

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN CAMBODIA

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF CAMBODIA
(Geneva, 1 and 3 November, 2011)**

EXECUTIVE SUMMARY

Cambodia has ratified all eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers, discrimination, child labour, and forced labour, determined measures are needed to comply with the commitments Cambodia accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

The law recognises the rights to organise and collective bargaining and to strike, however with certain restrictions. In practice, violence and intimidation towards union members and anti-union practices employed by authorities and employers have gravely weakened workers' rights in Cambodia. The law is inadequately enforced. One typical means of anti-union practices is for management not to sign a notification letter for registration of a union, even when the union has complied with all legal practices to indicate the membership and the list of union leaders elected.

The laws do not provide adequate protection against discrimination for all citizens. Women face a gender pay gap and they are underrepresented in senior and managerial positions. Ethnic minorities face discrimination in employment while indigenous people risk losing access to the land and resources which are essential for their work.

The scope of the labour law does not cover all working children and the law is not adequately enforced in practice. The latest available statistics show that there are 1.4 million working children, many in hazardous work.

Forced labour and trafficking are illegal but the law is poorly enforced due to corruption and lack of resources. Recruitment agencies, sometimes with political support, exploit and mistreat thousands of migrant workers and coerce them into becoming indentured or forced labour.

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Introduction

This report on the respect of internationally recognised core labour standards in Cambodia is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

I. Freedom of Association and the Right to Collective Bargaining

Cambodia ratified both ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining in 1999.

The 1997 Labour Law provides for the right to organise; however, many restrictions apply to trade union rights. Civil servants, police, air and maritime transportation workers, judges and domestic workers are excluded from the law's scope.

The law requires that all union leaders must be at least 25 years of age, engaged in their occupation for at least one year and have a certain level of education. Another provision requires that a union leader may have no criminal record; notwithstanding the fact that as some legitimate trade union activities have been criminalised, it is not clear if such a requirement would disqualify any trade union member from becoming a union leader.

While new legislation on trade unions is being drafted, it would continue to exclude all these workers from its scope, and to feature several restrictions of freedom of association. It is opposed by all the trade union confederations.

The law is not clear on the number of local unions required to form a union federation or the number of members required to constitute a union. It provides the Ministry of Labour the power to suspend the registration of a union before a court of justice produces a decision. Moreover, the law requires workers in an enterprise with eight or more workers to elect a "shop steward" who is to be the sole representative of the workers. This structure duplicates and usurps the role of trade unions that may or could potentially exist in an enterprise.

The law recognises the right to collective bargaining and stipulates the employers' obligation to engage in negotiations with unions. Nonetheless, the authorities have the right to refuse to grant most representative status to a union when the Labour Advisory Committee, the employer, or concerned third parties object to the union's petition. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) "*considered in this respect that permitting the objections of third parties as grounds for refusing a union most representative status ran counter to the principle of promoting collective bargaining expressed in Article 4 of the Convention.*" Moreover, all industrial disputes are subject to cumbersome dispute resolution procedures. Despite being provided for by the Labour Law, labour courts have still not been set up and therefore any legal action has to be taken before a civil or criminal court. A tripartite body created under the labour legislation, the Arbitration Council, has been playing the labour court's role. It is reported that employers usually appeal against the Council's decisions in the provincial courts when the decision is not in their favour. When the Council produces recommendations, the employers sometimes choose not to apply them. With this in mind, six major trade union centres have succeeded in achieving a signed agreement with the Garment Manufacturers Association which stipulates that the parties shall accept the Council's recommendations on disputes over rights, and on disputes regarding the application of collective agreements, as binding decisions.

The Labour Law provides that a minimum service should be arranged in an enterprise where a strike is taking place. In cases where there is no agreement between the parties to the dispute, the Ministry of Labour determines the minimum services in question.

