



# CAMBODIA:

## Vocal Coalition Makes Legal History

## CAMBODIA: A Political and Economic Snapshot



Cambodia continues to struggle with democratic change as it leaves behind the brutal and fanatical Khmer Rouge dictatorship (1975–1979), in which as many as 2 million Cambodians were executed or starved. Vietnam, which ousted the Khmer Rouge, governed Cambodia for 10 years, while sporadic civil warfare continued until 1991.

Today a constitutional monarchy with an elected parliamentary form of government, Cambodia is governed by the Cambodian People's Party (CPP), which holds a majority in the National Assembly. A 2011 State Department report says the country faces a variety of human rights issues, among them: Cambodian security forces "reportedly committed arbitrary killings," and "detainees were abused, often to extract confessions."

Beginning in the late 1990s, Cambodia took steps to open its markets and has made tentative, if sometimes uneven, efforts to improve working conditions. From 2004 to 2008, the economy grew about 10 percent per year, driven largely by an expansion in the garment sector, construction, agriculture and tourism. Cambodia reached a bilateral textile trade agreement with the United States, its largest trading partner, in 1998. The agreement, which ran until 2004, was linked to improved working conditions in Cambodian factories. In 2006, the two countries signed a bilateral Trade and Investment Framework Agreement (TIFA).

In 2010, the independent Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU) led 200,000 workers, the majority of them women, on a three-day strike for a living wage. The stoppage was a transformative moment for the Cambodian labor movement and led the major chain brands in Cambodia to pressure the government to negotiate with the workers for better terms. Exports in the Cambodian garment and footwear industry are valued at roughly \$4 billion a year and comprise about 80 percent of the country's export earnings. The two industries employ some 350,000 people, 90 percent of them women, and pay workers a minimum wage equivalent to \$66 a month.

A 1997 national labor law allowing for independent labor unions and rights to collectively bargain and to strike was a significant step forward for democratic participation. Yet in 2004, the assassination of union leader Chea Vichea underscored the perilous state of the free trade union movement. In 2011, the State Department gave Cambodia a mixed review on worker rights, citing credible reports of union leaders being dismissed on "spurious grounds" after organizing strikes.



# CAMBODIAN WORKERS: PICKING APART AN UNFAIR LAW

**Cambodia, still emerging from a dark history of Khmer Rouge tyranny and civil warfare, appears on the verge of enacting a new trade union law that non-governmental groups and labor activists say would be among the most progressive in the region.**

**The latest version of the draft law, now before the Council of Ministers and awaiting action in the government-controlled National Assembly, is an addendum to the country's sweeping 1997 Labor Law. It initially contained restrictions that activists feared would be a major setback to the country's emerging independent union movement.**

**But citizen pressure—specifically an unprecedented legal critique of the draft by a coalition of Cambodia's nascent independent labor movement and human rights non-governmental organizations (NGOs)— and criticism from the International Labor Organization (ILO), prompted the government of Prime Minister Hun Sen to significantly revise terms of the legislation from an initial version proposed by authorities in early 2011.**

The current draft eliminates the initial version's tough restrictions on registering unions and on who can become a trade union leader and also eliminates harsh penalties, including imprisonment, for trade union leaders who violate terms of the wide-ranging law. An Nan, who represents the Worker Rights Commission, a labor monitoring group on the country's quasi-judicial Labor Arbitration Council, says it also cancels a government right to dissolve unions.

David Welsh, Solidarity Center country program director for Cambodia, says the original version of the trade union law was designed to stymie key parts of the 1997 Labor Law, which is well-regarded by international experts.

"It was clear the government was adamant about going through with this," said Welsh. "And the initial drafts were incredibly draconian, including criminal sanctions against trade union leaders, imprisonment of union leaders, restrictions on who could become a trade union leader. So it was clear, when initially comprised, that it was meant to curtail and circumvent what were pretty good trade union rules in the (1997) Labor Law."

Worker representatives were invited to what appeared to be an open-ended, transparent process involving representatives from all major trade unions, industry and government. But while the participatory sessions were well attended and gave the appearance of being highly consultative, the labor community realized its input was not seriously considered. Any suggestions critical of proposed changes to the labor law were rarely included in subsequent drafts.

Rather than standing by as their rights were stripped away by a new law, Cambodian trade unions and NGOs joined to push back. One strategy involved developing professional relationships with high-ranking civil servants and relevant ministers charged with drafting the legislation, specifically those in the Ministries of Commerce, Social Affairs and Labor. Because creation of a regressive Trade Union Act seemed imminent, nurturing a different set of relationships was essential. Ultimately, such an approach proved to be far more effective than hoping that lower-level officials involved in the public drafting process would give their superiors the recommendations to improve the draft labor law.



From left: **Art Thorn**, president of the Cambodian Labor Confederation; **Heng Bong**, Community Legal Education Center; **H.E Sat Samoth**, Cambodian Under Secretary of State, Ministry of Labor.



