provide a copy of the company's internal regulations that outline grounds and processes for disciplinary action, as well as processes governing the redress of grievances brought by workers or union representatives.
8. Please provide information on the number of local unions registered at your factory.
9. Please provide specific information on company policies and processes with regard to respecting workers' rights to freedom of association, including details on company policies about affecting the ability for unions to form and register.
10. Please provide a copy of the factory's social audit report(s) for the past three years.
11. Please provide any other information that you wish to share regarding these above-mentioned matters.

We look forward to receiving a written reply from you to the information requested by **June 20** so that your responses can be reflected in our reporting. We also welcome any

opportunity to discuss this matter further, via conference call. Please do not hesitate to contact Robbie Newton at [newtonr@hrw.org](mailto:newtonr@hrw.org) with any questions regarding this letter.

We look forward to hearing from you.

Yours sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

## Letter to Garment Manufacturers Association (GMAC), May 27, 2022

Mr. Ken Loo  
Secretary-General  
Garment Manufacturers Association (GMAC)  
Phnom Penh Special Economic Zone  
Phum Trapeang Kul, Sangkat Kantouk  
Khan Kamboul, Phnom Penh  
Cambodia 120906  
*Via email at [kenloo@online.com.kh](mailto:kenloo@online.com.kh)*

May 27, 2022

### Re: Freedom of Association in Cambodia's Garment Sector

Dear Ken Loo,

You may recall that we met back in 2015 after Human Rights Watch released a report about garment workers and human rights in Cambodia. I am contacting you again on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

We are continuing our research on the overall situation of freedom of association in Cambodia, including in the garment sector. This builds on our previous research and publications about the freedom of association in the country.<sup>367</sup> We have researched and

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<sup>367</sup> HRW, "Work Faster or Get Out" – Labor Rights Abuses in Cambodia's Garment Industry, March 11, 2015, <https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry>; HRW, Cambodia: Revise Union Law to Protect Worker Rights – Donors and Brands/Companies Should Push for Improvements to Labor Bill, December 17, 2015, <https://www.hrw.org/news/2015/12/17/cambodia-revise-union-law-protect-worker-rights>; HRW, Cambodia: Free Prominent Trade Union Leader – Drop Fabricated Charges Against Rong Chhun, August 4, 2020, <https://www.hrw.org/news/2020/08/04/cambodia-free-prominent-trade-union-leader>; HRW, Cambodia: Covid-19 Used to Justify Crackdown on Union – UN, ILO, Governments Should Denounce Arrests of Union Leaders, Activists, February 15, 2022, <https://www.hrw.org/news/2022/02/15/cambodia-covid-19-used-justify-crackdown-union>.

exposed unfair purchasing and buying practices of brands and retailers more generally, and specifically during the Covid-19 pandemic. Human Rights Watch continues to advocate for fair purchasing and buying practices, including through mandatory regulations.

While we acknowledge that the pandemic has had a devastating impact on global supply chains and economies, we believe that even as employers seek to address the economic fallouts of the pandemic, they should take steps to respect rights to freedom of association and to collective bargaining. A way this can be done was seen in Myanmar, where, before the February 2021 military coup, several factories negotiated collective bargaining agreements with local unions to guide how the factories could conduct mass layoffs and rehire workers in a non-discriminatory manner.<sup>368</sup>

We are concerned that many Cambodian employers have responded to the pandemic by taking measures that were based on anti-union discrimination.

We note that GMAC has repeatedly raised concerns about factory owners' hardships during the pandemic. Union leaders have criticized GMAC's sole focus on employers' interests without giving adequate consideration to workers' welfare. Access to social protection, including unemployment benefits, is still a problem in Cambodia, despite the fact that such measures can play an important role during economic crises. The Cambodia Garment, Footwear and Travel Goods Sector Development Strategy 2022-2027 (Cambodia Garments Strategy), launched in March 2022, recognizes the importance of such benefits and notes among its objectives the need to "Review the possibilities to expand the scope of social security scheme, currently provided by the NSSF to workers/employees based on the actual development in this industry, such as the possibilities to provide unemployment benefits insurance to workers/employees."

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<sup>368</sup> Collective Bargaining Agreement signed between Myanmar unions and factories, on file with Human Rights Watch. The following clauses offer protection without discrimination: "If and when the factory re-opens (or rehires in the case of a partial cessation), the employer agrees to rehire all current employees (at time of signing this agreement). If all workers cannot be rehired at once, workers will be rehired in order of their seniority [or use your bargaining language below]. The employer agrees not to hire any external employees until all employees who were on the payroll at the time the agreement was reached have been offered re-employment. All rehired employees shall be offered the same or similar employment at the wages, benefits and working conditions they were afforded prior to termination. The employer agrees to recognize the union which was registered at the time of the total cessation of work. The employer agrees to a principle of non-discrimination against union leaders and members in the re-opening and re-hiring process." "Any compensation received at the time of closure or partial cessation shall not forfeit an employee's right to return to work upon re-opening or re-hiring per this agreement."

Human Rights Watch welcomes the need to review and expand the scope of the National Social Security Fund (NSSF) benefits and other aspects of the Cambodia Garments Strategy, including that it acknowledges the need to improve working conditions and welfare of workers in the sector; to strengthen dispute resolution mechanisms, including the capacity of conciliators at the Ministry of Labor and Vocational Training; to provide space for the negotiation of collective bargaining agreements; and to strengthen the independence and effectiveness of the Arbitration Council. In particular, we note that many of these objectives are aligned with one of the Garments Strategy’s medium-term objectives to “further promote the reputation of this industry in Cambodia as a sourcing destination with high compliance, ethics, and environmental sustainability; and as a sourcing destination of high value-added products.”

To improve Cambodia’s reputation as a sourcing destination and provide the space for negotiations of collective bargaining agreements between workers and employers at the factory/enterprise level, we strongly urge GMAC to support the need to reverse the increasing legal and administrative restrictions that prevent the formation, existence, and operation of independent unions in the sector. These legal and administrative reforms should center around the freedom of association and the right to collective bargaining, thus refraining from labeling workers’ industrial actions as “illegal strikes and demonstrations causing the loss for both workers/employee,” which the Strategy does.

During March, April and May 2022, Human Rights Watch conducted interviews with union leaders and activists in the garment sector. Our interviews revealed an overwhelming number of cases of discriminatory measures towards union leaders and activists that impeded or wholly prevented the conduct of their union activities. Some of the findings include terminations of union leaders and activists based on unsubstantiated claims of misconduct, criminal charges against unionists based on their union activities, non-payment or miscalculation of severance payments of dismissed workers upon closure of businesses, as well as harassment by government authorities, including restrictions on the right to strike and collective bargaining.

In April and May 2021, the Clean Clothes Campaign (CCC), together with local partners, collected data at over 100 factories where workers are still owed severance payments upon factories’ closures. The CCC attempted to reach legally binding agreements aimed at

settling all cases of unpaid wages at factories at once which would be signed by all parties (including brands, retailers, and manufacturers on the one hand, and workers, their trade union organizations, and their civil society allies on the other). However, this effort was unsuccessful. In the meantime, the CCC continues to support workers in individual cases to seek arrangements where the workers in question are promptly paid what they are owed.

We are deeply concerned that Cambodian government authorities continue to use the vague, one-size-fits all criminal charge of “incitement to commit a felony” to respond to unions’ pursuit of their legitimate union activities. Human Rights Watch has criticized the Cambodian authorities’ arbitrary use of “incitement” as a means to restrict activists’ rights to free speech protected under the United Nations International Covenant on Civil and Political Rights, to which Cambodia is a party. We have also repeatedly urged private actors to not invoke criminal provisions to restrict people’s exercise of their human rights or their legitimate union activities.

