

To: WRC Affiliate Universities and Colleges
From: Scott Nova and Vincent DeLaurentis
Re: Illegitimate Criminal Conviction of Union Leaders in Cambodia
Date: March 7, 2019

I am writing to update you regarding our work to address a serious obstacle to garment workers' ability to exercise their associational rights in Cambodia: the criminalization of legitimate union activity.

The Cambodian government's use of the criminal justice system to interfere with workers' efforts to advocate for improved wages and workplace conditions poses significant challenges to compliance in university licensees' supplier factories, as in the garment industry overall. It is significantly more difficult for workers to speak out about noncompliance in their factories when they see the most outspoken leaders harassed by the government using the criminal justice system. Given this, the WRC has, for the past several years, documented the use of the courts to interfere with advocacy and associational activities. Last August, we were able to announce that our work, along with that of civil society organizations in Cambodia and around the world, had succeeded in winning an end to baseless criminal charges against key WRC partner Tola Moeun.¹ This success, however, did not end the Cambodian government's use of the courts to attempt to silence workers' voices.

Conviction of Six Key Union Leaders on Baseless Charges

On December 11, the Phnom Penh Municipal Court convicted the leaders of six key Cambodian union bodies – Ath Thorn, Yang Sophorn, Pav Sina, Rong Chhun, Chea Mony, and Mam Nhim² – of baseless criminal charges filed against them in the wake of minimum wage protests in 2013 and 2014. The leaders now face a suspended sentence of two and a half years and were ordered to pay a fine of 35,000,000 Cambodian riel (roughly \$8,600 USD). Although the leaders will not be imprisoned, the suspended

¹ See, Worker Rights Consortium communication to affiliate universities dated August 2, 2018, <https://www.workersrights.org/communication-to-affiliates/080218-2/>

² Ath Thorn is the leader of the Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU), Mom Nhim leads the National Independent Federation Trade Unions of Cambodia (NIFTUC), Yang Sophorn heads the Cambodian Alliance of Trade Unions (CATU), Chea Mony led the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), Pav Sina leads the Collective Union of Movement of Workers (CUMW), and Rong Chhun is president the Cambodian Confederation of Unions (CCU).

sentence, which will follow the leaders for the next five years, will further constrict their ability to participate in union activities and advocate on behalf of Cambodian garment workers.

As noted above, the charges against the six originally stem from protests staged by Cambodian garment and footwear workers in late 2013 and early 2014. These workers rallied to demand an increase in Cambodia's minimum wage to \$160 USD per month. The Cambodian government responded with a violent crackdown, in which at least four garment workers were killed, as documented by the WRC in our report *Crackdown in Cambodia*.³ In the wake of the protests, the Garment Manufacturers Association in Cambodia (GMAC) filed a criminal complaint on behalf of a list of 170 of its members against these six union leaders. In response to this complaint, Cambodian prosecutors charged the six with property destruction and acts of physical violence.

As noted in *Crackdown in Cambodia*, “to the WRC’s knowledge, the only evidence the GMAC has presented of such alleged property damage is a brief video clip that, according to media reports, depicted ‘garment workers kicking and punching a metal factory gate, but inflicting no actual damage.’”⁴ In recent years, the GMAC has failed to publicly produce any additional evidence that significant property damage occurred, let alone evidence linking these six union leaders to any such damage. In addition, as noted in the same report, “leading Cambodian human rights organizations such as LICADHO and the Cambodian Human Rights and Development Association (known by its French acronym, ADHOC) that monitored the demonstrations stated that the protests were largely peaceful. Given this, and given the GMAC’s failure to present evidence in support of its claims of violence and property damage by protesters, the WRC finds no basis for concluding that these allegations are credible.”⁵

Over the course of the four years prior to the December trial, the leaders were under pre-trial supervision, which has restricted their ability to function in their role as union leaders. The terms of this supervision require them to refrain from making speeches in important public locations, participating in strikes, and meeting with an unspecified list of “certain persons,” as well as to report regularly to the police. These and other requirements of their pretrial supervision are clearly intended to limit their ability to represent their members.