In practice although some progress has been made, workers' rights are not respected. The clothing industry, which is the country's biggest industrial sector and main exporter, prefers subcontracted labour and many workers find it difficult to unionise. Trade unionists continue to face death threats, dismissals, blacklisting, false charges to bring them before the courts, wage deductions and other forms of anti-union discrimination. In October 2011 the CUF (Cambodian Union Federation) reported that three of its union leaders are being dismissed. In 2010 alone the Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU) reported the dismissal of 257 of its leaders. The Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) reported 65 dismissals of members and leaders and physical attacks and threats against six of its members. The authorities rarely prosecute or convict offenders for employing anti-union practices, partly because the labour inspectorate and other law enforcers lack human and physical resources to conduct controls. It is reported that some inspectors, police and judges overlook labour abuses when they receive bribes. Noting the conclusions of the ILO direct contacts mission of April 2008, the CEACR referred to "*serious problems of capacity and lack of independence of the judiciary, [and] requested the Government to take concrete and tangible steps, as a matter of urgency, to ensure the independence and effectiveness of the judicial system, including capacity-building measures and the institution of safeguards against corruption.*"

In December 2010 Cambodia Brewery Limited (CBL), in which Heineken has a 33.5 per cent stake, intimidated beer promotion workers, commonly referred to as “beer girls”, from taking part in a meeting with their union. The brewery refused to negotiate with their union, the Cambodian Food and Service Workers’ Federation (CFSWF). Cambrew Ltd, a brewery 50 per cent owned by Carlsberg, also refused to negotiate with the CFSWF. The CLB implicitly threatened the lives of the promoters and Cambrew explicitly threatened the promoters with dismissals.

There are numerous reports showing that many employers intimidate, threaten with dismissal or dismiss workers trying to organise a union. In some cases, the employers have used armed thugs to beat workers or threatened their lives during the process of organising. In its 2011 report the CEACR expressed concern “*regarding the persistent climate of violence and intimidation towards union members*” and “*urge[d] the Government to take all the necessary measures, in the very near future, to ensure that trade union rights of workers are fully respected and that trade unionists are able to engage in their activities in a climate free of intimidation and risk to their personal security and their lives, in accordance with the abovementioned principles.*”

Furthermore, organising in Cambodia is difficult because many workers are subcontracted labour. Under a short-term contract the employer can avoid providing rights and entitlements guaranteed by the Labour Law, including annual leave and maternity leave. Subcontracted employees are also reluctant to join unions because they fear that their contract will not be renewed. Moreover, many employers have established their own unions to prevent the emergence of genuine workers’ representation and labour demands as well as to ensure that collective agreements are negotiated on their terms.

Reports make it evident that employers and authorities intimidate and threaten unionists for planning strikes or demonstrations. In order to discourage industrial actions, employers often lay off workers and demand the payment of huge amounts of money in compensation for the losses incurred during a work stoppage. Further to this, some enterprises refuse to comply with court or Council decisions demanding the reinstatement of unfairly dismissed workers. The authorities for their part often send heavily armed police forces to intimidate striking workers. Such harassment from the authorities and employers is often dissuasive enough to pre-empt industrial actions.

There are no special laws or exemptions from national laws in export processing zones (EPZs).

Summary

The law recognises the rights to organise and collective bargaining and to strike, however with certain restrictions. In practice, violence and intimidation towards union members and anti-union practices employed by authorities and employers have gravely weakened workers’ rights in Cambodia. The law is inadequately enforced.

II. Discrimination and Equal Remuneration

Cambodia ratified both ILO Convention No. 100 (1951) on Equal Remuneration and ILO Convention No. 111 (1958) on Discrimination (Employment and Occupation) in 1999.

The Constitution provides for equal rights for women and equal pay for equal work; however, Article 31 of the Constitution limits protection against discrimination to Khmer citizens. Moreover without a law to provide for implementation, the constitutional premise is not actionable. There is no special law prohibiting discrimination at the workplace, but a provision of the Labour Law establishes equal wages between men and women for “work of equal conditions, professional skill and output” regardless of origin, sex or age. However the definition of “wage” excludes health care, legal family allowance, travel expenses and other benefits. The scope of the Labour Law’s application also excludes broad parts of the workforce, including civil servants and domestic workers. The Labour Law prohibits sexual harassment at the workplace but prescribes no penalties.