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. We request that you please provide us with a written response to the following questions so that we have an opportunity to review them and reflect them in our publications:

1. Please explain the measures GMAC is taking to review and revise the NSSF to include unemployment benefits to help workers in the future.
2. What steps is GMAC taking to renew its memorandum of understanding with union federations to treat Arbitration Council awards as binding?
3. Please explain any concrete actions taken by GMAC to help factory owners resolve the hundreds of unaddressed cases of unpaid severance payments of workers who lose their jobs because of factory closures. In particular, we are keen to receive a list of brands that have not paid suppliers for products already manufactured.
4. Please explain any actions taken by GMAC that seek to monitor, investigate, and take action against discriminatory practices by employers against union leaders.
5. Please explain any actions taken by GMAC that seek to prevent criminal harassment by employers against union leaders based on their union activities.
6. Please explain any actions taken by GMAC that seek to provide support to its members on adherence to codes of conduct that address the protection of freedom

- of association and ensure workers have access to effective grievance mechanisms to freely report rights abuses committed by their employers.
7. Please explain how GMAC, as implementing partner, intends to ensure that short-term measures reflected in the government’s “Cambodia Garment, Footwear and Travel Goods Sector Development Strategy 2022-2027” also take into account the protection of workers’ rights to unionize, strike and collectively bargain at factories.
  8. Kindly provide any other information that you wish to share regarding the above-mentioned matters.

We look forward to receiving a written reply from you to the information requested by **June 17** so that your responses can be reflected in our reporting. All written responses can be sent via email to Robbie Newton at [newtonr@hrw.org](mailto:newtonr@hrw.org). We also welcome any opportunity to discuss this matter further, via conference call. Please do not hesitate to contact Robbie Newton with any questions regarding this letter.

We look forward to hearing from you.

Yours sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

## Letter to Sun Hoi Garments International Ltd., May 27, 2022

Mr. Simon Li Kun Hung  
Director  
Sun Hoi Garments International Ltd.  
7/F, Block B&D, Young Ya Industrial Building  
381-389 Sha Tsui Road  
Tsuen Wan, Hong Kong

May 27, 2022

### Re: Allegations of Miscalculation of Severance Payments Upon Factory Closure

Dear Mr. Simon Li Kun Hung,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world, including Cambodia. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

We are investigating workers' complaints about not being paid what they are due under Cambodian labor law upon the closure of Wai Full Garments (Cambodia) Ltd., owned by Sun Hoi Garments International Ltd., on May 24, 2021.

Human Rights Watch received information that workers learned of the factory closure on May 24, 2021, which was the date the factory notified the Ministry of Labor and Vocational Training by letter of its impending closure. More than 400 workers were dismissed in stages between December 2020 and May 2021. According to factory management at the Arbitration Council hearing, 106 workers had been terminated prior to January 15, 2021, and 294 workers after January 15, 2021, until the factory closed. Factory management allegedly told workers that severance would be calculated based on workers' employment seniority, determined from the date that their contracts had been converted from fixed duration contracts to permanent employment contracts.



However, according to article 73, paragraph 7 of Cambodia’s Labor Law, in cases where a permanent employment contract replaces a fixed duration contract, the workers’ employment seniority should be calculated by taking into account the length of both contracts. The law states that “If a contract of unspecified duration replaces a contract of specified duration upon the latter’s expiration, the employment seniority of the worker is calculated by including periods of both contracts.”<sup>369</sup>

We understand that prior to the announcement of the factory closure, on March 17, 2021, Ang Snuol district police in Kandal province summoned four union leaders to hear a complaint filed by Wai Full Garments factory based on allegations of “a personal issue.” Police accused the union leaders of “causing chaos and instability in the factory” because of their “union activities.” This occurred after local union leaders had collected thumbprints for additional workers to join a complaint to the Ministry of Labor and Vocational Training.

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. Disclosing how the company conducted human rights due diligence in accordance with international human rights standards as well as with local labor laws is critical to demonstrating the company’s commitment to labor rights. We request that you please provide us with a written response to the following questions so that we have an opportunity to review them and reflect them in our publications:

4. Has Wai Full Garments clarified that it will pay all workers their legally owed severance, calculating seniority in line with article 73 of the Labor Law by taking into account the contract periods prior to switching from fixed duration contracts to permanent duration contracts? What is the current status of negotiations between Wai Full Garments factory management and the federation leader of the Cambodian Alliance of Trade Unions (CATU), Yang Sophorn, and/or other senior local CATU leaders, to resolve the dispute about levels of severance pay owed to workers?
5. Please explain Wai Full Garments factory’s decision to file a complaint with the police against local union leaders who were approaching workers to collect

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<sup>369</sup> Official translation of Cambodia Labor Law 1997, art. 73, available at: <https://www.ilo.org/dyn/travail/docs/701/labour>

thumbprints on a collective complaint to the Ministry of Labor and Vocational Training.

6. Does Wai Full Garments have a specific policy on the right of workers to freedom of association and the right to collectively bargain? If so, please provide information about that policy.

Please feel free to share any additional information about this matter that you think would be relevant.

We look forward to receiving a written reply from you to the information requested by **June 10** so that your responses can be reflected in our reporting. We also welcome any opportunity to discuss this matter further, via conference call. Please do not hesitate to contact Robbie Newton at [newtonr@hrw.org](mailto:newtonr@hrw.org) with any questions regarding this letter.

We look forward to hearing from you.

Yours sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

## Letter to Rosewood Phnom Penh, May 25, 2022

Mr. Daniel Simon  
Managing Director  
Rosewood Phnom Penh  
#199, Norodom St, BKK 1  
Khan Chamkarmon  
Phnom Penh  
Cambodia  
*Via email at [Daniel.simon@rosewoodhotels.com](mailto:Daniel.simon@rosewoodhotels.com)*

May 25, 2022

### Re: Denial of Registration of Independent Union

Dear Mr. Daniel Simon,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

We are researching the government's repeated denial of registration to the Cambodian Tourism Workers' Union Federation (CTWUF) local affiliate union at Rosewood Phnom Penh.

Human Rights Watch learned that on February 24, 2021, a local affiliate of CTWUF organized an election to form a local union at Rosewood Phnom Penh, with three failed attempts by the elected union to register with the Ministry of Labor and Vocational Training.

Shortly after the election, the hotel's management allegedly forced one of the workers who participated in the election to "resign" from the union. Subsequently, the government allegedly cited the ostensible resignation as the basis to deny union registration.

Companies should comply with local labor laws and adhere to the United Nations Guiding Principles on Business and Human Rights<sup>370</sup>, and company actions should ensure that workers can exercise their right to freedom of association to form and join unions of their choosing, and allow unions to conduct legitimate union activities without fear of interference or reprisals from their employers.

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. Disclosing how the company conducted human rights due diligence in accordance with international human rights standards as well as with local labor laws is critical to demonstrating the company's commitment to labor rights. We request that you please provide us with a written response to the following questions so that we have an opportunity to review them and reflect them in our publications:

1. Has Rosewood's senior management met the leadership of the CTWUF to discuss workers' efforts to exercise their right to freedom of association and establish a union? What steps will Rosewood take to ensure that workers can freely participate in future union elections without fear of retaliation?
2. Please provide specific information on how many local unions (if any) are currently registered at Rosewood Phnom Penh?
3. Please provide any additional information about measures that Rosewood Phnom Penh implemented to respect worker rights, including the right to freedom of association?
4. Please provide copies of relevant reports of social audits that Rosewood has conducted at its hotel. Please feel free to share any additional information about this matter that you think could be relevant.

We look forward to receiving a written reply from you to the information requested by **June 16** so that your responses can be reflected in our reporting. We also welcome any opportunity to discuss this matter further via conference call. Please do not hesitate to contact Robbie Newton at [newtonr@hrw.org](mailto:newtonr@hrw.org) with any questions regarding this letter.

We look forward to hearing from you.

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<sup>370</sup> United Nations Human Rights Counsel, Guiding Principles on Business and Human Rights (2011) [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

Yours sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

CC:

Kendall Trainer, Nike communications (Media North America)  
Sam Ang, Chairman of Board of Directors  
Sonia Cheng, CEO Rosewood Hotel Group

## Letter to Marriott International, Inc., May 25, 2022

Ms. Melissa Froehlich Flood  
Vice President, Social Impact and Public Affairs  
Marriott International, Inc.  
10400 Fernwood Road  
Bethesda, MD 20817  
United States  
*via email: [melissa.froehlich-flood@marriott.com](mailto:melissa.froehlich-flood@marriott.com)*

May 25, 2022

**Re: Termination of Three Trade Union Activists in Le MERIDIEN Angkor Hotel, Siem Reap, Cambodia**

Dear Ms. Froehlich Flood,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

We recognize that the hospitality industry has been among the hardest hit during the pandemic, including the Marriott's hotels globally. Hotel workers are among the worst affected.

