

BWI-BWTUC complaint to UNESCO

Regarding

Violations of Freedom of Association

By

EFEU, APSARA, and the French Embassy

On

The West Mebon temple restoration project

Part of

The Angkor Archaeological Park, a UNESCO World Heritage Site

This complaint maintains that the Cambodian Government agency APSARA has engaged in anti-union discrimination against a group of 126 skilled workers restoring the West Mebon temple complex, part of the Angkor Archaeological Park. It argues that those actions constitute an ongoing violation of the freedom of association of the affected workers. This is in conflict with UNESCO's commitment to uphold human rights. We are asking UNESCO to use its good offices to mediate and make other efforts to resolve the conflict.

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1. UNESCO's competence to consider the matter

UNESCO has, under Document 104 EX/Decision 3.3, laid out a specific procedure for examining cases and questions it receives concerning the exercise of human rights in the spheres of its competencies.¹ “UNESCO is called upon to examine ... cases concerning violations of human rights which are individual and specific”, and notes that the ‘Committee on Conventions and Recommendations’ will “...consider communications received by the Organization concerning cases and questions of violations of human rights within UNESCO’s field of competence...”

We believe that this document satisfies the criteria in 14(a) of the aforementioned provisions. The complaint is not anonymous (14(a)(i)), but rather is filed by the complainants identified in [1.1], who are direct victims of the behaviour described (14(a)(ii)). The complaint covers the rights of workers falling within UNESCO’s competence (14(a)(ii)) and is compatible with the principles laid out in the Universal Declaration of Human Rights and key international conventions on human rights (14(a)(iv)), identified at [4].

The evidence presented here is not manifestly ill-founded (14(a)(v)), is not offensive (14(a)(vi)) and is not exclusively based on information disseminated through the mass media (14(a)(vii)) but rather based on exhaustive engagement and communication with the affected individuals. The violations of freedom of association described below are ongoing. The complaint is submitted within a reasonable time frame and corresponds to the facts (14(a)(viii)). This document indicates a wide range of measures taken by the complainants to remedy the situation at the domestic level (14(a)(ix)) without adequate response. The complaint does not relate specifically to matters already settled by the State.

¹ Text of 104 EX/Decision 3.3 available at: http://portal.unesco.org/en/ev.php-URL_ID=15249&URL_DO=DO_TOPIC&URL_SECTION=201.html

2. Parties Involved

2.1 Complainants

- 2.1.1 The **Building and Wood Workers Trade Union Federation of Cambodia (BWTUC)** is the nationwide sectoral union that represents workers in the relevant building trades. It has more than 9,000 members across Cambodia. The 126 skilled workers previously engaged on the West Mebon temple restoration project are all members of the site union, affiliated to the BWTUC. The BWTUC was created in 2009 through a merger of the Siem Reap-based Cambodia Construction Trade Union Federation (CCTUF) and the Phnom Penh-based Cambodia Federation of Building and Woodworkers (CFBW).
- 1.1.2 The **Building and Wood Workers' International (BWI)** is the global union federation for workers in the building and construction, wood and forestry, building materials and allied sectors. has 352 member unions from over 140 countries, totalling over 12 million workers. The BWTUC is the Cambodian affiliate of the BWI.

2.2 Respondents

- 2.1.1 The **École Française D'Extrême-Orient (EFEO)** is a French college associated with PSL University. Since 1907, it has been involved in conservation and archaeological work at the Angkor Archaeological Park. At various times – including, in particular, from 2012 until 5 May 2018 – they acted as an employer of the workers who performed the temple restoration work in Angkor, and they are still involved in restoration efforts.
- 2.1.2 The **Authority for the Protection of the Site and Management of the Region of Angkor (APSARA Authority)** is the for-profit Cambodian management authority responsible for protecting the Angkor Archaeological Park. It was established in 1995 and is headquartered in Siem Reap. Its primary purpose was to ensure protection of the inscription of the Angkor Site on the World Heritage List, completed in December 1992. In 1999, it achieved the legal status of a public administrative institution, endowed with its own legal entity and with administrative and financial autonomy.
- 2.1.3 The **French Embassy** in Cambodia is the historic source of finances of the restoration work on the West Mebon temple complex. In 2012, work was financed with US\$3.8 million from the Embassy. It is understood that a subsequent amount of money was granted by the Embassy to finance completion of the restoration work. That funding comes from the French Government via the **Ministry of European and Foreign Affairs (MEAE)**.
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3. West Mebun temple and Angkor Archaeological Park

