

Analysis on the Law on Trade Unions and the Law Amending Articles 3, 17, 20, 21, 27, 28, 29, 54, 55 and 59 of the Law on Trade Unions



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Abbreviations

AC	Arbitration Council
ACILS	American Center for International Labor Solidarity
C87	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
C98	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
CATU	Cambodian Alliance of Trade Unions
CENTRAL	Center for Alliance of Labor and Human Rights
CEACR	Committee of Experts for the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
CICA	Cambodian Independent Civil Servants Association
CITA	Cambodian Independent Teachers' Association
FDC	Fixed-duration employment contract
IDEA	Independent Democratic Association of the Informal Economy
ILO	International Labour Organisation
MoLVT	Ministry of Labour and Vocational Training
MRS	Most Representative Status
TUL	Law on Trade Unions (2016)

1. Summary and Recommendations

This analysis of the Law on Trade Unions (2016) (TUL) and the Law on Amendments to Articles 3, 17, 20, 21, 27, 28, 29, 54, 55 and 59 of the Trade Union Law that was promulgated by Royal Code No. NS/RK/0516/007 dated 17 May 2016 was prepared by CENTRAL with technical support from ACILS between November 2019 to January 2020. The analysis considers requests for further amendments made by trade unions to the Ministry of Labour and Vocational Training (MoLVT) in May and August 2019. The analysis makes recommendations for further amendments to 25 articles in the TUL as well as to Chapter 15 of the law generally in order to bring the TUL into line with international labour standards and particularly C87 and C98. The recommendations for each Article are listed below. Please view the relevant section for each Article in this analysis for reasoning behind each of the recommendations.

1.1 Article 3 – Scope

- Article 3 should be further amended to extend coverage to all workers working in the Kingdom of Cambodia regardless of occupation, with the exception of the police and armed forces.

1.2 Article 5 – Rights to Establish and to Join a Union or Employer Association

- The first paragraph of Article 5 should be amended to read only: “All workers and employers have, without any distinction whatsoever, the rights to form a union or an employer association of their own choice.”

1.3 Article 10 – Structure of Unions, Employer Associations and Affiliation with Unions or Employer Associations

- Article 10 should be amended to make special provision for domestic workers and other informal economy workers either to form local unions with less than the minimum number of members required, or to join directly as members of a broader, sectoral union as suggested by the CEACR.
- Provision should be made to enable union formation by workers in enterprises employing less than the minimum number of workers required for formation of a local union.

1.4 Article 12 – Requirements for Applications for Registration

- Article 12 and Prakas 249 should be simplified to ensure registration procedures constitute a mere formality. To this effect, a number of requirements should be removed from the TUL such as submission of addresses for keeping of financial books and records, affidavits guaranteeing provision of bank account details within 45 days of receipt of registration, minutes of the election establishing the union and name lists of members.
- Additionally, Prakas 249 should be amended to remove requirements relating to submission of photos and personal information of leaders and declarations of literacy and lack of criminal convictions, as well as to formalise the removal of the requirement for leaders to submit information regarding their families.

1.5 Article 13 – Requirements for Statutes

- Article 13 should be amended to remove the following requirements:
 - The determination of safekeeping of ordinary financial records and regular publication of annual financial reports of the union or the employer association;
 - A set quorum by absolute majority (at least 50%+1) of the total members for a decision-making meeting on strike, amendment to the statutes and for a general assembly of the union;
 - A requirement that a secret ballot is to be cast by at least 50%+1 (fifty percent plus 1) of the total members participating in the decision-making meeting on strike;
 - An identified amount of union dues that each member shall pay, and for the mode of monthly payment for union contribution to be determined by a general assembly or an assembly of the union;
 - Qualifications of leaders, managers and those responsible for the administration at least in conformity with Article 20 and Article 21.
- Similar requirements included under Article 3 of Prakas 249/16 should also be removed.
- Prakas 249/16 should also be amended to make it explicitly clear that the statutes attached in Annex 2 to the Prakas are not a compulsory form for unions and employer associations to use.

1.6 Article 14 – Effect of Registration

- Article 14 should be amended in accordance with the request of trade unions by providing legal personality and the right to conduct activities and operate generally to unions with effect from the date of notification to the employer of an election to form the union.