## Creating a Fight-Back Coalition

At the same time, the trade unions and NGOs began working collectively as the “Trade Union Support Group.” Together, they inserted citizen opinion into a legislative process that historically has excluded input. While all major trade unions were welcome to join this process, those aligned with the government were reluctant to do so. Thus, the participating unions were drawn almost exclusively from the independent trade union community and, to a lesser extent, from unions aligned with the opposition Sam Rainsy Party. Importantly, only the independent union confederation, the Cambodian Labor Confederation (CLC), is actively engaged in all major sectors, including hotel and tourism, construction, and the public and informal sectors.



As a result, while the Trade Union Act was perceived as, and meant to be applied predominantly in the country’s largest sector, ready-made garments, inclusion of independent union federations from other major sectors emphasized and reinforced the point that the legislation would be a national law and would apply equally to all industries and affect worker rights in all sectors.

The Trade Union Support Group reviewed the draft law article by article, offering both criticism and positive proposals to make the law less unfriendly to workers. With each new draft—ultimately, the government proposed four—the Trade Union Support Group provided a comprehensive critique of new articles and circulated the draft among group members and others in the international community. Such in-depth involvement not only directly fed into the creation of the new draft law, but demonstrated the group’s high level of seriousness and commitment to the process. At the same time, the Trade Union Support Group promoted its work in the national English language media.

Civic organizations can be effective in a way that individuals cannot, say Heng Bong and Sary Both Charya, two labor and human rights lawyers with the Cambodian Legal Education Center (CLEC). They say the government generally considers individual activists to be “troublemakers.” In addition to CLEC, broad-based human rights groups brought into the process included the Workers’ Rights Consortium (WRC) and local representatives from a diverse array of global union federations, such as the Building and Wood Worker’s International union (BWI) as well as the ILO.

## Securing International Support

To further broaden public awareness and increase support for a revised trade union law, the Trade Union Support Group, which was chaired by the Solidarity Center in Cambodia, ensured that the diplomatic community representing home countries of brands and importers was kept apprised of the drafting process and received copies of each proposal. The Trade Union Support Group asked the diplomatic community to intervene, when possible, with both industry and the Cambodian government to bolster the rights of workers, adhere to international standards and support the group’s suggestions.

The Obama administration also stepped up contact with the Hun Sen government in tandem with Cambodia’s strides toward labor reforms. While in Phnom Penh in July 2012, former Secretary of State Hillary Clinton—in her second Cambodia visit in less than two years—made an explicit call for approval of the latest iteration of the trade union law, saying it “could be a model for the region.” Former U.S. Trade Representative Ron Kirk also visited Cambodia in late August 2012.

Members of the group say that diligence and patience throughout the long process was essential—not only during the drafting process but even after the draft legislation had been sent to the Council of Ministers, where it remained mired for some 15 months. The Council of Ministers finally moved the bill only after more pressure from worker representatives.

After the review of the law was complete, the group produced a report that included their revisions and was endorsed by international and local human rights groups. On March 15, 2011, independent federations from the garment and tourism sectors released the report to representatives of major brands, industry heads, embassy officials, the ILO, Cambodian government officials and the press.

Welsh says the outcry, somewhat surprisingly, prompted the Cambodian government to reopen consultations and that in ensuing talks, the authorities dropped “about 95 percent” of provisions in the initial draft that the ILO and other critics deemed unacceptable. Based on feedback from the Ministries of Commerce, Labor and Social Affairs, Cambodia’s independent unions are cautiously optimistic that the changes they seek will be incorporated in the law, once passed.

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Says Sok Narith, leader of the Cambodian Tourism and Workers Federation (CTSWF): “I can say that I feel very empowered by our work in revising the drafts of the Trade Union law...It shows that collective action in Cambodia works.”

Welsh credits the bravery of the young workers leading the independent unions and federations as well as support and endorsements from 15 local and international human rights and worker organizations for the significant win.

## **Draft Law Extends to Informal Workers**

An Nan says the first draft of the trade union law “was very, very bad. The whole purpose was to control the trade union movement and workers.” He points out that “the unstated government policy over the last five or six years has been to weaken activists and the opposition party through the courts and the introduction of new laws. It has become much more sophisticated. Previously all this was done through violence.” The latest draft of the law, experts say, will have the opposite effect. If passed, it will cover informal economy workers—including domestic servants, nannies, rickshaw drivers and others—who comprise the vast majority of workers in Cambodia. However, it is unclear how broad the government’s definition of the informal sector is.

Indeed, while the prospective law offers informal sector workers the right to form unions, it is not spelled out in practical terms how this might occur. An Nan says the most important provisions, which must be maintained in the final law, are the ability to form unions without harm to workers and the right to strike. He said if obstacles to them are written into the law at the last minute, “the situation becomes very dangerous.”



Not all independent union activists in Cambodia are convinced that the draft measure, even in its latest incarnation, is sufficient protection for workers. Ath Thorn, president of the CLC, believes the amended version retains objectionable terms, including limits on the right to strike and onerous registration requirements.

"If we compare our rights and freedoms under the existing Labor Law and Constitution, our rights and freedoms are lost," Thorn says. "The scope of the trade union law limits these if we look deeply. . . . Saying all of this, however, I admit that the current draft is far better than the first."