- 3.1 The **Angkor Archaeological Park** is a profitable venture for the APSARA Authority. The 400km² area contains remains from the Khmer Empire from the 9th to the 15th Century, including Angkor Wat, Angkor Thom and the Bayon Temple. Inscribed in 1992 as a UNESCO world heritage site, the Angkor Park is among the most important sites in Southeast Asia. In 2018, it welcomed 2.6 million international visitors and generated US\$116.64 million in direct revenue.² As one of Siem Reap’s largest and most-visited tourist attractions, it also plays a key role in supporting the regional economy, including the hotel and hospitality industries. It is expected that the completion of work on the West Mebun temple will add further value, increasing economic development in the region.
- 3.2 The **West Mebun temple** is part of the Angkor Archaeological Park. Built atop a raised plain that becomes an islet during rainy seasons, the West Mebun temple complex dates back to the 11th Century Khmer civilisation. It was built during the reigns of King Suryavarman I and Udayadityavarman II. It is renowned for its elegant ornamentation. Delicate restoration work has benefited from the work of an essential team of expert restoration workers with decades of experience.
- 3.4 There is a history of fractious labour relations within the Angkor Archaeological Park. In June 2008, the BWI filed a complaint on behalf of CCTUF (a predecessor of BWTUC) with the International Labour Organisation (ILO) Committee on Freedom of Association (the Committee) regarding, inter alia, the intimidation by APSARA of workers who had attempted to join the union, and a wide range of other legal violations. Attempts by the union to negotiate were met with further threats, followed by the dismissal of union leaders. The case also highlighted similar anti-union discrimination and unjustified terminations by the Japan-APSARA Safeguarding Angkor Authority. The Committee stressed that this case was of a “serious and urgent nature”, pointing out that the Cambodian Government had failed to protect freedom of association and the right to collective bargaining.³
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² Cheng Sokhorng “Angkor hosts 2.6m visitors” *The Phnom Penh Post* (2 January 2019). Available at: <https://www.phnompenhpost.com/business/angkor-hosts-26m-visitors>

³ ILO Committee on Freedom of Association, Case No 2655 (Cambodia). Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2911503

4. Timeline of alleged events

- 4.1 A team of 126 skilled temple restoration workers began their work in September 2012 under the direction of EFEO, financed by a US\$3.8 million contribution from the French Embassy in partnership with the APSARA Authority. Many of these workers had years – in some cases many decades – of experience in doing the intricate restoration work required for a project like West Mebun.
- 4.2 During this period, EFEO was under the leadership of Director Pascal Royère, a famed French archaeologist with a long-running passion for Angkor restoration work and a high regard for the people of Cambodia. Royère consistently championed the rights of the temple restoration workers. He passed away in 2014. There is a shrine paying tribute to his legacy at the West Mebun site.
- 4.3 In 2013, the workers formed a union, and in February 2013, their union bargained a collective agreement with EFEO that brought them real improvements **[See Document A]**. This is of critical importance because of the weak protection for workers' rights and livelihoods in Cambodian law. There is still no minimum wage for workers outside the garment sector and there is still no health and safety law.⁴ Additionally, since the conclusion of that agreement, the collective bargaining framework has deteriorated with the passage of the Trade Union Law 2016, which includes a number of restrictions on freedom of association.⁵ Specific terms and conditions of that agreement that differ from Cambodian law can be seen in **Annex A**.
- 4.4 The collective agreement formally ended in 2016 following the promulgation of the Trade Union Law. Given the new restrictions imposed by the law, the union and EFEO agreed, orally, to modify that agreement so that they could continue to operate under terms and conditions stipulated within it, while also negotiating annual pay increases. At the time, all the workers on the site were union members.
- 4.5 In February 2018, the EFEO communicated the BWTUC, informing them that due to a lack of funds from MEAE, the management of the 126 West Mebun workers would be handed over to APSARA as their new employer, making them public servants under the law. As a part of this process, they were told that they would be terminated for three months and then re-employed beginning on 5 May 2018.
- 4.6 Soon after, however, BWTUC was told orally by APSARA representatives that their re-employment would take place on significantly inferior terms. The difference in wages, for example, is shown by the table in **Annex A**. There is a reduction of 17-60 percent depending on where workers were on the wage scale. In addition, workers would not enjoy a range of other benefits negotiated into the agreement, including a 37-hour work week and a 13th month's pay.

