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International Centre for Trade Union Rights
Centro Internacional para los Derechos Sindicales
Centre International pour les Droits Syndicaux

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ICTUR was founded to
defend and extend trade union rights and
to raise awareness of these rights and their violations
around the world

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Attn:
Prime Minister Hun Sen
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CC: Dr. Ith Sam Heng, Minister of Labour and Vocational Training
Office of the United Nations Special Rapporteur on the rights
to freedom of peaceful assembly and of association
International Trade Union Confederation (ITUC)
IndustriALL

March 2018

Dear Prime Minister,

The International Centre for Trade Union Rights is writing to express serious concerns about freedom of association in Cambodia, in particular a spate of legal actions recently brought against trade unions and individual labour rights activists, and the government's threat to dissolve trade unions.

ICTUR understands that legal proceedings have been instigated in the last few months in the following cases:

- On 12 and 13 February 2018, four trade union leaders from the Cosmo Textile factory in Snuol district, Kandal province, were arrested after the company claimed they had led an illegal strike. Chhean Vannak, Moeun Chhit, Lok Neang and Phan Sary - members of the Workers Friendship Union Federation - are being held in Kandal Provincial Prison for pre-trial detention; police have reportedly indicated that they intend to arrest other workers. Over 100 workers at the factory went on strike after two trade

unionists were dismissed for allegedly failing to stamp their timecards, a claim they deny. It is understood that the four detained union members were questioned by the Phnom Penh Municipal Court on 22 February, without their lawyer being present.

- Workers at the Gawon Apparel factory in Kandal province's Takhmao city have been on strike several times in the last year to protest unpaid salaries. They are also asking for the reinstatement of 588 workers dismissed over previous strike action. In response, it is understood that the company has in January 2018 began legal action against the Coalition of Cambodian Apparel Workers' Democratic Union accusing the union of incitement and threatening workers, which the union denies. It is understood that a group of workers have filed a petition to the Prime Minister personally appealing for an intervention in their case.
- Workers from the Meng Da footwear factory in Phnom Penh's Por Senchey district have been on strike to demand annual bonuses, unpaid since 2010. It is understood that in December the Prime Minister criticised the strikers' action as "illegal" due to obstruction of traffic. On 15 January one of the workers, Bo Em was summonsed for questioning, and is facing potential charges of incitement, destruction of property and obstructing traffic; fifteen other workers are reported to have received a summons.

This ongoing climate of harassment of union leaders and members is of very serious concern. ICTUR further understands that in a speech on 1 January 2018, Labour Minister Ith Samheng warned that registered unions would be "dissolved" if they were "inactive".

Also of concern are the charges brought recently against labour activists, Chea Mony and Moeun Tola:

- In December a criminal complaint was filed to the Phnom Penh Municipal Court against Chea Mony, former president of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC). It is alleged that in a radio interview in December, Mony appealed to the European Union to stop importing clothing from Cambodia to protest the dissolution of the Cambodia National Rescue Party last November. He is charged with incitement, under Art. 495 of the Cambodian Criminal Code. The charges purport to hold Mony responsible for any damage done by the loss of trade preferences with the EU or the US and include a claim for USD \$1million in compensation. It is further understood that on 18 December 2017 – the day the case was filed – a group of unidentified men broke into Mony's house and attempted to kidnap him. Mony has reported that officials from the Ministry of Interior and from the court warned him that unless he leaves Cambodia, he will face the same fate as his brother, Chea Vichea, the founder of the FTUWKC who was assassinated in 2004.
- On 18 January 2018, prosecutors brought criminal charges and an

order for pre-trial detention against Moeun Tola – Executive Director of the Center for the Alliance of Labor and Human Rights (CENTRAL) – and two other civil society activists (Pa Nguon Teang and But Buntenh). They are charged with breach of trust over their handling of funeral funds, allegations they have denied.

ICTUR notes that the recently released report of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) highlights extensive concerns raised around the legislative framework for freedom of association and the exercise of trade union rights in practice in Cambodia. ICTUR wishes to remind the government of its obligations under the ILO Fundamental Conventions, all eight of which Cambodia has ratified.

The CEACR made numerous specific recommendations concerning the provisions and implementation of Cambodia's Law on Trade Unions in 2016. Following the adoption of the law, unions and international trade union organisations have reported an increase in criminal charges and arrests of union leaders and members. It is also reported that since 2015 some eighty trade unions have been blocked from registering with the Labour Ministry and there have been at least twenty-five incidents of arrest of union representatives.