1.7 Article 15 – Action on Application for Registration

- Article 15 and/or Prakas 249/16 should be amended to make it explicitly clear that the forms attached as annexes to the Prakas are not compulsory for usage by unions and employer associations.

1.8 Article 16 – Extended Time for Registration

- Paragraphs (d) and (e) of Article 16 should be removed.

1.9 Article 17 – Maintenance of Registration and Article 18 – Notification for Correction

- Article 17 should be amended in accordance with the unions' request by requiring only preparation of activity and financial reports in a form determined by the union for the purposes of keeping members updated of information.
- Article 18 should also be amended to remove the ability for the Minister of Labour and Vocational Training to file a lawsuit in court for the revocation of the union's registration upon failure to comply with Article 17, replacing the punishment with a fine for repeated failures to comply with the admonishments already provided for in the article.

1.10 Article 20 – Requirements for Leaders, Managers and Those Responsible for the Administrative Affairs of Unions in the Enterprise or Establishment

- Article 20 should be further amended to comply with the CEACR’s request by removing minimum age requirements and the need to make a declaration of a specific residential address for Cambodian nationals.
- Minimum age requirements and Khmer literacy requirements should also be removed for foreign nationals.

1.11 Article 21 – Requirements for Leaders, Managers and Those Responsible for the Administrative Affairs of Employer Associations

- Article 21 should be amended similarly to Article 20 to comply with the Observation of the CEACR by removing age and address requirements for Khmer nationals, as well as age requirements for foreign nationals.

1.12 Article 24 – Use of Finances and Assets in Accordance with the Statutes and the Law

- Amend Article 24 (or alternatively Article 4 – Definitions) to properly define the phrase “concerned party”. This definition should be framed such as to ensure that only genuinely concerned parties (e.g. members of the union or employer association concerned) are able to make audit requests under Article 24 and not parties who only have a mere tenuous link to usage of the finances and assets of the union or employer association.

1.13 Article 27 – Maintenance of Financial Records

- Article 27 should be amended similarly to Article 17 in accordance with the unions’ request by requiring unions and employer associations to maintain financial records in a form determined by the organisations themselves for the purposes of keeping members informed.

1.14 Article 28 – Dissolution of Unions or Employer Associations

- Article 28 should be further amended to comply with the CEACR’s Observation by removing paragraph two to ensure that unions’ dissolution is decided under the procedures laid down by its own statutes, or by a court ruling.
- The Government should also consider amending paragraph three of Article 28 (along with Article 29) to empower the AC by granting it the authority to dissolve trade unions instead of courts of first instance.

1.15 Article 29 – Grounds for Dissolution by Labour Court

- The language of paragraphs (a) and (b) should be amended to provide more clarity.
- Paragraph (a) should be amended to ensure that minor breaches do not result in the dissolution of trade unions and employer associations and that dissolution occurs only as a matter of last resort following serious breaches of the law.

- Paragraph (b) should be amended to further clarify what constitutes lack of independence, as well as the circumstances that must exist to conclude that a union is unable to restore its independence.
- Paragraph (b) should also enable dissolution in the event that the union is no longer independent from the government and is unable to restore its independence.
- The final paragraph of Article 29 should be amended to determine set time limits for rectification of the shortcomings in paragraphs (a) and (b).

1.16 Article 38 – Eligibility to Vote and Stand as a Candidate

- Amend Article 38 to remove the minimum age, literacy and employment seniority requirements currently prescribed.

1.17 Article 43 – Protection of Shop Stewards

- Amend Article 43 in accordance with the request of unions by empowering the AC to rule on appeals to labour inspector decisions in order to expedite and simplify resolution procedures for cases of termination of shop stewards.

1.18 Article 47 – Complaints Against the Results of the Shop Steward Election

- Article 47 should be amended to enable workers and unions to file complaints regarding shop steward elections, the right to stand for election and the fairness of the election to the Municipal and Provincial Departments of Labour and Vocational Training. In the event of non-conciliation, all these disputes should be forwarded to the AC for resolution.

1.19 Article 54 – Most Representative Status at the Level of the Enterprise or Establishment

- Article 54 should be amended to remove references to collective dispute resolution.
- Requirements to submit lists of members should be removed from Article 54, as well as Prakas 303/18.
- Paragraph (c) of Article 54 along with corresponding provisions in Prakas 303/18 should be amended to require secret ballots of all employees in an enterprise or establishment to be held for the purposes of determining most representative status.