We are writing about our ongoing research in relation to Le MERIDIEN Angkor Hotel in Siem Reap, Cambodia, which is part of the Marriott International's brands of hotels.

We have learned that in July 2020, the Le MERIDIEN Angkor Hotel management terminated three union activists affiliated with the Cambodian Tourism Workers' Union Federation (CTWUF) for sharing or commenting on a Facebook post about food assistance provided to employees during the Covid-19 pandemic at Angkor Miracle Resort & Spa. The Facebook

post was done a personal Facebook account, and it did not mention Le MERIDIEN Angkor Hotel, or any individual associated with the company.

In response to the Facebook post, the general management of Le MERIDIEN Angkor Hotel accused these union activists of “incitement” after they petitioned to oppose a wage cut for employees due to Covid-19. At that time, management announced it was cutting staff salaries by 35 percent. Workers protested and issued a counter-demand that staff salaries only be cut by 20 percent. In November 2021, before the labor dispute could be resolved, Le MERIDIEN Angkor closed temporarily for at least one year, starting from November 25, 2020, and laid off all the workers. Hotel management claimed a “mutual separation scheme” had been offered to employees as well as an “additional payout on top of other statutory payouts.”

Human Rights Watch has often criticized the Cambodian authorities’ arbitrary use of “incitement” as a means to restrict activists’ rights to free speech, as protected under the United Nations International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is party. Private actors should take care not to mimic abusive government practices by invoking criminal provisions to restrict people’s exercise of legitimate union activities or fundamental freedoms. This is particularly dangerous in the Cambodian context, where in recent years there has been decreasing respect for human rights and the rule of law.

Companies should comply with local labor laws and adhere to the UN Guidelines on Business and Human Rights. Disclosing how the company conducted human rights due diligence in accordance with international standards as well as with local labor laws, is critical to demonstrating the company’s commitment to labor rights.

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. We request that you please provide us with a written response to the following points so that we have an opportunity to review them and reflect them in our publications:

5. Did Marriott International issue any guidelines to its hotels about temporary closures and layoffs, providing guidance to management about the treatment of

- affected workers? If yes, please provide a copy, indicating the date of the policy and guidelines.
6. Are there plans to give workers the option of being rehired at the same or different levels when the hotel reopens?
  7. Has Marriott International provided any training to its managers in its Cambodian hotels about interacting with union leaders and unionized workers? If yes, please provide additional information about that training, and any associated written materials.
  8. Can the company specify what specific actions led Le Meridien Angkor to accuse the three union activists of “incitement” and whether they were given the opportunity to respond to the allegations before being terminated?
  9. Can you please specify what policies the Marriott International group has and what specific procedures and measures it undertakes to protect the right to freedom of association for workers at your brand hotels?

Please feel free to share any additional information about this matter that you think would be relevant.

We look forward to receiving a written reply from you to the information requested by **June 8** so that your responses can be reflected in our reporting. We also welcome any opportunity to discuss this matter further, via conference call. Please do not hesitate to contact Robbie Newton at [newtonr@hrw.org](mailto:newtonr@hrw.org) with any questions regarding this letter.

We look forward to hearing from you.

Yours sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch



## Response from Marriott International, Ltd., June 3, 2022

3 June 2022

Phil Robertson, Deputy Asia Division Director  
Robbie Newton, Asia Coordinator  
Human Rights Watch

Via email: [hrwasia@hrw.org](mailto:hrwasia@hrw.org)

To whom it may concerns:

Thank you for your outreach to Marriott International dated 25 May 2022, regarding the events at Le Meridien Angkor in Siem Reap, Cambodia. We have also been closely monitoring the situation and continuing to support human rights efforts in the region and globally.

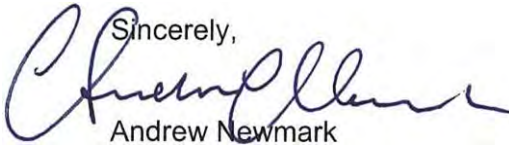
As stated in our Human Rights Policy, Marriott International acknowledges and respects the principles contained in the United Nations Universal Declaration of Human Rights. We are committed to conducting our business in a manner consistent with these principles and the United Nations Guiding Principles on Business and Human Rights and to respecting human rights.

Marriott strives to provide a safe, healthy, fair, and inclusive working environment for all associates, and our Human Rights Policy includes a specific commitment on freedom of association. Marriott supports the freedom of association and the right to choose a collective bargaining representative. As stated in our Supplier Guidelines, Marriott also expects suppliers to uphold the highest standards of human rights and encourages suppliers to respect an employee's freedom of association and right to bargain collectively.

The travel industry has been impacted in unprecedented ways by the COVID-19 pandemic. At the property level, reducing staff was one of the many proactive steps Marriott took to mitigate the negative financial and operational impacts of the pandemic. All termination packages were consistent with government requirements, and Marriott aims to rehire associates who were terminated due to the COVID-19 pandemic, where possible. At Le

Meridien Angkor, meetings were held between associates, union representatives, government, and hotel to resolve the matter amicably and constructively. A confidential settlement was reached with the three individuals in November 2020. Currently, Le Meridien Angkor remains closed with no scheduled reopening at this time.

We take our commitment to respect and uphold human rights seriously, and we appreciate you raising awareness of this important matter. Thank you again for your outreach and the opportunity to respond.

Sincerely,  
  
Andrew Newmark

## Letter to Ramatex Textiles Industrial SDN BHD, May 25, 2022

Mr. Ma Wong Ching  
Chairman/Founder  
Ramatex Textiles Industrial SDN BHD  
Plo 230 Kawasan Perindustrian Sri Gading,  
Johor, 83000, Malaysia  
*Via email at [batbol@berryapparel.com](mailto:batbol@berryapparel.com)*

May 25, 2022

### **Re: Denial of Prior Notice Before Dismissal and Damages in Lieu of Prior Notice**

Dear Mr. Ma Wong Ching,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world, including Cambodia. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

We are researching allegations of rights abuses linked to the closure of Violet Apparel (Cambodia) Co. Ltd. factory in Phnom Penh, owned by Ramatex. Human Rights Watch received information from affected workers that on June 30, 2020, Violet Apparel factory retracted the offer it made on June 25, 2020, and notified workers that they would no longer receive compensation in lieu of prior notice before termination. When the Ministry of Labor and Vocational Training clarified on August 14, 2020, that employers must pay compensation if they do not provide legally required prior notice before layoffs, the Violet Apparel factory agreed to pay. But the company referred to a private letter issued by the head of the Department of Labor Inspections, stating the factory only had to count seniority from the date of conversion from fixed-term contracts to permanent employment contracts. On July 1, 2020, the factory closed, giving workers less than 24 hours' notice. The closure resulted in the dismissal of over 1,100 workers.

Companies should comply with Cambodian labor laws and have a responsibility to adhere to the United Nations Guiding Principles on Business and Human Rights. Article 75 of Cambodia's Labor Law requires notice periods between seven days and three months, depending on the length of workers' continuous employment. In addition, article 3 of *Prakas* (Decree) No. 288/01 on Declarations of Opening and Closure of the Enterprise and Establishment provides that enterprises and establishments must notify the ministry or relevant provincial department about all "*changes in location, adjustments in production structure, changes in ownership and closure or termination of enterprise activities no longer than 30 (thirty) days after the day of the change or after the day of ceasing enterprise or establishment activities.*"<sup>371</sup> The Arbitration Council previously ruled that compliance with the notification requirements of this *Prakas* in the event of enterprise or establishment closure is not sufficient to release an employer from their obligations to pay compensation in lieu of giving prior notice and damages.<sup>372</sup> Cambodian law states that workers are owed damages if they are dismissed without valid reason, i.e. to compensate workers with the amount equal to the wages and all kinds of benefits that the worker would have received during the official notice period (article 77 of Cambodia's Labor Law).

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. Disclosing how the company conducted human rights due diligence in accordance with international human rights standards as well as with local labor laws, is critical to demonstrating the company's commitment to labor rights. We request that you please provide us with a written response to the following questions so that we have an opportunity to review them and reflect them in our publications:

1. What measures has the Violet Apparel factory taken to pay workers compensation in lieu of notice in line with the Arbitration Council's clarification?
2. Can you please explain what specific steps Violet Apparel factory is currently taking to resolve the outstanding labor dispute regarding outstanding claims of compensation in lieu of prior notice by dismissed workers?

