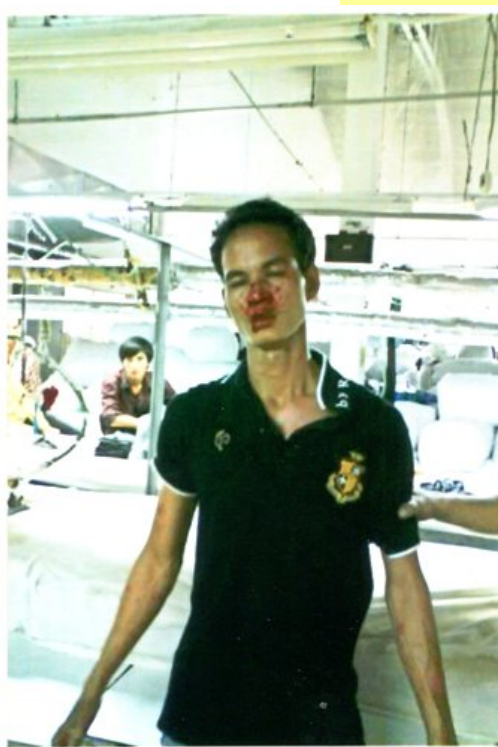


1 September 2010

A tightening noose: Briefing note on the restrictions on unions campaigning for an increased minimum wage in Cambodia



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CAMBODIAN CENTER FOR HUMAN RIGHTS

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A briefing note prepared by the Cambodian Center for Human Rights
(CCHR) and Community Legal Education Center (CLEC)

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Introduction

This briefing note aims to record all the alleged, reported and proven facts relating to the restrictions, threats and intimidation employed against Cambodian trade unions and union leaders in respect of their campaign for an increase to the minimum wage for garment factory workers in 2010.

The right to freedom of expression, the right to freedom of assembly and association and the right to join and form trade unions are directly incorporated into the Constitution of the Kingdom of Cambodia.¹ These fundamental rights are supplemented by the more detailed provisions of the Labour Law 1997, which at Articles 266-299 provides a legislative framework which explicitly grants workers the right to join and take part in trade unions and union activities.

Yet throughout the entire minimum wage campaign, unions claim to have been dogged by restrictions on their freedom of expression, freedom of assembly and freedom of association. Over recent weeks as the conflict has escalated, alleged threats and intimidation of union leaders and activists have increased markedly. As two major garment sector unions plan a nationwide strike of 60,000 workers in mid-September, prominent figures leading the campaign such as Ath Thorn and Kong Athit from the C.CAWDU union and NGO labour rights activist Tola Moeun claim they have been singled out for particular attention. This has been combined with allegations of violence to union activists.

Background to the minimum wage campaign

Article 104 of the Labour Law 1997 guarantees a national minimum wage “which ensures every worker of *a decent standard of living compatible with human dignity*” and Article 107 provides that this wage will be set by Prakas (Ministerial Regulation) from the Ministry of Labour. No Prakas has ever been issued under this provision, however, and in practice the level of minimum wage for garment workers (no minimum wage exists for workers in other sectors) has been set by an informal Notification from the Ministry of Labour following the agreement of the Labour Advisory Committee. While these Notifications are not an official legal instrument, in practice the level set by the committee is generally adhered to by garment factories.

The Labour Advisory Committee is a tri-partite institution made up of 7 representatives from federations of trade unions representing garment workers, 7 representatives from the Garment Manufacturers Association of Cambodia (“GMAC”) representing employers and 14 representatives from the Royal Government of Cambodia (“RGC”). Of the 7 union representatives, 6 are from unions generally thought to have links with the ruling Cambodian People’s Party (“CPP”) and one (Ath Thorn from C.CAWDU) is from an independent union. Other non-government aligned unions such as those headed by Chea Mony and Rung Chhun are not represented. More information about the composition of Cambodia’s trade union federations and the union representatives on the Labour Advisory Committee is set out in Annex A.