³ See, Worker Rights Consortium, *Crackdown in Cambodia: Workers Seeking Higher Wages Meet Violent Repression*, (March 24, 2014), <https://www.workersrights.org/wp-content/uploads/2016/06/WRC-Report-Crackdown-in-Cambodia-3.24.14.pdf>

⁴ See, Zsombor Peter and Hul Reaksme, “Garment Strike Cost Industry \$200 Million, GMAC Says,” *The Cambodia Daily* (January 7, 2014), <https://www.cambodiadaily.com/news/garment-strike-cost-industry-200-million-gmac-says-50222/>

⁵ See, Worker Rights Consortium, *Crackdown in Cambodia: Workers Seeking Higher Wages Meet Violent Repression*, (March 24, 2014), <https://www.workersrights.org/wp-content/uploads/2016/06/WRC-Report-Crackdown-in-Cambodia-3.24.14.pdf>

Lack of Independent Judiciary

Human Rights Watch (HRW) called, in September 2014, for the charges against the six to be dropped,⁶ describing them as “politically motivated.” HRW’s Asia Director, Brad Adams, explained the link between the charges against the union leaders and the repression of associational activities, stating, “Cambodian authorities are pursuing trumped-up charges against labor activists in an apparent attempt to get them to abandon demands for better pay and conditions. This is just the latest government effort to scare activists and the political opposition into dropping plans to use protests to advance their causes.”⁷

More broadly, the pervasive corruption and lack of independence of the Cambodian judiciary have been documented extensively by international observers. Among these are the United Nations Special Rapporteur on the situation of human rights in Cambodia⁸ and the International Commission of Jurists (ICJ).⁹ In November 2014, the UN Special Rapporteur issued a statement on the political abuse of the judiciary, focusing on the legal victimization of civil society activists involved in peaceful protest. The Special Rapporteur expressed his “sad[ness] … to see the courts being used again and again as a tool of the executive. He added that “those who seek to exercise fundamental freedoms can be arrested, charged and convicted, on little or no material grounds,” and that “the timing in which these individuals were arrested, charged and convicted, seem to be all well calculated.”¹⁰

WRC and Licensee Response

The Worker Rights Consortium has engaged with key buyers and licensees sourcing from Cambodia since 2015 regarding these charges. We have urged brands to (1) request that the Cambodian government drop the charges and (2) require that the factories that they

⁶ See, Human Rights Watch, “Cambodia: End Political Prosecution of 6 Unionists” (press release) (September 3, 2014), <http://www.hrw.org/print/news/2014/09/03/cambodia-end-political-prosecution-6-unionists>.

⁷ *Ibid.*

⁸ See, Surya P. Subedi, *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia to the UN Human Rights Council*, 52-53 (Sept. 16, 2010) (“...[C]orruption seems to be widespread at all levels in the judiciary. Because the laws needed to protect the judges are not there, the judges . . . seem to rely on patronage and political protection rather than on the laws for the security of their jobs. This has resulted in individual judges and prosecutors compromising their independence [...] the judicial proceedings have been used by the rich and powerful in many cases to dispossess, harass and intimidate the poor”).

⁹ See, Kingsley Abbott, “Scenes from a kangaroo court,” *The Phnom Penh Post* (September 11, 2014), <http://www.phnompenhpost.com/analysis-and-op-ed/scenes-kangaroo-court>.

¹⁰ United Nations Office of the High Commissioner for Human Rights, “Cambodia: ‘Judicial harassment for political purposes must stop’ – UN Special Rapporteur” (press release) (November 18, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15303&LangID=E#sthash.2iJKpkr0.dpuf>.

source from withdraw their support from the joint criminal complaint. In response, adidas, Outerstuff, Fruit of the Loom (parent company of licensee Russell Athletic), 5.11 Tactical, and Hanesbrands (parent company of licensees Gear for Sports and Knights Apparel) took action, insisting that their Cambodian suppliers withdraw their support from the criminal complaint.

Trial and Conviction

After prolonging the pretrial period for four years, in an apparent attempt to constrain the leaders' union activities, the Phnom Penh Municipal Court proceeded with a trial on December 7, 2018. The government appears to have taken this step in response to pressure from the European Union¹¹ and a campaign of domestic and international NGOs.¹²

The Center for the Alliance of Labor and Human Rights (CENTRAL) reports that, during the trial, prosecutors failed to present any evidence tying the six leaders to any crimes. When the court delivered its verdict to the leaders, it announced that it had convicted them of having instigated property destruction and acts of physical violence, rather than having directly participated in these crimes. However, no persons, let alone any of the accused worker leaders, have ever been named or charged, much less convicted, of committing any violence or property destruction in relation to the protests.

