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Petition to the Office of the US Trade Representative for its 1998 Annual GSP Product and Country Eligibility Practices Review regarding Cambodia

International Labor Rights Fund
June 16, 1998

Introduction

The Cambodian National Assembly passed a new labor law in January, 1997 thereby obligating the Cambodian Ministry of Labor to begin implementation of that law in April, 1997. GSP status was granted to Cambodia on June 1, 1997. The International Labor Rights Fund (henceforth ILRF) supported that decision based on the explicit condition that the Cambodian government made good faith progress towards implementation of the new labor code. To date, the Cambodian government has not demonstrated sufficient evidence of enforcement or intention to enforce the new labor law to warrant extension of GSP privileges.

In particular, workers' legal rights to associate freely and bargain collectively, protected under the new law, have been actively discouraged by the Cambodian government. In mid-1997, Cambodian leader Hun Sen seized power in an unconstitutional manner and formed a new government. Close associates of Hun Sen have developed extensive networks of business interests. It is no surprise that such a government has acted to inhibit freedom of association by denying legal protections to independent trade unions and by assisting formation of government- or employer-dominated unions.

Following are examples of instances since April, 1997 of the Cambodian government's failure to honor its legal obligations to enforce freedom of association and collective bargaining protections contained in the Cambodian Labor Code. The rights to associate freely and to bargain collectively have been systematically violated during the past year. Press reports, union statements and NGO reports also indicate the continued existence of forced labor and child labor in Cambodia, as well as the government's continued failure to implement protections regarding wages and working conditions.

Ministerial Decree on Union Registration

The Cambodian Labor Code provisions on union registration are clear and straightforward. The law calls for submission of basic documentation and a waiting period of sixty days, after which registration is automatic. However, the Cambodian Ministry of Labor has acted to inhibit union registration by issuing additional burdensome requirements for union registration, in contradiction to the intent and letter of the labor code.

The Cambodian Labor Code does not call for any additional ministerial regulations regarding union registration, whereas it does call for such implementing regulations on other subjects. It is clearly the intent of the framers that union registration be governed by the provisions of the Cambodian Labor Code itself. Nevertheless, in April, 1997 the Ministry of Labor issued a ministerial decree governing trade union registration.

This decree requires that all union leaders obtain police certificates from the Ministry of Justice. While in theory this is not an excessively burdensome requirement, in reality union leaders have experienced a great deal of difficulty in obtaining these certificates. The certificates must be approved and stamped by the Ministry of Justice, which is controlled by the Cambodian People's Party. The requirement enables the Justice Ministry to "weed out" unions of undesirable political affiliation.

The decree also provides a lengthy list of items that must be included in the union charter. Such a list constitutes unnecessary involvement by the government in the drafting of union bylaws. In practice, two independent unions which filed for registration (Sam Han and Gold Kamvimex) were ordered by the Ministry of Labor to rewrite and re-ratify their union constitutions, despite the fact that the union constitutions, as written, in all ways complied with existing Cambodian law. Ministry officials informed both groups that they would not be allowed to register unless they rewrote the constitutions in the language specified by the Ministry.

Finally, the Cambodian Labor Code states clearly that union registration shall be automatic after a 60 day waiting period. No certificates or other official documentation are required by the law. In practice, however, the Ministry of Labor has issued certificates to unions which it has registered. Ministry officials have insisted that no union may be considered legally registered until it receives such a certificate.

Copies of the Cambodian Labor Code and the Ministerial Decree on Union Registration are on file at ILRF, as are copies of union registration requests and rejections.

Ministry of Labor Involvement with Union Formation

Since the passage of the new labor law, the Minister of Labor has personally visited garment factory owners and, in May 1997, in cooperation with the factory owners, invited small groups of workers from two factories to come to the Ministry for a "training" to learn how to form a union. The Ministry provided these two groups will all the necessary documents for registration. The Minister of Labor brought leaders of these two groups to the ILO meetings in Geneva in June, 1997 as Cambodia's worker delegates.

Interviews by local NGO personnel with the leaders of these two "unions" revealed that even these leaders are not aware of what their union constitution says, nor do they have copies of their own constitution. They report that they were asked to form unions by the Ministry of Labor, and that all their documents for registration were prepared with the assistance of government officials. The unions have no membership base in the factories where they have been established.

Interference with Independent Trade Union Activity

Sam Han Garment and Textile Factory

Workers at Sam Han Garment and Textile Factory organized an independent trade union in February, 1997. The union attempted to register with the Ministry of Labor in April, 1997. Review of union documents indicates that the union was in full compliance with the provisions of the Cambodian Labor Code. However, the registration request was rejected for failure to comply fully with all conditions set forth in the ministerial decree of April, 1997. The union resubmitted all paperwork, in full compliance with the ministerial decree, in June, 1997.

By this time, factory management had learned of the union's existence. Management fired the union president in May, 1997 and brought armed police into the workers' dormitory to intimidate other union-affiliated workers. Management also held interrogation sessions with other union leaders. The union filed a complaint with the Ministry of Labor under the labor law, which provides protection against anti-union discrimination. The Ministry of Labor refused to hear this case.

The Ministry of Labor subsequently rejected the union's registration papers a second time on June 23, 1997. The Ministry offered no legal basis for this rejection. Two additional union leaders were fired for

their involvement in the union in June.

All three fired union leaders filed complaints with the Ministry of Labor. The labor inspector's office heard this case in July, 1997. Management representatives presented no legal argument, but stated simply that the three were "troublemakers" and they had no intention of re-hiring them. The Ministry failed to impose the penalties called for under the law or to offer any additional remedies.