The current minimum wage, which came into force in 2007 is US\$50 a month for permanent workers and US\$45 a month for probationary workers. In 2008 the RGC put in place a temporary cost of living allowance subsidy of US\$6 a month in addition to the minimum wage (payable to workers by the employer but funded by the RGC). Thus in practice the minimum a garment worker currently receives per month is US\$56 (permanent) and US\$51 (probationary).

Since 2004, inflation has had a dramatic impact on workers’ livelihoods in Cambodia:

¹ Article 31 of the Constitution of the Kingdom of Cambodia: ‘The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights. Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.’ For relevant rights see articles 19, 20, 23 of the Universal Declaration of Human Rights.

- According to the International Monetary Fund (“IMF”), inflation in 2008 reached 25%. The IMF estimates that inflation will reach 5.1% in 2010 and 7.7% in 2011 after levelling off in 2009.²
- A study sponsored by several labour rights groups in February 2009 which analysed the costs of basic living expenses for garment workers found that a decent living wage (i.e. the standard required by Article 104 of the Labour Law 1997) was US\$93 a month.³
- A subsequent study found that the minimum survival wage for a garment worker was between US\$72-US\$75 per month.⁴ The key difference between a “living wage” and a “minimum wage” in the two studies was that the “minimum wage” of US\$72-US\$75 did not allow workers to make any precautionary savings.
- No research has been carried out, sponsored or referred to by GMAC, the Ministry of Labour or the Labour Advisory Committee in their response to these reports or to the union campaigns to increase the minimum wage.

Evidence suggests that workers earning below US\$72-US\$75 are forced to compromise basic nutrition. In the 2009 CIDS study one worker explained, “I spend about 5000 riel per day on food. It is enough based on my salary, but not enough to keep me healthy. I can only afford to buy low quality food. I can’t afford to buy foods with high nutrition, like fruits.”⁵ According to another study by the CIDS in 2010 under commission by the ILO, UNDP and Better Factories Cambodia, half of the workers surveyed who were earning around \$59 per month had to overcome this insufficient wage by reducing spending on food and healthcare.⁶

Alarming, in recent weeks hundreds of workers at two different factories have fainted while at work. According to Sam Seiha, an administration officer at the Manhattan Industrial Park, where over 100 workers fainted on 15 August 2010, the wave of fainting was a result of workers not eating enough lunch. “They had little food for lunch, and that’s why they lacked sugar substance in the body,” he said.⁷ In another case a week later 185 workers fainted at a garment factory. Pao Sitha, director of the Kampong Chhnang Department of Labour and Vocational Training said that “it was likely that the workers were prone to fainting because they lacked vitamins from not having enough food to eat.”⁸

Already in 2010 the minimum wage in Vietnam has been lifted to the equivalent of US\$70 a month (from US\$61 in 2008)⁹, and in China was raised 20% to the equivalent of US\$140 a month.¹⁰

² IMF, 2010. Available at <http://www.imf.org/external/pubs/ft/weo/2010/01/weodata/weorept.aspx?sy=2008&ey=2015&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=60&pr1.y=9&c=522&s=PCPI,PCPIPCH,PCPIE,PCPIEPCH&grp=0&a=> Last accessed 26 August 2010.

³ Chandararot, K and Dannet, L, *Living Wage Survey for Cambodia’s Garment Industry*, Cambodia Institute of Development Study, February 2009.

⁴ Chandararot, K and Dannet, L, *Study on Minimum Wage for Cambodia’s Garment Industry* Cambodia Institute of Development Study, September 2009.

⁵ Chandararot, K and Dannet, L, *Study on Minimum Wage for Cambodia’s Garment Industry* Cambodia Institute of Development Study, September 2009, p 29.

⁶ CIDS (2010) “Tracking Study of Cambodian Garment Sector Workers Affected by the Global Economic Crisis,” prepared for ILO, UNDP and Better Factories Cambodia, July.