## Lack of Labor Lawyers Leaves Workers Unprotected

Thorn and other Cambodian activists interviewed for this report lament a severe shortage of labor lawyers in the country—even as more unions bring complaints before the Labor Arbitration Council. The council was established under terms of the 1997 Labor Law and assists parties in settling disputes. Efforts to create a formal labor court system have foundered.

Thorn says that at best, 1 percent of the country's lawyers are licensed labor lawyers, and that the current system tilts toward the government.

"The system in place does not work. It is corrupt and manipulated," Thorn says. "Frankly, only those in government or who belong to the CPP (the governing Cambodian People's Party) are allowed to become lawyers. It is extremely difficult for activists to become lawyers."

## Wanted: Labor Lawyers

Narith says the need for legal support, beyond that provided by NGOs like the Cambodian Community Legal Education Center and Solidarity Center, is acute.

"Workers and unions desperately need good representation," Narith says. "We definitely, urgently need more specialized labor lawyers to serve workers and trade unions based on the needs of their organizations."

Welsh says only about 40 Cambodian lawyers are licensed each year, but attorneys do not have to be fully licensed to argue before the Labor Arbitration Council. He said there are "loads and loads" of law graduates available for such work. The Solidarity Center is conducting weekly law clinics, including mock arbitration trials, to prepare them for Labor Arbitration Council cases.

"The education needs are huge," says Sary Both Charya, a labor and human rights lawyer with CLEC. "Literally thousands of workers need assistance, but NGOs that focus exclusively on labor or trade union issues are very few." There appears to be a consensus among Cambodian parties on the need for a national Labor Court, which was promised in the 1997 Labor Law but stalled by inter-ministerial conflicts. Cambodian Undersecretary of State in the Labor Ministry Sat Samuth, interviewed for this report, says setting up the court is a Justice Ministry task.

"Our position as a government is that we want to create a Labor Court," he says, "but the process to form it depends on the Ministry of Justice. There is a structure to form it but also a reason it cannot be formed now. We don't have the structure to do it and can't force the Ministry of Justice to do it."



## 5 THINGS THAT WORKED

*Successfully pushing back on an anti-worker law was unprecedented in Cambodia. While the trade union law is still under consideration, workers and their unions learned numerous important lessons:*

### **1. Think like a lawyer.**

“You can use the law and have success,” says one garment worker interviewed for this report. Responding to the articles in the draft, in legal language, brings workers and activists into the conversation as equals. Paralegal and advanced legal training can help provide deeper layers of expertise for analysis of laws, legal decisions and other maneuvers by government.

### **2. Begin early and at multiple levels in the process.**

Once a law is on the books, it is more difficult to modify. If no new legislation is in the pipeline, “the focus should be on creating and improving labor law and other laws linked with trade union rights,” says the CLEC’s Heng Bong. If working with lower-level officials does not work, try the top-down approach, avoiding middlemen and distortion of your input.

### **3. Offer solutions, not simply complaints.**

A criticism couched with positive solutions provides alternatives—and can help bring in support from civil society.

### **4. Generate support beyond primary interest groups.**

International backing, from human rights and other groups and even from unlikely quarters (such as foreign brands), can bring pressure in favor of positive legal change. “Empowerment is crucial,” advises Bong. Trade unions and rights organizations “need to act together and with one voice to advocate on behalf of freedoms and rights.” A broad group, speaking to multiple contacts across the process—but with the same message—creates an important chorus of voices instead of the appearance of solo actors.

### **5. Take the long view.**

The work done by the Trade Union Support Group and the government’s seeming receptiveness to it did not happen overnight, says the Solidarity Center’s David Welsh. Initial suggestions were not acknowledged. But over time, pro-worker voices were increasingly incorporated into the process. The draft went through four iterations and ultimately, worker and human rights advocates were invited to review the final draft with the Minister of Labor. Going from being explicitly excluded from the process to being a respected adviser is a form of success in itself, say support group members.

**ABOUT THIS SERIES**

Working people, regardless of country, want a government that is transparent, representative and accountable to its citizens—and which acts to better all citizens' economic circumstances. Around the world, labor unions and worker organizations play an important role in advocating for fundamental human rights, ensuring the voices and aspirations of workers are part of the national dialogue, and advancing policies that better serve civil society and promote equitable economic growth and humane development. *Catalysts for Change*, an ongoing series produced by the Solidarity Center with the support of the National Endowment for Democracy, features the working people, their unions and activists who are advancing worker rights and greater equity in their societies, often under trying circumstances. Their experience and efforts provide real, transferable lessons for others seeking to effect positive change.



**MISSION STATEMENT**

The Solidarity Center's mission is to help build a global labor movement by strengthening the economic and political power of workers around the world through effective, independent and democratic unions.

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**RESOURCES**

The primary sources for this publication were first-person interviews conducted by the Solidarity Center. Notes on other sources can be found on the Solidarity Center web site, [www.solidaritycenter.org](http://www.solidaritycenter.org)