⁴ At present, occupational health and safety is governed by a few Ministerial Directives or 'prakas'.

⁵ The law has been criticized for its limited coverage of workers within legal protections (excluding informal workers, civil servants, teachers and domestic workers), it requires a legal threshold of 20% membership for union formation, imposes age, residency and literacy requirements and requires significant document to be submitted before a union can be formed.

- 4.7 Given the inferior wages and conditions being offered and the potential risk that working under APSARA represented for the workers, they decided that they would not return to work until they had secured a commitment that their original collective agreement would be honoured. In March 2018, the BWTUC presented a petition signed by the 126 workers to APSARA requesting the reversal of the above decision. They received no response **[See Document B]**.
- 4.8 On 9 April, the BWI sent a letter to the MEAE regarding the termination of the workers, affirming its opposition to the withdrawal of MEAE from the project **[See Document C]**. A response was only received on 24 May, rejecting the suggestion that MEAE's involvement was coming to an end, and stating that the "re-engagement of the workers [by MEAE and APSARA] will be managed in accordance with current legislation and in the interests of both parties" **[See Document D]**. They explained that EFEO and MEAE will continue funding the project.
- 4.9 On 5 May, work on the West Mebun temple by the skilled restoration workers came to an end. The workers estimated at the time that restoration work was around 65% complete and that completion of it would take several more years.
- 4.10 On 16 August, a response was sent from the BWI to the MEAE **[See Document E]** seeking clarification on what was meant by the guarantee that workers would be re-engaged "in accordance with current legislation and in the interests of both parties", given that the wages and conditions offered by APSARA fell well below that which the workers had previously received.
- 4.11 Also on 16 August 2018, the BWTUC wrote to the French Embassy regarding the situation of the West Mebun temple restoration workers, pointing out that work had not yet resumed. It further requested that a meeting take place on 3 September between the Embassy, the BWTUC and the BWI. When no response was received, a second letter was sent on 28 August 2018, this time, it was a letter from the BWI Asia-Pacific Regional Representative. It also asked for a meeting **[See Document F]**.
- 4.12 On several occasions, indications have been given to the BWTUC that it might be possible to rehire some of the workers at a slightly improved rate. While the union has always been willing to negotiate on a decent offer, there has been little real negotiation. Therefore, the workers have stuck to their position. They want all workers to be re-employed on the terms that they negotiated in 2013. Refusals to negotiate meaningfully have been consistently justified on the basis that there is no further funding available for the project. Given that the collective agreement has been in place since 2013, it is difficult to understand why the budget allocation for this project did not reflect those costs.
- 4.13 On 4 October 2018, representatives from the BWI and BWTUC met with representatives of the French Embassy – including Deputy Head of Mission Laurent Triponey and the Counsellor of Cooperation and Cultural Affairs Guillaume Narjolet – in Phnom Penh, in an attempt to make progress on the differences. Mr. Narjolet indicated that the Embassy and EFEO had not been informed of the termination, but, stated that the Embassy had no authority to deal with reinstatement issues. The Embassy also indicated that they had never been made aware either that there was a collective agreement at the site or that there had been a case submitted to and a decision rendered by the ILO Committee on

Freedom of Association against the Government of Cambodia that implicated their partner, APSARA. BWI Secretariat staff provided the embassy with copies of the collective agreement and links to the ILO Committee decision.