⁷ *Phnom Penh Post* “Factory Closes Down After Mass Fainting,” 16 August 2010.

⁸ *Phnom Penh Post* “Fainting Hits Another Factory,” 23 August 2010.

⁹ Arnold, D and Pickles, J “Global Work, Surplus Labor, and the Precarious Economies of the Border,” *Antipode*, special issue ‘Abandoned Populations in Contemporary Capitalism,’ (2010) forthcoming.

¹⁰ *Cambodia Daily*, “Wage Spikes Elsewhere Could Aid Garment Sector” 11 June 2010.

Part one: a lack of engagement

Pursuant to the 2006 Labour Advisory Committee ruling (which came into force in 2007), the minimum wage was due to be re-negotiated in 2010. In February the Labour Advisory Committee agreed that such negotiations could commence, but did not set any firm timetable for this to happen. Unions made it clear at this meeting that they were seeking an increase to US\$93 a month,¹¹ based on research findings that this was a living wage which ensured workers a decent standard of living compatible with human dignity.¹² GMAC initially stated that it did not disagree with an increase in the wage,¹³ but had concerns about such a large increase (i.e. to US\$93) in light of the global economic crisis still affecting the sector.¹⁴ Despite the February decision that negotiations would take place, no meeting of the Labour Advisory Committee had been scheduled by the end of April 2010, nor had GMAC agreed to any bilateral talks with unions. In response to the lack of action, various trade unions began planning rallies and demonstrations calling for negotiations and to build support for an increased wage.¹⁵

The announcement of demonstrations led to a specific warning from Prime Minister Hun Sen to workers not to participate. Speaking to a group of garment workers, he stated, “Garment factories are like your cooking pot. So if the workers and the factory owners have disputes it is destroying the cooking pot”.¹⁶

In spite of these warnings, two groups of unions (the CLC, headed by Ath Thorn and the CCU headed by Rung Chhun and Chea Mony) went ahead with the International Labour Day rally as planned. After a brief confrontation with police, the demonstrators were allowed to continue.¹⁷ However, police later intervened to prevent a documentary being shown about the death of trade union leader Chea Vichea.¹⁸

By the end of May, the CLC and CCU (with the support of other unions) began to publicly threaten strikes in response to the lack of action on the minimum wage.¹⁹ This prompted the ILO to issue a statement encouraging both parties to commence negotiations and offering to facilitate such discussions.²⁰

Part two: a decision from the top

On 24 June 2010 the major groups of unions agreed a common position for negotiations (seeking an increase to US\$93) at an ILO sponsored meeting.²¹ However, the very next day (and one week before the planned strike of Chea Mony’s FTUWKC), a joint press statement was released by the Ministries of Labour and Social Affairs highlighting a personal recommendation from Prime Minister Hun Sen that the current wage be increased by only US\$5, and that the existing US\$6 cost of living allowance be included as part of the minimum wage. This would increase the minimum amount regular workers receive from US\$56 to US\$61, far short of union demands.²²

¹¹ *Phnom Penh Post*, “Garment Wages Discussed”, February 9 2010.

¹² Chandrarot, K and Dannet, L, *Living Wage Survey for Cambodia’s Garment Industry*, Cambodia Institute of Development Study, February 2009.

¹³ See quote from Van Sou Ieng in *Phnom Penh Post*, “Garment Wages Discussed”, February 9 2010.

¹⁴ *Phnom Penh Post*, “Unions to rally for a higher minimum wage” April 26 2010.

¹⁵ *Phnom Penh Post*, “Unions to rally for a higher minimum wage” April 26 2010.

¹⁶ *Phnom Penh Post*, “Unions to rally for a higher minimum wage” April 26 2010.

¹⁷ *Cambodia Daily*, “Police Give Way as Labor Marchers Press On With Demonstration” 3 May 2010.