In practice, women face a 25 per cent gender pay gap and they are underrepresented in highly skilled and highly paid positions. The government’s Labour Force 2007 report estimated the difference in the labour force participation between women and men as about 11 percentage points (70 per cent for women and 81 per cent for men). There is no formal information about sexual harassment at the workplace; however, reports show that it is particularly a problem for beer promoters.

The 2009 Law on the Protection and Promotion of the Rights of Persons with Disabilities prohibits discrimination against disabled persons and requires accessibility to public buildings and services. However, disabled persons face discriminatory societal norms and attitudes, *“especially in obtaining skilled employment”*.

The Cambodian Constitution limits protection against discrimination to Khmer citizens. There are reports that many ethnic Vietnamese and ethnic Chinese people face discrimination in various aspects of life, including in employment. Moreover, the government fails to effectively apply the 2001 Land Law on the registration of communal lands of indigenous people. Reports show that much of the indigenous land is given to private enterprises especially for the development of rubber plantations. The CEACR has reminded the government that *“that access to land and natural resources is essential for indigenous peoples to engage in their traditional occupations”*. Land developers and agricultural corporations often exert pressure on the government to make forceful evictions. More often than not, the compensation provided is inadequate. Reports show that the land is mainly used by the expanding sugar and rubber industry which turn it into plantations as well as land developers who make commercial use of the land or construct buildings. Sugar exports are preferentially treated by EU under the “Everything But Arms” scheme and the expansion of the industry has put immense pressure on indigenous lands.

Cambodia is relatively tolerant towards homosexuals but some lesbian, gay, bisexual, and transgender (LGBT) individuals face discriminatory attitudes especially in rural areas.

Persons living with HIV/AIDS can face stigmatisation especially in rural areas. In 2006, the government mandated the creation of HIV committees in all enterprises with more than eight workers throughout Cambodia. The ILO's HIV/AIDS Workplace Education Programme in Cambodia (2003-2007) established a tripartite partnership that established several HIV workplace committees. The committees determine enterprise-provided HIV education and other services, such as access to prenatal care, reproductive health and prevention of mother-to-child transmission.

Summary

The laws do not provide adequate protection against discrimination for all citizens. Women face a gender pay gap and they are underrepresented in senior and managerial positions. Ethnic minorities face discrimination in employment while indigenous people risk losing access to the land and resources which are essential for their work.

III. Child Labour

In 1999, Cambodia ratified ILO Convention No. 138 (1973) on the Minimum Age. In 2006, Cambodia ratified Convention No 182 (1999) on the Worst Forms of Child Labour.

The Labour Law sets the minimum age for admission to employment at 15 but the government took advantage of a special provision of Convention No. 138 and specified a minimum age of 14 years. Children between 12 and 15 are allowed to engage in light work and domestic servitude. However, the types of light work and working conditions, particularly the maximum number of hours of work remain yet to be determined. Children are not allowed to perform hazardous work and the Ministry of Labour has listed 38 types of hazardous work, but the law does not prohibit hazardous work to children working in family enterprises. The Labour Law does not apply to domestic or household servants and it is not clear if its scope covers self-employed persons.

However, child labour is widespread. The ILO estimates that there are an estimated 28,000 child domestic workers in Phnom Penh alone. A 2006 World Bank/ ILO/ UNICEF study found that “[a]bout 16 per cent of children are already economically active at age six years, and over half of all children are economically active by the age of 10 years”. Another finding was that “[a]n estimated 79 per cent of 7-14 year-olds were engaged in housework activities on a regular basis each week”. About 52 per cent of children aged between 7 and 14 years old, a figure that stands for over 1.4

million children in absolute terms, performed work in economic activities. The study also found that, on average, children earned one US dollar per day.