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<sup>371</sup> Prakas No. 288/01 on Declarations of Opening and Closure of the Enterprise and Establishment, November 5, 2001 available at: <https://www.arbitrationcouncil.org/download/prakas-288-01-on-declaration-of-enterprise-or-establishments-opening-and-closing/#>

<sup>372</sup> See e.g. Arbitration Council Award No. 068/19 – Meta Biomed.

3. Has Violet Apparel factory met with representatives of unions registered at the factory to resolve the current labor dispute? If so, how many meetings have taken place and what progress has been made in resolving the dispute?

Please feel free to share any additional information about this matter that you think would be relevant.

We look forward to receiving a written reply from you by **June 8** so that your information may be reflected in our reporting. We welcome any opportunity to discuss this matter further, via conference call. Please do not hesitate to contact Robbie Newton at [newtonr@hrw.org](mailto:newtonr@hrw.org) with any questions regarding this letter.

We look forward to hearing from you.

Yours sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

## Letter to Trax Apparel (Cambodia) Co., Ltd., May 20, 2022

Mr. Chaiyapong Vechamamontien  
Director  
Trax Apparel (Cambodia) Co., Ltd.  
No. 1, Russian Federation Boulevard,  
Teuk Thla Commune  
Sen Sok District  
Phnom Penh  
10102 Cambodia  
*Via email at [chantip.jit@traxapparel.com](mailto:chantip.jit@traxapparel.com)*

May 20, 2022

### **Re: Non-Renewal of Fixed-Term Contracts of Union Leaders and Activists**

Dear Mr. Chaiyapong Vechamamontien,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

We are researching the circumstances surrounding the layoff of 620 workers, including seven local union leaders and activists affiliated with the Cambodian Alliance of Trade Unions (CATU):

1. Yon Yet, union president
2. Ken Ven, union vice-president
3. Kon Sokoun, union secretary
4. Him Rokei, union treasurer
5. Pom Sreymol, union executive
6. Choun Sophol, union executive
7. Im Seakveng, union executive

Human Rights Watch understands that Trax Apparel informed 620 workers in April 2020 that their contracts were to be terminated due to lack of orders from customers. A majority of these workers were employed on three-month, fixed-term contracts.

Trax Apparel gave workers the option to resign immediately, or be placed on a two-month suspension with a payment of US\$30 per month, in addition to US\$40 promised to be paid by the Cambodian government. According to information we received, 252 workers chose immediate resignation, and 368 workers chose the two-month work suspension, including the seven CATU leaders and activists.

On May 27, 2020, Trax Apparel sought and received official authorization from the Ministry of Labor and Vocational Training to terminate the seven local CATU leaders and activists, who were employed on three-month fixed-term contracts. In June 2020, Trax Apparel rehired workers, however, the seven local CATU union leaders and activists were not reinstated. Finally, on April 4, 2022, the union and Trax factory management reached an agreement in which the factory would rehire Yon Yet, Him Rokei, Kon Sokoun and Pom Sreymol.

Companies should comply with local labor laws, international labor standards, and the United Nations Guiding Principles on Business and Human Rights<sup>373</sup>. Articles 62 and 67 of the Trade Union Law and article 12 of the Labor Law protect against anti-union discrimination towards union leaders and activists, which includes protection against unfair dismissals. Disclosing how the company conducted human rights due diligence in accordance with international human rights standards as well as with local labor laws, is critical to demonstrating the company's commitment to labor rights.

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. We request you to please provide us with a written response to the following questions so that we have an opportunity to review them and reflect them in our publications:

1. What criteria did the factory use to select the 620 workers for lay off?

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<sup>373</sup> United Nations Human Rights Counsel, Guiding Principles on Business and Human Rights (2011) [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

2. Please outline factory management efforts to reach out to union leaders and activists to negotiate how the retrenchment should be carried out.
3. Please outline how the factory would treat laid-off workers in future hiring when the business prospects for the factory improve?
4. Please provide a copy of the factory's termination order from May 27, 2020, and explain the reasons for terminating the seven local CATU leaders and activists.
5. Please provide copies of all correspondence the factory sent to the Ministry of Labor and Vocational Training (MoLVT) relating to the request for dismissal of the seven local CATU leaders and activists.
6. Please provide a copy of the company's internal regulations that outline grounds and processes for disciplinary action, as well as processes governing redress of grievances.
7. Please provide information on policies and procedures of the factory workers' freedom of association, including the ability for unions to form and register.
8. Please provide a copy of the factory's social audit report(s) for the past three years.
9. If you wish to share any other information that we have not requested above regarding these three employment terminations, please do so.

We look forward to receiving a written reply from you for the information requested by **June 11, 2022**, so that your responses can be reflected in our reporting. We also welcome any opportunity to discuss this matter further via conference call. Please do not hesitate to contact Robbie Newton at [newtonr@hrw.org](mailto:newtonr@hrw.org) with any questions regarding this letter.

We look forward to hearing from you.

Yours sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch



## Letter to Roo Hsing Garment Co., Ltd., July 20, 2020

Mr. Chen Hsing Hung  
President  
Roo Hsing Garment Co., Ltd.  
New Road  
Sangkat Toul Sanker, Khan Russey Keo  
Phnom Penh, Cambodia

July 20, 2020

**Re: Alleged Arbitrary Firing of Trade Union Leader and Members at Roo Hsing Garment Co. Ltd.**

Dear Mr. Chen Hsing Hung,

I am writing you on behalf of Human Rights Watch, an international non-governmental organization that conducts research and advocacy on human rights violations in more than 90 countries around the world, including Cambodia. We have worked extensively on a range of business and human rights concerns, including in the garment industry.

Over the last few months, Human Rights Watch has been researching the impact of the Covid-19 pandemic on the garment industry, highlighting brands' unfair purchasing practices, and labor rights abuses by factories.

We are committed to fair reporting and seek information from a variety of sources, including factory management, to inform our research.

Therefore, we are writing to seek information from you about workers' rights to freedom of association at Roo Hsing Garment factory. We request information regarding factory management's termination of three leaders of a factory level-union affiliated with the Cambodian Alliance of Trade Unions (CATU). Our initial findings on the matter are provided in more detail in the attached Appendix I. We welcome any additional comments you may have, in addition to your responses to our questions outlined in the section below, Request for Information.

**Request for Information:**

1. Please provide a copy of the factory's termination order and explain the reasons, in detail, for terminating the three factory workers Kon Soch, Ek Sarun, and Sok Kong.
2. Please provide a copy of the company's internal regulations that outline grounds and processes for disciplinary action, as well as processes governing grievance redress.
3. Please provide copies of all correspondence the factory sent to the Ministry of Labor and Vocational Training (MoLVT) relating to the request for dismissal of Kon Soch, Ek Sarun, and Sok Kong.
4. Please provide a copy of any evidence submitted to MoLVT authorities with respect to applications filed by the factory under articles 43 and 67 of the Trade Union Law, as well as information provided to the Arbitration Council.
5. Please provide a copy of the factory's social audit report(s) for the past three years.

If you wish to share any other information that we have not requested above regarding these three employment terminations, please do so.

We respectfully request that you provide us with written response to these questions by July 27, 2020, so that we may have the opportunity to review and reflect them in our publications. The written responses, and any questions regarding this letter, may be sent to my colleague, Racqueal Legerwood, at [legerwr@hrw.org](mailto:legerwr@hrw.org).

We thank you for your consideration and welcome opportunities to discuss this matter further, via conference call. We look forward to hearing from you.

Yours sincerely,

Phil Robertson  
Deputy Director, Asia Division  
Human Rights Watch

## Appendix I: Summary of Information to Date

The Roo Hsing Garment factory has four unions. The factory union affiliated with the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU) has Most Representative Status. One of the other factory unions is affiliated to the Cambodian Alliance of Trade Unions (CATU).