¹⁸ *Cambodia Daily*, “Police Give Way as Labor Marchers Press On With Demonstration” 3 May 2010.

¹⁹ See for example, *Cambodia Daily* “Garment Union May Strike if Minimum Wage Not Upped by June” May 24 2010 and *Phnom Penh Post*, “Thousands to protest wages”, June 1 2010.

²⁰ ILO, “Statement on Minimum Wage Negotiations in Cambodia”, 2 June 2010.

²¹ Unpublished minute of meeting, “National Union Consultation Meeting on the Minimum Wage in Cambodia Garment Sector”, June 24 2010, InterContinental Hotel, Phnom Penh. Available on request.

²² *Phnom Penh Post*, “Resolving a minimum wage” 28 June 2010.

Following the release of this statement, a Labour Advisory Committee meeting was scheduled for 8 July. At this meeting, all the unions began by arguing for the US\$93 in accordance with their agreed common position. In response, GMAC claimed that this increase was too large, but refused to offer an alternative proposal. After consensus could not be reached, the chairman called for a vote by public show of hands on the government proposal which he emphasised had been recommended by Hun Sen himself (i.e. a US\$5 increase and inclusion of the existing cost of living allowance). Only Ath Thorn (representing the independent C.CAWDU and Morm Nhem (representing NIFTUC) from the unions did not vote in favour. They were joined by 3 officials from the RGC. The new wage will come into force on 1 October 2010 and will not be reviewed until 2014.²³

The two unions who voted against the proposal (C.CAWDU and NIFTUC) and their broader affiliations (the CLC and the CNC) decided to continue campaigning for a higher wage, seeking to press government into re-opening negotiations. Despite initially indicating dissatisfaction with the decision and announcing that a planned July strike would go ahead,²⁴ Chea Mony from the FTUWKC called off his planned strike.²⁵ Some of his members went ahead with wildcat strike action nonetheless.²⁶

Part three: an effort to silence dissenters

C.CAWDU and NIFTUC's first action was to attempt to hold a public forum on 25 July 2010 to gather the views of their members in respect of dispute, discuss options and vote on what action to take. However, Phnom Penh municipal authorities refused all requests to hold the public forum.²⁷

Meanwhile, Government figures began to publicly threaten legal sanctions against union leaders who continued to express opposition to the decision and organise worker demonstrations. On 23 July, the Secretary of State of the Ministry of Labour Mr Oum Mean stated publicly that, "Ath Thorn would face criminal offences if he still fought against the decision of the Ministry".²⁸

In spite of the ban, an estimated 3,500 to 5000 garment workers converged on Phnom Penh on 25 July for the C.CAWDU and NIFTUC public forum.²⁹ A heavy police presence at the main entrance points to the city stopped cars, motorbikes and tuk tuks carrying workers to the event.³⁰ After holding the workers for two hours, police eventually allowed them to proceed to the city centre on foot.³¹ A heavy police presence also prevented workers from entering the planned site of the forum at Wat Botum Park. Eventually, after intervention from human rights groups and UN representatives, these police allowed workers to gather at an alternative location in front of the National Assembly for one hour. The total number present at any one time at the eventual meeting did not appear to exceed 1000.³² A joint statement from four Cambodian NGOs condemned the police action in relation to the forum, concluding that "the actions by the authorities were meant to intimidate and threaten workers, so that they would not take part in this peaceful assembly".³³

²³ Statement of the Labour Advisory Committee from the 8 July Meeting, available at <http://www.gmac-cambodia.org/announcement/statement/lac-08-July-2010/index.php>

²⁴ *Phnom Penh Post*, "Minimum wage ruling set to spark garment protests" 9 July 2010.

²⁵ *Phnom Penh Post*, "Labour leader calls off strike" 12 July 2010.

²⁶ *Cambodia Daily*, "Pay Raise Demands Continue As Garment Strikes Wind Down" 15 July 2010.

²⁷ Notice from Phnom Penh Municipal Authority, dated 24 July 2010. Available on request.