- 4.14 At the end of December 2018 or the beginning of January 2019, BWTUC became aware that around 90 unskilled and/or semi-skilled workers were hired by APSARA to undertake work on the restoration site. These workers do not have the necessary skills to undertake the full gambit of restoration work for the West Mebun temple complex.
- 4.15 On 21 January 2019, site union leader Chin Sophal was contacted by APSARA and asked to facilitate communication with the workers on a possible improved wage offer (US\$270 monthly for team leaders and technical staff, US\$210 for deputy team leaders and US\$140 for general workers). There was no information provided on what would happen to the other conditions of their employment that were in the original agreement. At this stage, APSARA indicated that they hadn't spoken to the other partners involved (i.e. EFEO and the French Embassy), but they wanted to see if the workers were interested.
- 4.16 BWTUC requested a formal meeting with APSARA on 18 February, however it was refused. On 20 February, the French Ambassador visited the restoration site to sign an agreement to transfer equipment to APSARA, an indication that official control of the site had been formally handed over to APSARA.
- 4.17 In March 2019 representative from the Confédération française démocratique de Travail (CFDT, a French national confederation with a member organisation that also belongs to BWI) met with French Government officials on the matter. Cambodian Government officials insisted that that the French Government has no responsibility in the affair. They considered that as the collective agreement has expired and is no longer in force, it is no longer binding on the parties.
- 4.18 In late March 2019, BWTUC received information that APSARA would be interested in further negotiations with the workers, and that they were considering hiring 80 workers on terms and conditions inferior to those in the original collective agreement, but still an improvement over recent wages. The workers indicated that their preference was that all workers were re-employed, rather than have some of the work of union members effectively done by unskilled, replacement workers paid less, but doing substantially similar work. Nonetheless, they made it clear that they were willing to negotiate. However their offer brought no action.
- 4.19 In June 2019, BWTUC was informed that the previous offer of rehiring around 80 workers on terms and conditions similar to those in the original collective agreement was no longer available and that APSARA would, at most, take back 40 workers. BWTUC learned that the reason was that they were seeking to hire local artisans with a higher skill level than the unskilled and semi-skilled workers previously employed by APSARA. The union interprets this as a disruptive and bad-faith act, as it had been in discussions with the Siem Reap artisan union to ensure that they do not undercut the West Mebun temple workers by accepting those jobs.
- 4.20 On 29 June 2019, the BWI wrote to APSARA's National Chairperson Phoeurng Sackona, EFEO Director Christophe Marquet and Deputy Head of the French Embassy in Phnom

Penh Laurent Triponey outlining the deteriorating situation. In that letter, the BWI indicated that if there was no willingness to engage, it was planning to further publicise the problem. After no response was received from either institution, a video covering the situation was released that has had tens of thousands of views. In addition, a petition was circulated online that has received nearly 6000 signatures.