Based on interviews and document reviews, Human Rights Watch learned that in mid-April 2020, the factory management sent letters to the Labor Inspector of the Ministry of Labor and Vocational Training (MoVLT) to apply under articles 43 and 67 of the Trade Union Law to seek the government's permission to terminate three leaders of the CATU-affiliated union.<sup>374</sup> The three individuals were:

1. **Mr. Ek Sarun**, Vice-President of the local factory union, working as a mechanic at the factory; started work in 2014, and was a permanent worker at the time of dismissal.
2. **Mr. Sok Kong**, Secretary of the local factory union, working as an electrician at the factory; started work in 2008, and was a permanent worker at the time of dismissal.
3. **Ms. Kon Soch**, elected Assistant Shop Steward in the factory and a local union activist, working in the factory's sewing section; started work in 2014, and was a permanent worker at the time of dismissal.

The workers allege they were wrongly terminated based on accusations that they orchestrated a strike at the factory. Based on the information that Human Rights Watch has gathered, on April 7 – six days before the annual Khmer New Year holidays (April 13-16) – the MoVLT issued a prakas (notification) postponing the annual holiday, following a government ban on inter-province travel ban imposed between April 9 and 16. Against this backdrop, on April 9, Roo Hsing factory witnessed what appeared to be a spontaneous wildcat strike by some 400 workers who stopped work.

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<sup>374</sup> On May 12, Roo Hsing factory management sent letters to the three workers, inviting them to collect their termination severances on May 13.

CATU union leaders say they were not among the striking workers and unequivocally state the CATU-affiliated union did not organize the strike. However, the factory management accused Kon Soch, Sok Kong, and Ek Sarun of orchestrating the work stoppage.

The factory initiated “disciplinary action” that does not appear to have followed procedural safeguards under Cambodia’s labor law, and failed basic due process standards. Without giving the three workers an opportunity to be heard and present their version of events at the factory level, the factory sought the Labor Inspector’s permission to terminate them.<sup>375</sup> Acting on the factory’s application, the MoLVT took a decision on May 7, providing permission for the workers’ “termination.”

### ***Failure of Due Process at the Factory-Level***

According to CATU, from the outset of the dispute, CATU’s union leader in the factory made numerous efforts by phone and in person to reach Roo Hsing’s management. The union sought a meeting with the factory’s management to represent the workers and ensure they were given a fair opportunity to present their side of the case, and the three workers’ contention that they were not involved in organizing or orchestrating the strike.

However, factory management did not give the workers a fair hearing before they were terminated. Instead, the factory allegedly stated to CATU that it was not required to hold a meeting to hear the workers’ account before dismissing them because the CATU-affiliated union did not have “most representative status.”

However, factory-level due process safeguards for termination should be aligned with International Labour Organization (ILO) Convention No. 158 and Recommendation No. 166 on Termination of Employment. Brand codes of conduct like those of H&M Group, Gap Inc., and Levi Strauss require sourcing factories to put in place factory-level grievance redress mechanisms<sup>376</sup> that follow recognized due process procedures.

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<sup>375</sup> In accordance with articles 43 and 67 of the Trade Union Law, employers are, respectively, required to seek authorization from the Labor Inspector when terminating shop stewards and elected union leaders. On April 13, Roo Hsing factory management first issued a letter to the Labor Inspector related to Kon Soch’s employment, and followed with two further letters on April 16, related to the employment of Ek Sarun and Sok Kong.

<sup>376</sup> H&M Group requires in Commitment 1B of its “Sustainability Commitment H&M Business Partner”: “There is a grievance mechanism in place enabling employees to put forward complaints without risk of retaliation.”

### ***Serious Limitations of State-Based Grievance Mechanism***

The factory applied for labor department permissions to dismiss the workers in mid-April, which was decided by the MoVLT's labor disputes department on May 7. The labor disputes department decided in favor of the factory and confirmed that the factory could terminate them, despite there being no meeting or discussion held with the CATU-affiliated union at the factory-level.

CATU issued a statement<sup>377</sup> responding to the factory's allegations that stated union leaders neither knew of the stoppage by the 400 workers, nor "incited" any workers to stop their work. CATU's statement further clarified it has only a few workers in the finishing section of the factory where the stoppage occurred.

According to article 333 of Cambodia's Labor Law, an "employer is prohibited from imposing any sanction on a worker because of his participation in a strike," meaning the dismissal of the three CATU members on grounds that they had "incited" other workers to go on strike is a violation of Cambodia's labor law.

On April 20, CATU initiated a collective labor dispute procedure with the factory at the labor disputes department. The department decided to refer the collective dispute to the Arbitration Council (AC) on May 7. The AC referred only two of CATU's demands – payment of full severance legally owed to terminated workers and ending discrimination against

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[https://hmggroup.com/content/dam/hmggroup/groupsite/documents/en/CSR/Sustainability%20Commitment/Business%20Partner%20Sustainability%20Commitment\\_en.pdf](https://hmggroup.com/content/dam/hmggroup/groupsite/documents/en/CSR/Sustainability%20Commitment/Business%20Partner%20Sustainability%20Commitment_en.pdf); Levi Strauss & Co's 'Labor Standards – Terms of Engagement' state that Levi requires, "The factory must immediately commence documenting a comprehensive set of employment policies to guide: recruiting, hiring, training, working hours, harassment/abuse, grievance, discipline, termination, promotion, diversity, and compensation procedures. These company policies must be made publicly available to all workers, in a language that they understand, and applied in a standardized fashion throughout the facility." <http://levistrauss.com/wp-content/uploads/2017/12/TOE.pdf>; Gap Inc.'s Code of Vendor Conduct (revised June 2016) states that suppliers, "shall ensure that workers have means to report grievance to management, including a channel that provides for confidentiality and anonymity. The facility shall also ensure workers can bring to management's attention grievances through means other than their immediate supervisor. The grievance system shall include addressing grievances in a timely manner and documenting grievances and management action on grievances. The facility shall provide for a system for addressing disputes in the workplace, whether between co-workers or between workers and supervisor or manager. The facility shall ensure that such grievance channels and mechanisms for resolving disputes and grievances provide for protection from retaliation." [https://gapinc-prod.azureedge.net/gapmedia/gapcorporatesite/media/images/docs/codeofvendorconduct\\_final.pdf](https://gapinc-prod.azureedge.net/gapmedia/gapcorporatesite/media/images/docs/codeofvendorconduct_final.pdf)

<sup>377</sup> Cambodia Alliance of Trade Unions, "Statement On The Decision Of The Ministry Of Labor And Vocational Training At Roo Hsing Garment Co., Ltd.," May 11, 2020, <https://catucambodia.org/statement-on-the-decision-of-the-ministry-of-labour-and-vocational-training-at-roo-hsing-garment-co-ltd/>.

CATU. The labor disputes department did not refer the third CATU demand in the collective dispute – to seek the workers’ reinstatement – contending that the MoVLT had already confirmed the termination. In considering the case, the AC can only arbitrate on matters that are specifically referred to it by the labor disputes department.

Given the factory management did not provide a fair and just hearing at the factory-level, none of the three workers received any copies of the evidence against them or any opportunity to contest the evidence. The labor department’s decision also does not outline any evidence and fails to provide a detailed basis for the department’s decision. These are serious procedural failings that appear to violate various provisions of codes of conduct of the various brands sourcing from the Roo Hsing factory.

## **Appendix II: Human Rights Watch Letters to NagaWorld Ltd., July 17, 2021 – May 31, 2022**

### **Letter to NagaWorld Ltd., May 31, 2022**

Mr. Yepern Chen  
Managing Director  
NagaWorld Limited  
Samdech Hun Sen Park  
Phum 1, Tonle Basak, Chamkar Mon  
Phnom Penh, Cambodia  
*Via email at [longsovichea@nagaworld.com](mailto:longsovichea@nagaworld.com) and [yepernchen@nagaworld.com](mailto:yepernchen@nagaworld.com)*

May 31, 2022

#### **Re: Continued Violations of Right to Strike in the Absence of a Resolution of Labor Disputes**

Dear Mr. Yepern Chen,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world. We have worked extensively on a range of human rights and business concerns in Cambodia for many years.

Human Rights Watch has written to your company several times seeking additional information pertaining to ongoing labor disputes including those related to workers' right to strike, during the course of the past year. To date, we have yet to receive a reply to any of our communications to NagaWorld Limited.

We first wrote to your company on July 17, 2021, with a request for information. We outlined our concerns about mass layoffs and the circumstances surrounding the termination of NagaWorld employees in April 2021, and included questions about occupational health

and safety measures, and livelihood support for suspended workers. We sent a follow-up letter requesting information on September 1, 2021.