In rural areas, child labour is widespread in agriculture and plantations, constructions, salt production, shrimp and other sea-food industries, fishing, brick kilns and domestic servitude. The agricultural sector, forestry, hunting and fishing account for seven out of every ten child workers aged 5 to 17 years. In urban areas, children work as beggars, street vendors and scavengers, as well as domestic servants. Many child workers, whether rural or urban, are employed in informal economic activities. Children work with dangerous pesticides and chemicals in agriculture and often with dangerous machinery in industrial production. Moreover, reports show that children working in salt production, brick kilns and in construction often have to carry heavy loads. A study showed that children working as domestic servants typically do not attend school.

The Ministry of Labour and the Labour Inspectorate monitors the law's application only in formal and registered economic activity. Moreover, lack of financial, physical and human resources as well as corruption limit the effectiveness of labour law inspection.

The government has cooperated with ILO IPEC over the past decade to withdraw children from and prevent them working in the worst forms of child labour. The programme includes capacity building for local authorities, employers' organisations, trade unions and civil society organisations. It has assisted the government to develop action plans and policies that would help eliminating worst forms of child labour. Moreover, the second phase of the National Plan of Action on the Elimination of the Worst Forms of Child Labour (2008-12) (NPA-WFCL) aims at reducing the incidence of child labour among children aged 5 to 17 years from 16.5 per cent in 1999 to 10.6 per cent in 2010 and to 8 per cent by 2015. The government also implements awareness raising campaigns to sensitise employers and parents on child labour. The National Poverty Reduction Strategy (NPRS) and the 2003 Cambodian Millennium Development Goals (CMDG) contain specific child labour reduction targets.

Summary

The scope of the labour law does not cover all working children and the law is not adequately enforced in practice. The latest available statistics show that there are 1.4 million working children, many in hazardous work.

IV. Forced Labour

Cambodia ratified Convention No. 29 on the Forced Labour in 1969 and Convention No. 105 on the Abolition of Forced Labour in 1999.

The Labour Law states that forced or compulsory labour is forbidden, including for domestics or household servants and all workers in agricultural enterprises. The Law prohibits hiring people for work to pay off debts. The 2008 Law on the Elimination of Human Trafficking and Commercial Sexual Exploitation prohibits all forms trafficking in human beings and prescribes adequately stringent penalties. However, the USDoS Human Rights Report finds that *“Cambodian laws on the recruitment, placement, and protection of migrant labor are limited and outdated. They lack clear delineation of responsibilities of recruitment agencies during the recruitment process, do not detail suitable controls and monitoring of agencies to avoid abuses, and do not assign penalties for agencies' misconduct.”* There is no rule outlawing or regulating the amount and the payment methods of any fees the migrant workers need to pay. The government is preparing a sub-degree of regulations on international labour recruiters which is discussed only with the Association of Cambodian Recruiting Agencies but not with unions or other stakeholders.

Moreover, the CEACR finds that the provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia provide for sanctions of imprisonment, which involves compulsory prison labour, for the incitement of national, racial or religious hatred. Although for the cases of using or calling to violence the Convention does not prohibit punishment by penalties involving compulsory labour, such sanctions fall within the scope of the Convention when authorities enforce a prohibition on the expression of political views which might be contrary to the political, social or other establishment. Furthermore, the 1997 Law on Political Parties makes various offences related to the administration or management of a political party which has been dissolved, or whose activities have been suspended by a court, or whose registration has been refused, punishable with sanctions of imprisonment with compulsory prison labour.