- 4.21 As a result of these activities, a communication was received from APSARA Director Dr. Hang Peou on 30 July 2019, saying that APSARA had no responsibility to respect the collective agreement. The BWI wrote back to Dr. Hang Peou on 23 August and challenged the arguments (**See Document G**). The letter noted that although APSARA was not a direct party to the previous employment relationship it had intended to establish a new employment relationship with the concerned workers on inferior conditions and without recognising workers' freedom of association. It further noted that APSARA had an overall political responsibility to ensure that freedom of association is respected in all major employment projects in the Angkor Archaeological Park. No response was received to this letter.
- 4.22 On 6 September, a meeting was held between BWTUC and APSARA staff, who again stressed that APSARA had no legal responsibility for the 126 workers. There did, however, seem to be a renewed interest in resolving the matter, although APSARA expressed some concern about the how to deal with the replacement workers who had been brought onto the site. BWTUC officials were also informally told that their activities had raised significant issues in the relationship between Cambodia and France. On 18 September, the BWI again wrote to the APSARA Director-General, indicating that BWI and BWTUC are considering filing a UNESCO complaint on this matter. A meeting was requested in early November.
- 4.23 On 18 September, BWI General Secretary Ambet Yuson wrote to APSARA Director Dr Hang Peou (**See Document H**), reiterating the position of the workers. He stressed that labour protections available for workers in Cambodia were insufficient, citing the risk that trade preferences of the EU would be withdrawn under the 'Everything But Arms' (EBA) agreement due to the failure to improve its implementation of worker and human rights. In the letter, Ambet Yuson suggested that the workers were considering making a formal complaint to UNESCO if a satisfactory resolution could not be reached.
- 4.24 On 24 September, another meeting took place between the BWTUC and the French Embassy staff. At that meeting, Embassy representatives noted that the financial assistance provided by the Embassy was the same as before. However, it was emphasised that the Embassy's role was restricted to financing technical experts and they held no remaining legal obligations to the workers, whose employment was the exclusive responsibility of APSARA. They did, however, commit orally to facilitate a meeting between the parties. Such a meeting has not yet taken place.
- 4.25 While no response was received to the letter written on 18 September, a follow-up communication was sent to Dr Hang Peou on 22 October informing him that BWI representatives would be visiting Cambodia in the next month and requesting a meeting. Again, no response was received to that communication.

- 4.26 On 28 January, a meeting was held between the BWTUC and the Minister of Labour and Vocational Training in which the conflict was raised. The meeting involved representatives from several Departments of Government. The Minister was keen to see the matter resolved in a way that protected the workers' freedom of association and right to collective bargaining, however no specific commitments were made as the Minister maintained that he did not have sufficient information.
- 4.27 On 12 February 2020, the European Commission announced that it was withdrawing some trade preferences to Cambodia affecting around one billion Euros worth of Cambodian exports (20% of Cambodia's total exports to the European Union) due to its failure to improve its performance on worker and human rights. It is a major action, but a temporary measure. It can be lifted if the country improves its protection of human and worker rights so as to be in line with universal human rights standards.
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5. Application of freedom of association

- 5.1 UNESCO's commitment to human rights is based on the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Both documents refer to freedom of association. The meaning of that right is elaborated in ILO standards and their interpretation.
- 5.2 Article 20(1) of the UDHR states that "[e]veryone has the right to freedom of peaceful assembly and association." Article 22(1) of the ICCPR, which Cambodia ratified in May 1992, provides that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".
- 5.3 UN Special Rapporteur on the Rights to Peaceful Assembly and Freedom of Association Maina Kiai maintained that freedom of association "serves as a vehicle for the exercise of many other civil, cultural, political and social rights."⁶ This is certainly the case for the West Mebon workers, as the denial of their freedom of association has meant a significant drop in income resulting in a reduction of their access to other rights, including the right to food, housing and health.
- 5.4 The actions of the EFEO and APSARA – terminating the workers and offering to rehire them, but only with individual contracts with significantly inferior wages and conditions – constitutes anti-union discrimination. The ILO Committee on Freedom of Association (CFA) states that "[a]nti-union discrimination is one of the most serious violations of freedom of association"⁷. They determine that "[n]o person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present."⁸
- 5.5 The CFA says that the right should not be restricted only to hiring and dismissal, but also include "transfers, downgrading and other acts that are prejudicial", and determines that "[t]he non-renewal of a contract is a prejudicial act within the meaning of Article 1 of Convention 98."⁹ Demotions are also mentioned as a form of direct, anti-union discrimination as are "more subtle attacks which may be the outcome of omissions."¹⁰
- 5.6 The CFA determines that these instances represent a more subtle set of attacks on the workers' rights to freedom of association and collective bargaining, combining elements of dismissal (which took place on 5 May but was signalled months in advance) and non-renewal of contract (which was also signalled in advance), which together would have led to an effective demotion, had the workers not refused to return to work. It is maintained that this overall pattern of behaviour is anti-union discrimination in violation of the workers' legitimate rights.