We again contacted NagaWorld on January 27, 2022, to express concerns and seek information regarding the arrests of eight union leaders and activists of the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU). Those arrests were based on allegations that the workers had committed “incitement to commit a felony.” We also sought information about the cases of three other LRSU activists who were detained based on allegations that they had violated Covid-19 measures. While those three workers were released on bail in mid-March, the charges against them have not been dropped. All of Human Rights Watch’s prior communications can be found in the appendix of this letter. We would appreciate receiving your responses to those letters as well as responses to the concerns and questions we have outlined in this letter.

We note that NagaCorp released a statement on December 19, 2021 to shareholders describing the strike as “illegal,” while adding that the strike had “no material impact on the overall business operations and operations of the Group.” That statement came three days after the Phnom Penh court informed the union that the court deemed the strike action “illegal” due to negative impacts on NagaWorld’s business, among other things. We are deeply concerned that the court issued the order, *ex parte*, without giving the union an opportunity to present its case before the court. We are also concerned that the court order did not provide any reasons or rationale for why it determined the strike was “illegal.”

LRSU informed Human Rights Watch that authorities restricted strikers who continued to participate in the strike action in front of NagaWorld casino after the court order was issued. Government officials repeatedly transported hundreds of workers in buses to the outskirts of Phnom Penh or far-away quarantine centers to prevent them from continuing their strike action. Protesters also faced the unnecessary use of force by security forces, who significantly outnumbered the protesters.

Human Rights Watch reiterates that NagaWorld has a responsibility to operate in accordance with the United Nations Guiding Principles on Business and Human Rights (the “UN Guiding Principles”). Under those principles, companies should seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations.



Since Cambodia has ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, the government is obligated to protect workers' right to strike. Cambodian workers should enjoy the right to collective bargaining and the right to strike in line with international labor standards.

At NagaWorld, the absence of a resolution of the ongoing labor disputes, despite at least 20 tripartite negotiations between the union, the Cambodian government and NagaWorld, leaves workers in precarious situations that threaten their livelihoods. We understand that the LRSU put forward a proposal that sought the rehiring of approximately 200 laid-off workers (including several union leaders) in exchange for the voluntary resignation of an equivalent number of workers currently employed at NagaWorld. NagaWorld reportedly rejected that proposal.

NagaWorld should consider accepting the ILO's offer to be an observer during the negotiation process to ensure that a prompt and fair resolution can be attained.

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. Disclosing how NagaWorld conducted human rights due diligence in accordance with international human rights standards is critical to demonstrating the company's commitment to labor rights. We request that you please provide us with a written response to the following questions so that we have an opportunity to review them and reflect them in our publications:

1. What steps has NagaWorld taken to seek a timely resolution of the labor disputes with LRSU leadership and union?
2. Why did NagaWorld reject the offer made by LRSU that would permit the rehiring of approximately 200 of the laid-off workers in exchange for the resignations of an equivalent number of workers currently employed at NagaWorld who have stated they are ready to voluntarily resign?
3. On what basis did NagaWorld reject the proposal by the ILO to attend negotiation meetings with the union and the Cambodian government to attain a resolution in the labor disputes? Has NagaWorld made a decision about the ILO's overall offer to be involved, and if so, what is that decision? If NagaWorld has not made a decision on ILO involvement, when will it do so?

4. Please provide specific information on company policy and processes with regard to respecting workers' rights to freedom of association, including details on company policies about affecting the ability for unions to form and register.
5. Please provide any other information that you wish to share regarding these above-mentioned matters.

We look forward to receiving a written reply from you to the information requested by **June 21** so that your responses can be reflected in our reporting. We also welcome any opportunity to discuss this matter further, via conference call. Please do not hesitate to contact Robbie Newton at [newtonr@hrw.org](mailto:newtonr@hrw.org) with any questions regarding this letter.

We look forward to hearing from you.

Sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

Cc:

Tan Sri Dr. Chen Lip Keong, Chief Executive Officer at NagaCorp Ltd.  
Timothy McNally, Chairman at NagaCorp Ltd.  
Philip Lee Wai Tuck, Executive Director and Executive Deputy Chairman at NagaCorp Ltd.  
Chen Yepern, Former Executive Director at NagaCorp Ltd.  
Mike Ngai, Chief Operating Officer at NagaCorp Ltd.  
Chen Yiy Fon, Executive Director at NagaCorp Ltd.  
Tan Sean Cزون, Chief Financial Officer at NagaCorp Ltd.  
Wilfred Tan - Director of Operations at NagaWorld.  
Hein Dames, Chief Human Resources Officer at NagaWorld.  
Gerard Chai, Managing Director, Head of Investor Relations at NagaCorp Ltd.

## Letter to NagaWorld Ltd., January 27, 2022

Mr. Yepern Chen  
Director and Chairman of the Board of Directors  
NagaWorld Limited  
Samdech Hun Sen Park  
Phum 1, Tonle Basak, Chamkar Mon  
Phnom Penh, Cambodia

January 27, 2022

### **Re: Violations of Right to Strike and Arbitrary Arrests of Union Activists**

Dear Mr. Yepern Chen,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world, including Cambodia. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

We are writing once again in light of recent alleged actions by NagaWorld Limited (NagaWorld) that further harm workers' freedom of association and associated rights.

We first wrote to your company on July 17, 2021, with a request for information. We outlined our concerns about mass layoffs and the termination of NagaWorld employees in 2021, as well as the occupational health and safety measures and livelihood support for suspended workers. We sent a follow-up letter requesting information on September 1, 2021. To date, we have received no response to our letters to you. Both of these communications are annexed to this letter. We would still appreciate your response to these letters.

We reiterate that NagaWorld has a responsibility, including during the pandemic, to consistently assess its operations and ensure that it is operating in accordance with the United Nations Guiding Principles on Business and Human Rights (the "UN Guiding Principles"). Termination of workers' employment should be done in accordance with

Cambodian law and international labor rights standards. In undertaking human rights due diligence in accordance with the UN Guiding Principles, NagaWorld should assess actual and potential human rights impacts, integrate and act upon the findings, track responses, and communicate how impacts are addressed. This is critical to demonstrating the company's commitment to labor rights and human rights.

After months of not being able to resolve the labor disputes that workers had raised through their local union, the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU) initiated a legal and peaceful strike action to highlight the dire economic situation of workers who were laid off and terminated. The union commenced the strike action after complying with Cambodian law's unreasonably high standards of requiring the vote of an absolute majority of members to initiate a strike. An overwhelming majority of union members voted in support of the strike, and that action commenced on December 18, 2021. We note that the International Labour Organization (ILO) Committee on Freedom of Association has repeatedly held that a requirement that an absolute majority of union members is needed for calling a strike is onerous, seriously limiting the right to organize.

The strike called for the reinstatement of 365 employees previously dismissed as part of the mass layoff of 1,329 workers in April 2021. Among those dismissed were union leaders such as the union president, Chhim Sithar, as well as elected shop stewards.

On the same day, NagaWorld and the Phnom Penh authorities labelled the strike action as "illegal," ordering protesters to resume work. According to the Phnom Penh courts' order issued on December 16, NagaWorld was allowed to terminate employment of workers who continued to participate in the strike action.

At the time workers were striking in December 2021, NagaWorld's business had significantly recovered from pandemic losses. The company could have reinstated terminated workers but instead opted to recruit trainees, even though terminated workers were available to be rehired. Article 95 of Cambodia's Labor Law states that dismissed workers should be given priority for reinstatement after having been laid off.

Subsequently, authorities arrested nine union leaders and union members, as well as a tuk tuk (moto taxi) driver uninvolved in the strike who was a bystander, on December 31,

2021. While authorities released four of those arrested after they signed agreements prepared by the police pledging they would not participate in strike action in the future, six other persons remain in jail. The six union members are being held in the Phnom Penh's Correctional Center 2 (CC2) and were charged with "incitement" (articles 494 and 495 of Cambodia's penal code) on January 3, 2022. The authorities assert that the strike affected "social security" and "public order."

On January 3, 2022, the authorities arrested an additional 17 union members, including a pregnant woman. On January 4, the authorities released them after they signed agreements pledging not to take part in strike action in the future.