In other words, the worker leaders have been convicted of having "instigated" violence and property destruction, without it having even been proven that such violence or property destruction was ever committed or, if it was committed, by whom. As a result, it was never clearly shown at the trial exactly who it was the leaders supposedly "instigated" or what actual misconduct these unnamed persons were "instigated" to commit.

As noted by CENTRAL, the alleged offenses for which the leaders were convicted were not even the same alleged offenses with which they actually stood trial. While not inconsistent with Cambodian legal practice, the sudden switch in charges after the case was heard did not allow the six leaders' lawyers adequate opportunity to defend their clients. This further undermines any pretense of the legitimacy of these convictions.¹³

¹¹ The European Union was at the time assessing Cambodia's human rights performance and its eligibility for the Everything But Arms trade scheme; *see*, European Commission, "Cambodia: EU launches procedure to temporarily suspend trade preferences," (February 11, 2019), http://europa.eu/rapid/press-release_IP-19-882_en.htm

¹² *See*, Khuon Narim, "End court cases against union leaders: PM," *Khmer Times*, (November 29, 2018), <https://www.khertimeskh.com/50553936/end-court-cases-against-union-leaders-pm/>

¹³ *See*, Joint Statement (Coordinated by CENTRAL), "End Criminalisation of Unionists," (January 19, 2019), <https://www.central-cambodia.org/archives/2492>, and "Solidarity Statement: Global unions condemn conviction of union leaders" (December 17, 2018), http://www.worldpsi.org/sites/default/files/attachment/news/joint_statement_union_leader_convictions_final.pdf.

The lack of evidence presented in the case and the switch in charges before the verdict illustrates the politically-motivated purpose of the trial. The leaders each received a suspended sentence of two and a half years, which they will be required to serve if they are found to commit any additional crimes within the next five years. As the original charges stem from union activity and the courts appear to have been able to obtain convictions without substantive evidence, it is clear that for the next five years these leaders are on notice that, if they act in a manner too displeasing to the government, they could find themselves facing new charges and being forced to serve out their sentences. This means that these leaders continue to operate under an escalated threat of repression and imprisonment.

Several of the unionists have appealed the court's decision.¹⁴ The WRC will monitor the case as it continues through the Cambodian judicial system.

This conviction is only the latest in a series of government efforts to undermine freedom of association in Cambodia, including changes to the laws governing unions and non-governmental organizations supporting workers. A number of union leaders continue to face criminal charges deriving from their union activities outside the garment sector. As some of these leaders, notably Ath Thorn and Kong Athit of the union C.CAWDU and its parent body Cambodian Labor Confederation, are also active in the garment sector, the WRC also will continue to monitor these cases.¹⁵

The Worker Rights Consortium will continue to address the abuse of the Cambodian legal system to silence garment worker leaders and advocates, as well as our ongoing efforts to address other forms of systemic restriction of associational rights in Cambodia.

As always, please feel free to contact us with any questions.

¹⁴ See, Long Kimmarita "Union chief Rong Chhun lodges complaint to court," *The Phnom Penh Post* (January 10, 2019), <https://www.phnompenhpost.com/national/union-chief-rong-chhun-lodges-complaint-court>.

¹⁵ See, e.g., Sek Odom and Taylor O'Connell, "Union Leaders Blast Charges Over Capitol Tours Protest," *The Cambodia Daily* (February 10, 2016), <https://www.cambodiadaily.com/editors-choice/union-leaders-blast-charges-over-capitol-tours-protest-107981/>. Pav Sina and his fellow leaders of CUMW has also faced baseless charges based on incidents at multiple garment factories, including Agile Sweater, in 2016. The Cambrew case, resolved in 2017, represents another example of this tactic of using the Cambodian judicial system to intimidate worker leaders (see, Carolyn Butler, "Cambodia Brewery Workers Win Suit, Charge Intimidation," Solidarity Center (blog) (July 31, 2017), (<https://www.solidaritycenter.org/cambodia-brewery-workers-win-suit-charge-intimidation/>).