In particular, ICTUR wishes to highlight the following:

Judicial safeguards

Relevant to all of the above, the ILO's CEACR highlighted concerns around the "lack of independence of the judiciary and its use to criminalize and curtail legitimate trade union activities", recalling that "one of the principal findings of the direct contracts mission, which visited the country in 2008, concerned the lack of an effective and impartial judiciary". In this respect the Committee has urged the Government "to ensure the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' freedom of association rights during labour disputes, as well as to address the serious concerns raised on the independence of the judiciary and its impact on the application of [Convention 87 on Freedom of Association and Protection of the Right to Organise]." (See *General Report and observations concerning particular countries*, International Labour Conference, 107th Session, Report III (Part A), First Ed. 2018).

The CEACR has further expressed "deep concern with the lack of concrete results" concerning investigations into the murders of Chea Vichea and Ros Sovannareth (in 2004) and Hy Vuthy (in 2007) - all former leaders of the FTUWKC - and urged "the competent authorities to take all necessary measures to expedite the process of investigation".

Union Dissolution

The ILO's Committee on Freedom of Association has declared that, such measures should only be taken as a matter of "last resort" in view of "the serious consequences which dissolution of a union involves for the occupational representation of workers" (ILO Digest, para. 678). Dissolution of trade union organizations "should only occur in extremely serious cases" and only "following a judicial decision so that the rights of defence are fully guaranteed" (ILO Digest, para. 699). The Committee has further stated that "measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association" and a "clear violation of Article 4 of Convention No. 87" (ILO Digest, paras. 683-4).

In this respect the CEACR has specifically requested that the government amend the 2016 Law on Trade Unions (section 28) to ensure that the dissolution of a workers' organization can only be decided under the procedures laid down by their statutes, or by a court ruling.

Criminalisation of trade unionists

The Committee on Freedom of Association has expressly declared that, unless attended by appropriate judicial safeguards, the arrest and sentencing of trade unionists constitutes a serious interference with trade union rights, and a violation of the principles enshrined in the United Nations International Covenant on Civil and Political Rights, (*Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth Edition, 2006, paras. 72, 75, 93, 97, 106, 109). It is "incumbent upon the government" to show that the arrest, detention and sentencing of a trade union official are "in no way occasioned by the trade union activities of the individual concerned" (ILO Digest, para. 94).

Concerning the charges being brought against Chea Mony, it is understood that this prosecution was initiated by lawyers representing 120 different unions and federations – led by the Cambodian Union Federation (CUF). While ICTUR respects that all trade unions must have recourse to their respective countries' legal systems, it is quite clear that the burden of responsibility for a country's access to preferential trade arrangements cannot reasonably be attributed to a single individual. Any decision by the EU or the US to suspend Cambodia's access to preferential trade schemes will not hinge on the basis of one individual's comments and any harm done to the Cambodian economy as a result of the loss of such preferences cannot be reasonably attributed to Mony. Prior to the alleged statements, on 16 November 2017, the Spokesperson for the European Union's Foreign Affairs and Security Policy, Maja Kocijancic, gave a statement on the dissolution of Cambodian National Rescue Party, clearly reiterating that 'respect of fundamental human rights is a prerequisite for Cambodia to continue to benefit from the EU's preferential Everything But Arms scheme'. It is precisely the persecution of Mony, Tola and other trade unionists, as well as the failure to respect freedom of association, freedom of assembly and freedom of speech that ultimately makes Cambodia's loss of such preferences more likely.

In respect of the above, ICTUR urges the authorities to undertake all necessary measures to comply with the recommendations of the CEACR and with Cambodia's international obligations under the ILO fundamental conventions; and in particular to:

- **ensure that the cases against the aforementioned trade unions and trade union leaders are dropped and that any individuals still in detention are immediately released;**
- **refrain from suspending or dissolving any trade union by the exercise of administrative authority;**
- **take measures to ensure that concerns identified by the CEACR about the judiciary are addressed, that trade unionists are not subjected to unwarranted legal harassment, and that freedom of association is underpinned by appropriate judicial safeguards;**
- **open an investigation into the death threats made against Chea Mony;**
- **facilitate the investigations into the murders of Chea Vichea and Ros Sovannareth and Hy Vuthy;**
- **and take all further measures necessary to protect the fundamental freedoms of workers to join and form unions and take action in defence of their interests.**

ICTUR will report these incidents in the journal *International Union Rights*, which was established in 1993, and which enjoys a readership in more than 100 countries.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'D. Blackburn', followed by a long horizontal line extending to the right.

Daniel Blackburn, Director