On January 4, the authorities used excessive force while arresting LRSU's leader Chhim Sithar when she arrived at the NagaWorld strike site. They also arrested a former NagaWorld employee, Sok Narith, and LRSU member Sok Kongkea at the same time. On January 5, Sok Kongkea was granted bail, while Narith and Sithar were charged with "incitement" and sent to CC1 and CC2, respectively.

The right to strike is protected under ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, which has been ratified by Cambodia. Cambodian workers enjoy the right to collective bargaining and the right to strike in line with international law binding on Cambodia.

In relation to the events leading up to the strike action, we have the following additional question for which we would appreciate your response, as well as any other comments you might wish to share:

- What steps is NagaWorld planning to take to ensure that all labor disputes will be fairly and swiftly resolved, including the reinstatement of union leadership, in accordance with Cambodian and international labor rights standards?

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. We request that you to kindly provide us with a written response to the question above by February 10, 2022, so that we have an opportunity to review your response and reflect it in our publications. Please also share any additional information about this matter that you think would be relevant.

Please send your reply to Jody Chen at [chenj@hrw.org](mailto:chenj@hrw.org). We would also welcome the opportunity to discuss this matter further at your convenience via conference call.

Thank you for your attention to this important matter.

Sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

Cc:

Tan Sri Dr. Chen Lip Keong, CEO  
Timothy McNally, Chairman  
Philip Lee Wai Tuck, Executive Director and Executive Deputy Chairman  
Chen Yepern, Former Executive Director  
Mike Ngai, COO  
Chen Yiy Fon, Executive Director  
Tan Sean Cزون, CFO  
Wilfred Tan - Director of Operations  
Hein Dames, HR Director  
Gerard Chai, Managing Director, Head of Investor Relations

## Letter to NagaWorld Ltd., July 17, 2021

Mr. Yepern Chen  
Director and Chairman of the Board of Directors  
Branch of NagaWorld Limited  
Samdech Hun Sen Park  
Phum 1, Tonle Basak, Chamkar Mon  
Phnom Penh  
Cambodia

July 17, 2021

### **Re: Mass layoffs, livelihood support, and occupational health and safety concerns**

Dear Mr. Yepern Chen,

I am contacting you on behalf of Human Rights Watch, an international non-governmental organization that conducts research and advocacy on human rights violations in more than 90 countries around the world, including Cambodia. We have worked extensively on a range of business and human rights concerns.

We are researching the impacts of the Covid-19 pandemic on workers at NagaWorld, including mass layoffs and resulting termination of workers, failure to address serious occupational health and safety measures, and failure to provide livelihood support.

Companies have responsibilities under the United Nations Guiding Principles on Business and Human Rights at all times, including during the pandemic. Termination of worker employment should be done in accordance with the Cambodian Labor Law (including Chapter IV and articles 12 and 182) and the Trade Union Law. Disclosing the company's conduct of human rights due diligence in accordance with international standards is critical to demonstrating the company's commitment to labor rights.

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. We request that you to kindly provide us with a written

response to the questions in Appendix I below by August 6, 2021, so that we have an opportunity to review them and reflect them in our publications. Please also share any additional information about this matter that you think would be relevant.

Please send your reply to our questions to Seashia Vang at [vangs@hrw.org](mailto:vangs@hrw.org). We would also welcome the opportunity to discuss this matter further at your convenience via conference call.

Thank you for your attention to this important matter.

Sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch



## **Appendix III: Human Rights Watch Letter to the Minister of Labor and Vocation Training (MoLVT), January 27, 2022**

Letter to the MoLVT, January 27, 2022

H.E. Dr. Ith Samheng  
Minister of Labor and Vocational Training  
No. 3 Confederation Russia Blvd (110)  
Phnom Penh  
Cambodia

January 27, 2022

**Re: Violations of Right to Strike and Arbitrary Arrests of Union Activists**

Dear H.E. Dr. Ith Samheng,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in some 100 countries around the world, including Cambodia. We have worked extensively on a range of business and human rights concerns in Cambodia for many years.

We are writing to you about alleged actions by NagaWorld Limited (NagaWorld) that harm workers' rights to freedom of association and related labor rights.

As you may know, the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU), after months of intransigent responses from NagaWorld on the labor issues raised through their local union, initiated a legal and peaceful strike action to highlight the dire economic situation of laid-off workers. LRSU initiated the strike action after complying with the unreasonably high requirement in Cambodian labor law that requires the vote of an absolute majority of members to initiate strike. An overwhelming majority of union members voted in support of the strike, and the workers' action began on December 18, 2021. We note that the International Labour Organization (ILO) Committee on Freedom of

Association has repeatedly held that a requirement that an absolute majority of union members is needed for calling a strike is onerous, seriously limiting the right to organize.

The strike called for the reinstatement of 365 employees previously dismissed as part of the mass layoff of 1,329 workers in late April 2021. Among those dismissed were union leaders including the union president, Chhim Sithar, as well as elected shop stewards.

With the proper encouragement from the government, this dispute could be resolved because NagaWorld's business has significantly recovered from pandemic losses and the company had opportunities to reinstate terminated workers. Instead, NagaWorld opted to recruit trainees, even though terminated workers were available to be rehired. Government officials should engage with NagaWorld and effectively enforce article 95 of Cambodia's Labor Law, which states that dismissed workers should be given priority for reinstatement after having been laid off.

However, within hours of the start of the strike, NagaWorld and the Phnom Penh authorities labelled the strike action as "illegal," ordering protesters to resume work. According to the Phnom Penh court order issued on December 16 and made public on December 18, NagaWorld is allowed to terminate employment of workers who continued to participate in the strike action.

Subsequently, authorities arrested nine union leaders and union members, as well as a tuk tuk (moto taxi) driver uninvolved in the strike who was a bystander, on December 31, 2021. While authorities released four of those arrested after they signed agreements prepared by the police pledging they would not conduct strike action in the future, six other persons remain in jail. The six union members are being held in the Phnom Penh's Correctional Center 2 (CC2) and were charged with "incitement" (articles 494 and 495 of Cambodia's penal code) on January 3, 2022. The authorities assert that the strike affected "social security" and "public order."

The authorities also raided LRSU's offices on December 31 and confiscated union documents, computers, and leaders' mobile phones. These items should be immediately returned to the union and its leaders.

On January 3, 2022, the authorities arrested an additional 17 union members, including a pregnant woman. On January 4, the authorities released them after they signed agreements pledging not to take strike action in the future.

On January 4, the authorities used excessive force while arresting LRSU's leader Chhim Sithar when she arrived at the NagaWorld strike site. They also arrested a former NagaWorld employee, Sok Narith, and LRSU member Sok Kongkea at the same time. On January 5, Sok Kongkea was granted bail, while Narith and Sithar were charged with "incitement" and sent to CC1 and CC2, respectively.

The right to strike is protected under ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, which Cambodia has ratified. Cambodian workers enjoy the right to collective bargaining and the right to strike in line with international law to which Cambodia is bound.

Human Rights Watch calls on the Cambodian government to take the following actions:

1. Immediately and unconditionally release all detained union activists, including LRSU leader Chhim Sithar, union secretary Chhim Sokhorn, union advisor Sok Narith, and union activists Ry Sovandy, Sun Sreypich, Hai Sopheap, Klaing Soben, Touch Sereymeas, and drop the incitement charges against them;
  - a. Cease the arbitrary arrest, detention, and prosecution of trade unionists for undertaking legitimate trade union activity.
  - b. Bring the policing of trade union protests into compliance with ILO Convention No. 87.
  - c. End all harassment of independent unions, including illegal raids of union offices, intimidation and violence against peaceful protesters, arbitrary denial of unions' right to strike, and intimidation of unions that prevents them from conducting union activities, in line with Cambodia's obligations under ILO conventions and international human rights law.
2. Ensure that the Ministry of Labor and Vocational Training promptly takes measures to ensure that all labor disputes between NagaWorld and LRSU are fairly and swiftly resolved, including the reinstatement of union leadership, in accordance with ILO conventions and international labor rights standards.
3. Ensure that LRSU members are able to freely and fully exercise their right to strike for the duration of the ongoing labor dispute.

Thank you for your attention to this important matter.

Sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

Cc:  
Minister of the Interior, Sar Kheng  
Minister of Justice, Vong Vathna

## **Appendix IV: Correspondence between Human Rights Watch and Japanese International Cooperation Agency (JICA), June 24, 2022 – July 28, 2022**

### **Letter from Human Rights Watch to JICA, June 24, 2022**

President Akihiko Tanaka  
Japan International Cooperation Agency (JICA)  
Nibancho Center Building 5-25  
Niban-cho, Chiyoda-ku, Tokyo 102-8012 Japan

June 24, 2022

**Re: JICA's bus grants to Cambodia**

Dear Mr. Akihiko Tanaka,

I am contacting you on behalf of Human Rights Watch, an international nongovernmental organization that conducts research and advocacy on human rights violations in about 100 countries around the world. We have worked extensively on a range of business and human rights concerns in Cambodia for many years. We have also previously visited JICA in December 2019 and November 2014 to discuss the human rights implications of JICA's projects in Cambodia and elsewhere in the Southeast Asia and South Asia regions.

Human Rights Watch is currently researching rights abuses ensuing from the ongoing labor dispute at NagaWorld casino in Phnom Penh after management conducted a mass layoff of 1,329 workers in April 2021. Among those dismissed were the union president, Chhim Sithar, and other union leaders, including elected shop stewards. After months of negotiations failed to resolve the labor dispute, in December 2021 the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU) called for a strike to demand reinstatement of dismissed workers – in particular union leadership – and payment of fair compensation in accordance with Cambodia's Labor Law. While the authorities immediately labelled the strike action as "illegal," workers continued their industrial

action. To break up the peaceful protests, the authorities forcibly removed striking workers from the strike site (near the NagaWorld casino) and arrested 11 union activists, including Chhim Sithar, on the basis of bogus incitement charges as well as alleged violations of Cambodia’s “Law on measures to prevent the spread of COVID-19 and other deadly infectious diseases” – even though the strikers complied with the required Covid-19 measures.

In this context, we would like to raise serious human rights concerns about the use of public buses donated by JICA to the Phnom Penh City Bus Authority between 2016 and 2018. These donations are part of a grant program of nearly 1.3 billion yen (US\$9.7 million), involving 80 buses, that was signed on September 27, 2016. In an attempt to end the strike, the Cambodian authorities used these JICA buses to transport detained striking workers to the outskirts of Phnom Penh or quarantine sites, and then left them there, many kilometers from their homes and without means to return. The workers reported incidents of violence against them that have been reported in the media. Video footage also circulated on social media showing police hitting, punching, and dragging striker workers onto the JICA provided buses, and Human Rights Watch has verified the authenticity of those videos. Most of the striking workers are female and Human Rights Watch also received reports from workers who stated officials sexually abused them.

In 1991, Japan issued its charter on Official Development Assistance (ODA), which includes human rights as one of its principles. The principle of ODA implementation within Japan’s ODA Charter states: “Full attention should be paid to efforts for promoting democratization and the introduction of a market-oriented economy, and the situation regarding the protection of basic human rights and freedom in the recipient country.”

The use of Japanese-provided vehicles in authorities’ aggressive, rights-violating actions to end peaceful worker protests, thereby violating workers’ rights to strike and collectively bargain, is extremely concerning. Japan should call on the Cambodian government to immediately stop its violent crackdown on these peaceful striking workers, and to respect their human rights.

Human Rights Watch is committed to fair reporting and seeking information from a variety of sources to inform our research. We have written several letters to NagaWorld’s management and other organizations about the NagaWorld labor dispute. To fully reflect

the latest information and actions initiated by JICA in relation to the use of grant-provided buses operated by Phnom Penh City Bus Authority and used to disperse peaceful protesters, Human Rights Watch requests your response to the following questions:

1. Please comment whether JICA, the Japanese government or the Japan Embassy to Cambodia have raised concerns about the Cambodian authorities' use of the JICA-donated public buses to effectuate the crackdown on peaceful strikers at NagaWorld.
2. Has JICA, the Japanese government or the Japan Embassy to Cambodia made private representations with the Cambodian government with respect to the serious ongoing violations of the right to freedom of association of LRSU leaders, elected shop stewards, and rank and file members?
3. Does JICA plan on taking any action regarding its funding related to city bus operations in Phnom Penh in light of this inappropriate use of buses in effectuating human rights violations?

We welcome your responses to the questions above, and the provision of any other relevant information. Any information provided will be reflected in our publications.

We request that you please send your response by June 24, 2022, to the Human Rights Watch Asia Program Officer, Mr. Teppei Kasai, who is based in our Tokyo office and can be reached at [kasait@hrw.org](mailto:kasait@hrw.org) or 070-4466-3147.

We also welcome an opportunity to discuss our concerns in person or on the phone with you or other representatives. Thank you for your consideration regarding these important matters.

Yours sincerely,

Phil Robertson  
Deputy Asia Division Director  
Human Rights Watch

## Response from JICA to Human Rights Watch, July 28, 2022

July 28, 2022

Human Rights Watch  
Asia Division Deputy Director  
Mr. Phil Robertson

Japan International Cooperation Agency  
Director of the Southeast Asia and Oceania Division  
Mikio Hataeda

A response to your letter regarding JICA's bus grant to Cambodia

Below is our response to your letter received on June 24, 2022.

1. Please comment whether JICA, the Japanese government or the Japan Embassy to Cambodia have raised concerns about the Cambodian authorities' use of the JICA-donated public buses to effectuate the crackdown on peaceful strikers at NagaWorld.
2. Has JICA, the Japanese government or the Japan Embassy to Cambodia made private representations with the Cambodian government with respect to the serious ongoing violations of the right to freedom of association of LRSU leaders, elected shop stewards, and rank and file members?
3. Does JICA plan on taking any action regarding its funding related to city bus operations in Phnom Penh in light of this inappropriate use of buses in effectuating human rights violations?

(Response)

○ As stated in the Development Cooperation Charter, our country's ODA places the following as priority subjects; "Japan will provide assistance so as to share universal values such as freedom, democracy, respect for basic human rights and the rule of law as well as to realize a peaceful, stable and secure society," and "Japan will pay adequate attention to the situation in the recipient countries regarding the process of democratization, the rule of law and the protection of basic human rights, with a view to



promoting the consolidation of democratization, the rule of law and the respect for basic human rights,” as part of the implementation principles.

○ In light of these principles, the Japanese government and JICA are undertaking efforts to ensure the appropriate use of facilities and equipment provided through our country’s ODA.

○ The Japanese government and JICA are closely engaging with the Cambodian government on a daily basis, including the human rights situation, and we are taking appropriate measures regarding this issue, but we will refrain from responding in detail as it is a diplomatic exchange.

# “Only ‘Instant Noodle’ Unions Survive”

## Union Busting in Cambodia’s Garment and Tourism Sectors

Since early 2020 the Cambodian government has used the Covid-19 pandemic as a tool to adopt and enforce measures to increasingly clamp down on independent unions in the garment and tourism sectors in violation of the right to freedom of association and other labor rights. Many employers used the country’s economic downturn and the government’s failure to protect workers to unfairly dismiss union leaders and members, misuse fixed-duration contracts to prevent unionization at their businesses, and harass and seek to prosecute union activists.

*“Only ‘Instant Noodle’ Unions Survive”* documents how Cambodian authorities have denied local union leaders the right to organize strikes based on arbitrary public health and other grounds, labelling their strikes “illegal.” Unions that demonstrated while taking precautionary Covid-19 measures still faced arrests on the picket line, detention, and prosecution. The government’s use of the 2016 Trade Union Law to arbitrarily enforce the registration of trade unions, threatens the existence of independent unions and their ability to operate without government or employer interference. Cambodia’s increasingly politicized dispute settlement mechanisms, notably the Arbitration Council, have failed to resolve labor conflicts, refusing to challenge seemingly unlawful Ministry of Labor instructions.

The report calls on the United States, European Union, and other trade partners to use clear benchmarks on labor rights to monitor Cambodia’s rights abuses against workers, and sanction Cambodia’s non-compliance with its obligations under International Labour Organization conventions and international human rights law.



*Union protesters hold a photo of Chhim Sithar, president of the Labor Rights Supported Union of Khmer Employees of NagaWorld, and call on authorities to release her and detained members, during a rally in Phnom Penh, January 11, 2022.*

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