²⁸ *DAP News*, 23 July 2010.

²⁹ See differing estimates in *Phnom Penh Post*, "Garment workers rally over minimum wage" 26 July 2010 and *Cambodia Daily*, "Garment Workers Get Blocked From Rally in Phnom Penh" 26 July 2010

³⁰ *Cambodia Daily*, "Garment Workers Get Blocked From Rally in Phnom Penh" 26 July 2010; ADHOC, CCHR, CLEC, LICADHO Joint Media Statement, "Union Workers Gather to Demand Better Minimum Wage" 25 July 2010; and unpublished CLEC photographs of police presence.

³¹ *Cambodia Daily*, "Garment Workers Get Blocked From Rally in Phnom Penh" 26 July 2010; ADHOC, CCHR, CLEC, LICADHO Joint Media Statement, "Union Workers Gather to Demand Better Minimum Wage" 25 July 2010

³² *Phnom Penh Post*, "Garment workers rally over minimum wage" 26 July 2010

³³ ADHOC, CCHR, CLEC, LICADHO Joint Media Statement, "Union Workers Gather to Demand Better Minimum Wage" 25 July 2010; and unpublished CLEC photographs of police presence.

On 6 August, a press statement from the government aligned NACC union federation said that the majority of workers were happy with the increase and called on the RGC to take serious action against unions and NGOs continuing to oppose the new minimum wage.³⁴

Following the forum, C.CAWDU and NIFTUC began planning a strike for September 13-18 if new talks on the minimum wage did not commence, sending letters to the Ministry of Labour and GMAC.³⁵ The unions received support in their campaign from Asia Floor Wage Alliance (a regional trade union alliance)³⁶ and from opposition parliamentarians.³⁷

In response, government threats against union leaders and NGOs supporting the unions intensified. For example:

- On 8 August, a talk show was broadcast on government owned television channel TVK, during which a panel of 5 speakers took turns praising the minimum wage decision and criticizing unions and NGOs who continued to oppose it. Two representatives from CPP aligned unions appealed for the government, “to take serious action” against those unions and NGOs currently opposing the minimum wage. In conclusion, Council of Ministers official Pa Angtoni acknowledged these appeals and said that he would investigate the possibility of charging union leaders and NGO figures with incitement, for which they could, if convicted, receive prison sentences of between 1 and 5 years.³⁸ Some of Pa Angtoni’s comments were subsequently reported in the English language press: “once union leaders hold a strike, it will affect the garment industry and the public interest. So we are considering taking legal action through the court on the basis of incitement.”³⁹ Before the broadcast ended, Sam Aun from the government aligned NACC union reiterated the earlier comments and issued a final, urgent, appeal to the government to take “serious action” against those who continue to oppose the minimum wage decision.
- On 15 August, Oum Mean, Secretary of State within the Labour Ministry responded to strike plans by claiming that if Ath Thorn gets his way the garment industry will collapse, “[t]hen will Ath Thorn be brave enough to take responsibility and go to prison instead of the workers?”⁴⁰

In addition to official threats of government action, union leaders and NGO figures who continue to campaign against the minimum wage decision such as Ath Thorn, Moeun Tola and Kong Athit have allegedly become subject to informal and implicit pressure to cease their activities. Such rumours and otherwise innocuous comments are taken more seriously in a country where 3 prominent trade union leaders have been murdered since 2004. Some of the examples given of this type of pressure include:

- Ath Thorn states that he was told by a friend that “the government officials and employers know that you are the leader and are causing the trouble” and that he should be careful and “not go out at night”.
- A relative of Ath Thorn allegedly told him that, “I have heard that you are in the middle of it. You should know that this is a problem. No one can help you if you keep doing this.”⁴¹

³⁴ NACC Press Statement. Copy available in Khmer on request.

