



H.E. Hun Sen,
Prime Minister
Office of the Prime Minister
Phnom Penh, Kingdom of Cambodia

20 May 2015

Trade Union Law

Your Excellency:

For many years, trade unions have called upon your government to amend the 1997 Labour Act in order to ensure that it complies with ILO Conventions 87 and 98, both of which Cambodia has ratified. In 2011, the Government of Cambodia responded by drafting a new Trade Union Law; however, that project was ultimately abandoned after several rounds of consultations with trade unions, employers and the ILO.

In 2014, the idea of the Trade Union Law was revived, largely at the urging of global garment brands which were looking for a solution to overcome the crisis in the industry. As with the unions, the brands also sought a law which protected fundamental rights and established a more stable foundation for industrial relations in the industry. Consultations with social partners were reinitiated. However, the current draft of October 2014 does the opposite, marking a substantial step backward and threatening to undermine rather than protect the rights to freedom of association, to organise and to bargain collectively.¹ It even fails to include numerous amendments to which the parties had already agreed in the 2011 draft.

We understand that the government continues to draft the law. However, the complete lack of consultation with social partners since October 2014 leaves us in the dark as to the government's intentions. On the basis of the October 2014 draft, we wish to highlight several serious concerns and strongly urge the government to ensure that any future draft and final law address these concerns. Our concerns include, but are not limited to, the following:

Article 3: This article governs the scope of the law. It excludes from the law's coverage civil servants, domestic workers, and workers in the informal economy. However, workers without discrimination whatsoever are entitled to form or join a trade union.

¹ As to the May draft, an ILO representative explained in a public forum that it "contains numerous provisions that are not in compliance with Conventions 87 and 98. Moreover, the draft appears to ignore requests from the ILO's Committee of Experts on the Application of Conventions and Recommendations."

Article 10: This article governs the structure of unions and employer associations setting out minimum membership requirement at each level. The new 20% minimum membership requirement to establish a union is excessive. The ILO Committee on Freedom of Association has stated that “The establishment of a trade union may be considerably hindered, or even rendered impossible, when legislation fixes the minimum number of members of a trade union at obviously too high a figure.”

Article 18: In setting out the scenarios where the government can suspend a union, this article grants sweeping powers to the government to suspend a union if it does anything that the government does not approve of (such as strikes). It also appears to prohibit contact with NGOs (both foreign and international) which are not registered in Cambodia. Again, the intent is to cut off the unions from international solidarity. It also takes decisions on suspension of union registration for other reasons away from the courts and vests it initially with the Ministry of Labour, which constitutes a serious violation of freedom of association. The time limit of 1 week to file a challenge to a suspension is also far too short.

Article 21: Most of these eligibility requirements should be eliminated. The ILO has in the past found that literacy requirements are not in keeping with principles of freedom of association. Many workers, particularly in rural areas, will be unable to meet this requirement. Additionally, preventing anyone who has ever been convicted of a crime under the Cambodian justice system from holding elected office opens the door for abuse as a way for employers and other authorities to levy charges on any active or prospective union leader for crimes of any nature, including those of a “political” nature as a means of preventing them from holding or seeking union office. This provision should be revised to limit leadership in the case of a conviction for a criminal offense that calls into question their integrity (fraud, embezzlement, etc). Finally, there should be no discrimination as between national and foreign workers.

Articles 33-43: Chapter 6 of the draft bill deals with “shop stewards.” In the interest of developing a strong and independent trade union movement, the negotiation of collective bargaining agreements must be the sole prerogative of trade unions and therefore we recommend the elimination of the position of the “shop steward” in the sense given here. If the position of shop steward remains, it should only be allowed to exist in a workplace where there is no union with a Most Representative Status (MRS).

Article 55: The article lays out the criteria for identifying an MRS union in a factory. While an MRS union retains the exclusive right to negotiate a collective agreement for the entire workforce, the law should allow all other unions (minority unions) in the workplace to represent their own members when it comes to settling disputes. We would also warn against declaring a union an MRS union if it does not have the members of 50% +1. This could mean that in a multi-union situation, a union with a fraction of the workforce, and perhaps less than another union, could be declared the MRS union. In the absence of a majority union, we would recommend that unions aggregate to form a bargaining committee representing 50%+1 in order to negotiate a single agreement with management which covers those unions.

Article 56: This article, which describes how a confederation can acquire MRS status to negotiate sector-wide agreements, should be revised to make clear that if there is an industrial federation that enjoys 50%+1, then it should be able to negotiate a sector level agreement that sets the minimum standards for the industry. Enterprise level unions may of course bargain above this sectoral minimum. In the absence of a single MRS federation, a council of federations should be established which together negotiate at the sectoral level.

Article 78: This article sets out who will determine whether a strike or lock-out is illegal and outlines the legal consequences for illegal strikes. It is particularly dangerous. First, only courts should determine whether a strike is illegal, not a labour inspector. If a court determines that a strike was illegal, then a fine should be imposed. Suspension of registration would make it impossible for the union to function for that period of time, including representing itself in court. Moreover, until a culture of collective bargaining is respected, strikes remain the only viable option for independent union to advance their positions. Court imposed injunctions on strikes must only be issued when the union in question has been allowed to present its case, meaning no ex-parte injunctions should be issued. While we support the application of the rule of law, in the Cambodian context, many of the dominant unions enjoy the full support of management and/or the government, making it impossible to force employers to recognize legitimate unions without resorting to strikes.

Article 79: The fines set out in this article, concerning when employers engage in unfair labor practices against workers and unions, is insufficient. One million riels is roughly equivalent to US \$250. Even 6 times that amount is only \$1,500. Such low fines will never dissuade employers from violating the labour law.

Article 87: This article sets out how existing unions, federations, and confederations should comply with the trade union law, when it comes into force. As noted above, the new membership requirements would decimate many independent unions, meaning that within 6 months of the passage of this law, we would effectively see pro-CPP and pro-management unions consolidating their power and creating even greater industrial chaos as a reaction.

As you know, Cambodia's international reputation in the area of labour rights suffered greatly due to the tragic events in 2014. Indeed, they caused some international investors, namely garment brands, to revise their position in Cambodia as reflected in the most recent export figures from the industry. The garment industry provides employment to some 700,000 people, mostly young women. Introducing the Trade Union Law as it is will only further damage Cambodia's reputation, and put the future of the industry at risk.

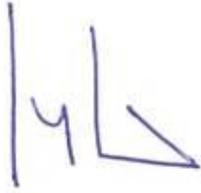
That is why the undersigned urge you to address the concerns above. We will also share our concerns with international brands invested in Cambodia, and foreign governments. If the government instead attempts to pass a seriously regressive law far out of compliance with international norms, we will have no option but to vigorously oppose it.

I appreciate your government's full attention to this important matter.

Sincerely,



Sharan Burrow
General Secretary,
International Trade Union Confederation



Jyrki Raina
General Secretary,
IndustriALL Global Union



Philip Jennings
General Secretary,
UNI Global Union

cc: Mr Heng Sour, Minister of Labour (hengsour@yahoo.com)
Mr Hor Namhong, Minister of Foreign Affairs and International Cooperation
(mfaic@mfa.gov.kh)
Mr Aun Porn Moniroth, Minister of Economy and Finance