In practice, forced labour and human trafficking are widespread. Recruitment agencies organise “training centres” for recruits before they employ them in Malaysia mainly as domestic servants. These centres are reportedly overcrowded with poor hygiene facilities and agencies forge documents stating older ages for their recruits. In some cases, girls as young as 13 years old are recruited for work in Malaysian households. Many recruits are abused and the conditions are not much different than prisons. Moreover, they impose limitations on the movement of the recruits and take measures to prevent them from escaping. For example, in the training centre of T&P Co. Ltd after a woman had an accident, three persons who carried her off and assisted her until an ambulance arrived were later arrested and accused of colluding with the “trainees” to help them escape. The woman later died. Another woman also died in her effort to escape as she jumped from the third floor. After the “training”, many recruits are coerced into indebted labour as they have to agree to repay pre-departure loans which are effectively used to ensure that workers would fulfil employment contracts in Malaysia.

Such loans are signed even by illiterate persons and they include the deduction of the equivalent of four to twelve months of the workers' wages in Malaysia. Often, workers do not receive copies of the contracts and their traveling documents are confiscated.

Since 2008, the number of migrant workers recruited for employment in Malaysia has grown eight-fold. In 2010, recruitment agencies trained and sent 16,395 workers to Malaysia, of whom 11,918 were females trained as domestic workers. Reports say that government is complicit with the recruitment agencies. A former Minister of Women's Affairs said that "*the government was protecting the recruiting companies because some of its members might have financial interests in them.*" Other sources reveal that family members of Ministers are involved in some of these agencies.

Other recruiters have cheated thousands of Cambodian men, usually poor and illiterate farmers, offering them better paying jobs in Thailand. Instead, they are turned into forced workers on fishing boats. A UN study shows that Thailand has deported 20,000 such victims of forced labour from the Poipet border alone. Victims' reports refer to inhumane conditions on the boats.

Cambodian migrant workers are generally not aware of their rights during their work abroad, or that there might be complaints procedures or specialised agencies to report abuses and violations. In general, when Cambodian consular and other authorities intervene in disputes involving Cambodian migrant workers abroad, they usually try to save the recruitment agency from potential harm. However, the Ministry of Labour reports that in 2011 pre-departure training on rights began.

Ethnic Vietnamese and national Vietnamese women and girls, mostly debt peons, are forced into prostitution in Cambodia. Cambodian women and girls are also forced into prostitution both inside and outside the country. Cambodian girls are victims of commercial sexual exploitation in neighbouring countries, especially in Thailand. Many women and girls are coerced into becoming forced domestic servants. Sometimes, parents sell their children to traffickers who take them across the border to Thailand and Vietnam to force them into beggary or street-vending. Some sold children are sexually exploited.

The government makes some efforts to investigate, prosecute and convict offenders. However, in 2010 the authorities convicted only 20 offenders in 72 trafficking cases, down from 36 convictions in 2009. In general, there have been few convictions for forced labour in recent years. Corruption and a weak judicial system hamper the government's anti-trafficking efforts. Indeed, prosecutors often fail to charge offenders under the appropriate articles of the law. For example in 2009, one recruiter was arrested for attempting the trafficking of nine children to Malaysia but the recruiter was released on bail in April 2010. In addition to this, police have generally been unwilling to investigate premises owned by or affiliated with high-ranking officials, except that in March 2011 they arrested a police major for trafficking-related corruption. In February 2011, a court convicted a clerk working for a municipality service for accepting bribes to forge the age of children on documents for them to work overseas.

The government offers training to police officers and other law enforcers on the application of the anti-trafficking law. The government has established a Department of Counter-Trafficking in Persons and Reintegration in the Ministry of Labour. The government also implements awareness raising campaigns which include radio talk shows on issues related to trafficking, magazine advertisements and hand-outs.

Summary

Forced labour and trafficking are illegal but the law is poorly enforced due to corruption and lack of resources. Recruitment agencies, sometimes with political support, exploit and mistreat thousands of migrant workers and coerce them into becoming indentured or forced labour.