1.20 Article 55 – Most Representative Status in One Profession or One Economic Activity or One Sector

- Article 55 should be amended to remove references to collective dispute resolution and requirements to submit lists of fee-paying members.

1.21 Article 56 – Request for Certification of Most Representative Status and Article 57 – Determination of Most Representative Status by the Minister in Charge of Labour

- Articles 56 and 57 should be amended to provide for determination of most representative status to be undertaken by an independent body such as the AC.

1.22 Article 59 – Rights and Roles of Minority Unions in the Enterprise or Establishment with a Most Representative Status Union

- Article 59 should be amended to enable minority unions in enterprises or establishments with an MRS union to represent their members in all collective and individual labour disputes.

1.23 Article 62 – Non-Discrimination on Account of Union Activities and Article 63 – Employers’ Actions Considered to be Unfair Practices

- Articles 62 and 63 should be further amended to provide greater protection to union members, leaders and activists employed on FDCs to respond to concerns raised by the CFA in cases regarding Cambodia on the long-term usage of such contracts to undermine and restrict trade unions.
- This could be achieved by shifting the burden of proof in case of contract non-renewal from the employee to the employer and requiring the employer to provide evidence showing that the workers’ contract was not renewed for reasons other than their union membership or participation.

1.24 Article 67 – Protection from Dismissal

- Article 67 should be amended to require stronger enforcement measures to be taken by the MoLVT following issuance of an order for reinstatement of a worker.
- The language of Article 67 should be amended to provide greater protections to workers employed on FDCs from contract non-renewal in retaliation for trade union activities.

1.25 Article 89 – Coercion into Participation in a Strike

- Article 89 should either be repealed or amended to refer only to illegal and/or violent strikes.

1.26 Chapter 15 – Administrative Measures and Penalties

- Fines under Chapter 15 of the TUL, specifically Article 79 (Acts of Illegal Obstruction of the Right to Establish a Union or an Employer Association), Article 82 (Breach of the Obligation to Organise Elections), Article 84 (Activities without Integrity and Good Faith), Article 87 (Illegal Obstruction of a Strike), Article 88 (Acts against Testimony Relating to Enforcement of the Labour Law), Article 93 (Illegal Lockout) and Article 94 (Responsibilities of Employer Associations) should be increased to provide sufficiently dissuasive sanctions against acts of anti-union discrimination.
- Provisions for punishment for violations of Articles 62 and 63 should also be introduced.

2. Introduction

- 2.1** The TUL was initially drafted in 2008 and discussed over an eight-year period before its promulgation on 17 May 2016. Prior the passage of the TUL, trade union regulations were largely prescribed by the Labour Law.¹
- 2.2** The TUL has long been controversial in Cambodia. The ILO cautiously criticised the law in the lead-up to its passage by the National Assembly, suggesting changes such as extension of the law's scope to informal economy workers and civil servants, along with removal of age, residency and literacy requirements for union leaders.² On the day of the vote in the National Assembly, approximately 100 protestors from trade unions clashed with security guards outside the National Assembly, with at least two union activists suffering injury.³ The law was ultimately passed by 67 votes to 31 in the National Assembly.⁴
- 2.3** At the time of its passage, the law was criticised by rights groups as being unconstitutional and contrary to international labour standards⁵. Trade unions, meanwhile, stated they felt the law gave government too much power over union activities and excluded portions of the workforce from labour law protections, whilst raising concerns over restrictions on the right to strike and overly bureaucratic processes of registration and maintenance of financial records.⁶ A number of stakeholders outside of rights groups and trade unions, including global apparel and footwear brands⁷ and other companies sourcing from Cambodia⁸, have also advocated to the Cambodian Government for changes to the TUL. In the years since its passage, the TUL has been cited as the primary contributing factor to reduced numbers of workers' strikes and cases heard by the AC (AC).⁹ For example, in 2015, the year before the TUL's passage, the AC issued arbitration award in 242 cases.¹⁰ This dropped to 219 cases in 2016¹¹ before plunging to just 50 in 2017 and 41 in 2018.¹² However, it should be noted that in 2019 these numbers have increased to over 100 cases.
- 2.4** In February 2019, the Government announced its intention to amend the TUL. On 22 April 2019, a Draft Law amending Articles 3, 17, 20, 21, 27, 28, 29, 54, 55 and 59 of the TUL was issued by the MoLVT. On 25 April 2019, a tripartite meeting was held between trade unions, government officials and employers' representatives to discuss the proposed amendments. Trade unions followed up on this by submitting two letters to the MoLVT in May and August 2019 requesting a number of changes to the proposed amended articles, along with amendments to Articles 10, 14, 43, 47 and 67.¹³ These requests appear not to have been accepted by the MoLVT.
- 2.5** In September 2019, the MoLVT sent a second draft of the law to the Council of Ministers. This bill was passed unchanged by the National Assembly on 26 November 2019 and subsequently passed unchanged by the Senate on 9 December 2019. On 19 December, the Constitutional Council of Cambodia reviewed and approved the draft law on amendments. These amendments have been criticised by both rights groups and trade unions as still falling short of international standards and failing to address problematic issues with the TUL.¹⁴ The amending law was promulgated on 3 January 2020. The European Commission, too, as part of its investigation regarding Cambodia's continued access to the Everything But Arms system, has called for the launching of a new round of negotiations with social partners to continue with the revision of the TUL.¹⁵