³⁵ *Phnom Penh Post*, “Union group threatens to strike” 4 August 2010 and *Cambodia Daily*, “Labor Unions Call for New Wage Negotiations” 3 August 2010. Full text of letters available on request.

³⁶ Asian Floor Wage Alliance Press Statement, “Garment Workers in Asia Deserve a Living Wage”, 13 August 2010.

³⁷ On 8 August 2010, Radio Free Asia reported that Sam Rainsy Party lawmaker Mr Son Chhay had sent separate letters to Hun Sen and Vong Soth to request a wage increase, and asked Vong Seth to respond before the National Assembly. See also *Phnom Penh Post*, “Strikers face legal obstacles”, 9 August 2010.

³⁸ CLEC has a recording of the TV programme in Khmer. This summary was translated into English by CLEC officials.

³⁹ *Cambodia Daily*, “Gov’t Considers Legal Action Against Union Leaders” 9 August 2010.

⁴⁰ *Phnom Penn Post*, “Unions threaten mass strike” 16 August 2010.

⁴¹ Unpublished Statement by Ath Thorn of 27 August 2010. Available on request.

- A statement from an assistant of Ath Thorn states that late at night on 17 August 2010 she received a suspicious call from a withheld number. The caller did not identify himself but asked the assistant a number of questions about her work at C.CADWU, the activities and movements of Ath Thorn and about the progress of collecting thumb prints to increase wages.⁴²
- On or about 17 August, Moeun Tola reports that he was told by a close friend working in an NGO with links to employer organisations that union leaders and others publicly supporting the campaign are likely to be charged with incitement in the hope that they flee the country.⁴³

C.CADWU also claims difficulties in attempting to communicate with and ballot its members. For example, the union alleges that on 31 July 2010 six C.CADWU activists attempting to gather signatures from union members in favour of strike action at the E-Garment factory in Kandal province were attacked and beaten by a group of 8 fellow employees (from a government aligned union) who were armed with scissors, wooden clubs and a walkie talkie. C.CADWU has provided the following photos of the injuries it claims were suffered by the officials:



C.CADWU activists Chea Sambo and Kao Tuon



Following the incident, 8 C.CADWU members allegedly had their employment at the factory terminated. C.CADWU officials claim that no disciplinary action was taken against those responsible for the beating.

⁴² Unpublished Statement by Eam Chan Mony, Available on request.

⁴³ Unpublished Statement by Tola Meoun, Available on request.