Recommendations

1. A number of urgent legislative changes are essential to ensure freedom of association in Cambodia:
 - Civil servants, police, air and maritime transportation workers, judges and domestic workers should be covered by the trade union law.
 - All excessive requirements for becoming a union leader should be repealed.
 - The power of the Ministry of Labour to suspend the registration of unions before a court examines the case should be revoked.
 - The requirement to elect a “shop steward” - who in effect duplicates and usurps the role of trade unions - should be abolished.
 - Clear rules on granting most representative status to a union should be established.
2. Labour courts should be established. A trained, independent and impartial judiciary must be guaranteed.
3. The Labour Law’s provisions on minimum service requirements during a strike should be revoked.
4. The authorities should immediately investigate and prosecute employers making death threats, using violence or threatening to do so, or threatening to dismiss, blacklist, intimidate, or take any other offensive measures against their employees for participating in unions.
5. Legislative changes are required to prevent employers from intimidating workers organising industrial actions by means of demands for compensation for the losses incurred during the action, lay-offs, or any other measure intended to curb union industrial actions.
6. Similarly, the authorities must stop using the police to intimidate or disperse workers in strikes.
7. The authorities should enforce court or Council decisions demanding the reinstatement of unfairly dismissed workers.
8. Article 31 of the Cambodian Constitution which limits protection against discrimination to Khmer citizens should extend such protection to all citizens.
9. The law should be amended to prohibit discrimination at the workplace and give full legal expression to “work of equal value”. Furthermore, the definition of “wage” should include health care, legal family allowances and other benefits.
10. The government should take urgent measures to improve women’s participation in the workforce and women’s access to highly skilled and highly paid jobs and to close the wage gap. Measures including training and employment preferences should be taken to empower particular ethnic groups, disabled persons and other groups that face discrimination in employment.

11. The Labour Law should be amended in order to prescribe penalties for sexual harassment at the workplace.
12. The government should take measures to effectively enforce the 2001 Land Law on the registration of communal lands of indigenous people and grant any other necessary protection and rights to indigenous people.
13. The authorities should actively encourage and facilitate companies and unions to adopt workplace HIV/AIDS programmes.
14. The government should adopt special measures, including human resources development and sensitisation measures, to alleviate any discrimination against disabled persons, homosexuals and persons who live with HIV/AIDS.
15. Light work and working conditions with regard to young workers should be defined by law.
16. The law should be amended to extend the prohibition of hazardous work to children working in family enterprises, domestic workers and self-employed persons.
17. The Ministry of Labour and the Labour Inspectorate should extend and monitor the application of the law to ensure it protects those currently engaged in informal and unregistered economic activity.
18. Cambodian laws on the recruitment, placement, and protection of migrant labour should be updated after social dialogue. The police should investigate recruitment agencies and their practices and should prosecute offenders against forced labour and trafficking legislation. Due attention should be given in the investigation to find and prosecute any person who bears responsibility for coercing workers into debt bondage or slavery.
19. The authorities must enforce the law in training centres of recruitment agencies and ensure that workers enjoy a decent environment and that their mobility is not limited. The workers should have the right to withdraw from such training. The government and the employers should work with trade unions to make sure that Cambodian migrant workers are aware of their rights during their work abroad.
20. The Judiciary and Criminal Law and Procedure applicable in Cambodia on the incitement of national, racial or religious hatred should be clarified and a definition should be provided for 'incitement of hatred'.
21. The provisions in the 1997 Law on Political Parties providing for sanctions of imprisonment with compulsory prison labour should be revoked.
22. The authorities should actively investigate, prosecute and achieve convictions of offenders of labour laws, especially for cases of anti-union discrimination, forced labour, trafficking and child labour.
23. In general, the Labour Inspectorate need to be adequately funded and inspectors should be properly trained. The government should build up its law enforcement and judicial capacities in order to monitor and enforce all labour laws, including legislation on violations of trade union rights, discrimination, child labour and

- forced labour and trafficking, and start punishing those who commit such crimes. The government should take measures to strictly punish corrupt officials.
24. The WTO should draw the attention of the Cambodian authorities to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. It should request that the ILO intensify its work with the Government of Cambodia in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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