In July, 1997 the union called a strike to demand higher wages and better working conditions. Although the strike resulted in negotiation of a collective bargaining agreement, subsequently the factory was closed for several days as a result of armed clashes between government troops in Phnom Penh. When the factory re-opened, management called a meeting of all 1,500 employees. Management then announced that it would not honor the collective bargaining agreement, and fired several additional union leaders. The Ministry of Labor has not acted to protect these individuals nor to ensure enforcement of the collective bargaining agreement.

Copies of Sam Han union registration documents and complaints filed with the Ministry of Labor are on file at ILRF.

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Gold Kamvimex Garment Factory

Workers at the Gold Kamvimex Garment factory formed an independent trade union in January, 1997. The union filed papers for registration in April, 1997. The papers were rejected in April, 1997. The union re-filed for registration, in full compliance with both the Cambodian Labor Code and the subsequent ministerial decree, in June, 1997. The papers were rejected a second time in June, with no legal or other explanation for the refusal. The union re-submitted its papers without alteration in late June. The Ministry of Labor accepted the papers in July, 1997.

Immediately after the union was registered, labor ministry officials visited the Gold Kamvimex plant. Labor officials called management and union representatives into a meeting and presented both with a pre-written "collective bargaining agreement." Management was also requested to invite additional, non-union "worker representatives" to this meeting. Union officials refused to sign the agreement, stating that they could not do so without first presenting the document to their membership for discussion. Union officials reported that the labor ministry representative responded by threatening to ensure they were fired from their jobs if they did not sign the document. They subsequently signed under duress.

In September, 1997 union leaders attempted to negotiate outstanding issues not covered by this agreement with factory management. As union representatives approached management offices for a bargaining session, a union officer was seized, beaten and stabbed by security guards and one of the factory managers. The union attempted to file a complaint with the Ministry of Labor over this incident, but the Ministry refused to accept the case, stating that it was "a personal matter."

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The union officer who had been assaulted, Sou Rottana, was subsequently barred from returning to his position within the factory. Union representatives attempted to negotiate Rottana's re-employment with management, but were rebuffed. Subsequently the union called a strike in March, 1998 to demand that Rottana be reinstated in his position. Factory management immediately fired all the remaining union leaders, a total of sixteen workers. Union leadership was replaced with management-selected representatives. The Ministry of Labor refused to act in any way to reinstate the fired union leaders or to impose relevant penalties on factory management for its actions in violation of union discrimination provisions of the Cambodian Labor Code.

These incidents are described in the US Department of State's 1997 Human Rights Report for Cambodia. Copies of Gold Kamvimex union registration documents and statements by union leaders are also on file at ILRF.

Free Trade Union of Workers of the Kingdom of Cambodia

In December, 1997 a group of Phnom Penh garment workers formed the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC). The FTUWKC has gained support among workers in at least a dozen factories in Phnom Penh and has negotiated agreements on behalf of workers in at least seven factories. However, the union has been denied legal recognition and its activists have been routinely harassed. Many have been dismissed without valid cause. FTUWKC has documented over 100 cases of such unfair dismissals. The union has filed cases with the Ministry of Labor regarding many of these dismissals; however, none of the cases has yet been heard or determined.

A typical case is that of the Sin Lan Ho garment factory. In February, 1998 workers at Sin Lan Ho went on strike. Thirteen elected worker representatives, affiliated with FTUWKC, negotiated an agreement with management. This agreement has not yet been honored. Subsequent to the negotiations, all thirteen of these representatives were dismissed without valid cause. FTUWKC immediately brought the dismissals to the attention of the government; however, the Ministry of Labor took no action to assist these workers or to interfere with subsequent management actions. Ten days following the dismissals, factory management forced workers to sign a petition calling for, among other things, "a factory-inspired peaceful demonstration to condemn and oppose past violence committed on the factory." Those workers who hesitated to sign the petition were threatened with dismissal. Management subsequently held and closely supervised new elections for worker representatives.

FTUWKC filed its registration papers with the Ministry of Labor in May, 1997. This registration request was rejected. According to a FTUWKC press release, the reason for refusal was that the Ministry considered FTUWKC to be acting as a confederation of unions rather than as a single union, despite the fact that the organization's charter and registration documents indicate a unified structure. Therefore, reasoned the rejection letter, the FTUWKC was not entitled to the rights and benefits reserved for trade unions under Cambodian law.

A complete list of cases of harassment and dismissal of FTUWKC representatives and members is on file at ILRF, as are the union's registration documents.

Conclusion

These cases are part of a larger pattern of discrimination by the Labor Ministry against independent trade unions. Since March 1997, when the Cambodian labor law took effect, the Ministry has consistently balked at registering or assisting any unions not affiliated with the Cambodian People's Party. The CPP-affiliated Cambodian Union Federation has continued to register workplace-level branches and to operate without interference. In contrast, leaders from the independent Sam Han and Gold Kamvimex unions and from the KNP-affiliated FTUWKC, have not been able to obtain any protection from the Cambodian government in the face of anti-union discrimination, despite the fact that such discrimination is expressly prohibited by the Cambodian Labor Code.

These incidents have been documented by the US Department of State, in its 1997 Human Rights Report for Cambodia. The report notes that although by the end of 1997 "there were 19 registered trade unions, (however) many had close ties with the Government or company management and were not independent in practice." The report also notes that at least one collective bargaining agreement negotiated by an independent union, and several negotiated by opposition politician Sam Rainsy on behalf of the

FTUWKC, are not being honored.

The International Labor Rights Fund submits that the current Cambodian government has no intention of enforcing existing legal protections for workers' rights to associate freely and to bargain collectively. Therefore, we ask that Cambodia's GSP status be revoked.

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