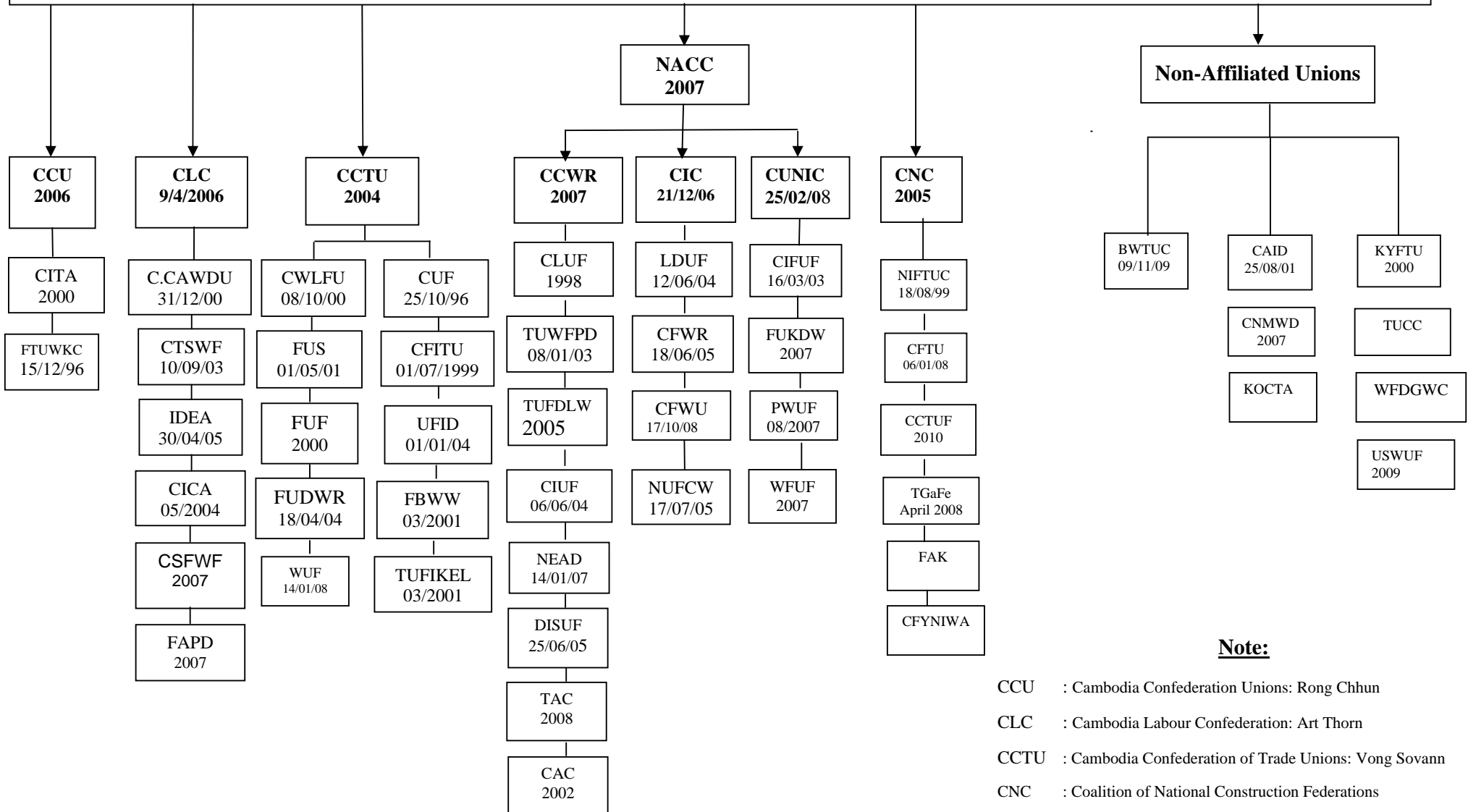
ANNEX A: CAMBODIAN TRADE UNIONS AND AFFILIATIONS

Cambodia has a large number of trade unions, operating within a range of different federations, with varying degrees of political alignment or links to political parties. A table listing the various unions and their overarching confederations is set out on the following page. Of the broad confederations listed on that table, the CCTU headed by Vong Sovann, the NACC headed by Son Aun and the CNC headed by Morm Nhem are widely considered to have links with the ruling CPP. The CCU (comprising CITA headed by Rong Chhun and the FTUWKC headed by Chea Mony) and the CLC (headed by Ath Thorn) are not aligned with the government.

The following 7 unions are represented on the Labour Advisory Committee:

Union	Leader
C.CAWDU	Ath Thorn
CUF	Choum Monthol
CFITU	Tep Kimvannary
CLUF	Sam Aun
DISUF	Va Chankosal
CIFUF	Heng Bunchhun
NIFTUC	Morm Nhem

Structure of Cambodian Professional Organizations of Workers



Note:

- CCU : Cambodia Confederation Unions: Rong Chhun
- CLC : Cambodia Labour Confederation: Art Thorn
- CCTU : Cambodia Confederation of Trade Unions: Vong Sovann
- CNC : Coalition of National Construction Federations
- NACC : National Union Alliance Chamber of Cambodia: Som Aun
- * Three confederations affiliate to NACC as below:
- CIC : Cambodia Inheritance Confederation: Sok Sambath
- CCWR: Cambodian Confederation for Worker Rights: Sam Oun
- CUNIC: Confederation of Union National Independence Cambodia: Heng Bunchhun