⁶ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (21 May 2012), at [12]. Available at:

https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

⁷ International Labour Organisation "Digest of Decisions and Principles of the Committee of Freedom of Association of the Governing Body of the ILO" Fifth (revised) edition, 2006, at [769]. Available at:

https://www.ilo.org/dyn/normlex/en/f?p=1000:52::NO:52:P52_DIGEST_YEAR:2006

⁸ *Ibid.*, at [770].

⁹ *Id.*, at [781].

¹⁰ *Id.*, at [788].

- 5.7 The Committee on Freedom of Association (CFA) has clearly stated that “[a]cts of anti-trade union discrimination should not be authorized under the pretext of dismissals based on economic necessity”,¹¹ however economic necessity was used both to justify the initial proposed three-month dismissal period as well as APSARA’s refusal to allow the workers to organise a trade union or enjoy the benefits of the collective agreement that they had negotiated.
- 5.8 The CFA further considered that the fact that the collective agreement had formally lapsed but the parties continued to operate on the wages and conditions stipulated under it – including, in this instance, wage increases negotiated between the parties – the agreement should be considered as having been modified by oral agreement. This is especially the case in a country like Cambodia, where formal legal protection for the rights of freedom of association and collective bargaining are limited.
- 5.9 While the particular circumstances of this case meant that the workers’ withdrawal of their labour (or refusal to supply their labour) cannot strictly be described as a strike, it is clear that the hiring of unskilled and semiskilled labour, and moves to hire artisans to complete the work are provocative, anti-union steps by APSARA. In this regard, the CFA states that “[t]he hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association.”¹²

¹¹ Id., at [795].

¹² Id., at [632].

6. Complainant's demands

- 6.1 This document shows that the organisations APSARA and EFEO, together with the French Embassy in Cambodia have responsibility for the maintenance of the Angkor Archaeological Site – and in particular the West Mebun temple restoration site – and that they have acted in a way that violates the temple restoration workers' freedom of association and right to collective bargaining. They have been out of work for over a year and are experiencing severe financial distress.
- 6.2 This information and supporting evidence show that the BWTUC and BWI have, on multiple occasions, tried to address the issue through dialogue and negotiation. While some progress appeared to have been made earlier, the situation appears to be moving backwards.
- 6.3 We are calling on UNESCO to intervene to help resolve the conflict including by attempting to mediate the dispute and restore healthy industrial relations. To facilitate such a process, UNESCO may wish to consider sending a mission to Cambodia, perhaps in cooperation with the ILO. BWI and BWTUC are prepared to fully cooperate with UNESCO with respect to any and all measures taken to deal with this complaint and to resolve this serious conflict between current law and practice on the one hand and earlier legal protections for workers and universal human rights standards on the other.
- 6.4 The demands of the West Mebun temple restoration workers remain:
- a) Employment of all 126 workers on terms not less favourable than the original collective agreement; and
 - b) Recognition of the workers' legal right to form a union; and
 - b) Fair compensation for the extended period of time during which they have been unemployed.
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Annex A: Wages negotiated in the collective bargaining agreement

Work on the West Mebun temple restoration is done by highly skilled workers, many of whom have decades of experience in archaeological restoration of Angkor's ruins. The terms and conditions contained in their collective agreement reflect that level of expertise. Below is a short comparison of wages.

Difference in wages						
	CBA scale		New Offer		Difference	
	KHR	USD	KHR	USD	KHR	USD
Bottom	554319	137	462000	114	93060	23
Top	1497066.56	370	594000	146	906332	224