3 Article 3 New – Scope

- 3.1** The amending law removes the second paragraph of Article 3 and slightly modifies the wording of the first paragraph to provide that the TUL covers all establishments, enterprises and people who fall under the provisions of the Labour Law. This is a significant departure from what had been included in the draft amendments which extended coverage of the TUL to domestic workers. Additionally, the amendments have removed air and maritime transport workers from coverage by the law.
- 3.2** Article 36 of the Constitution of the Kingdom of Cambodia provides that “Khmer citizens of both sexes shall have the right to create trade unions and to participate as their members.” Article 31 of the Constitution further states that citizens are “equal before the law” and enjoy the same rights and liberties regardless of their situation.
- 3.3** Article 2 of C87 provides that workers, without distinction whatsoever, have the right to establish organisations of their own choosing. As a ratifying nation of this Convention, Cambodia is bound by its provisions. This is enforced by Article 31 of the Constitution of the Kingdom of Cambodia which states that Cambodia “recognises and respects human rights as enshrined in ... all the treaties and conventions related to human rights.” In 2007, the Constitutional Council of Cambodia confirmed that these treaties and conventions are directly applicable to domestic law.¹⁶
- 3.4** In 2017, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) urged the Cambodian Government to amend the TUL to ensure freedom of association rights under C87 for civil servants (including teachers), as well as the full and effective enjoyment of those rights by domestic workers and workers in the informal economy.¹⁷ The Committee on Freedom of Association (CFA), similarly, has stated that civil servants, teachers, judges, air and maritime transport workers and domestic workers should benefit from the right to freedom of association.¹⁸
- 3.5** Based on the provisions of both the Cambodian Constitution, as well as C87, Article 3 still requires further amendment. Article 3 as amended still excludes a number of occupation categories from the laws coverage, such as civil servants (including teachers, doctors and nurses), informal economy sector workers (e.g. market vendors, tuk-tuk drivers and hawkers), police, members of the armed forces, members of the judiciary, and now, air and maritime transport workers as well. With respect specifically to police and members of the armed forces, their exclusion does not of itself violate international labour standards by virtue of Article 9 of C87 which provides that “the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.”

Recommendation:

- 3.6** Article 3 of the TUL should be further amended to extend coverage to all workers working in the Kingdom of Cambodia regardless of occupation, with the exception of the police and armed forces so as to properly comply with both the Constitution of the Kingdom of Cambodia and Article 2 of C87.

4. Article 5 – Rights to Establish and to Join a Union or an Employer Association

- 4.1** Article 5 of the TUL states that workers and employers have, without any distinction whatsoever, the right to form a union or an employer association of their own choice for the exclusive purpose of study, research, training, promotion of interests, and protection of the rights and moral and material interests, both collectively and individually, of the persons covered by the union or employer association statutes.
- 4.2** The words “for the exclusive purpose of” in Article 5 restrict unions and employer associations from pursuing any other objectives other than those mentioned in the provision. Article 2 of C87 provides that “workers and employers, without distinction whatsoever, shall have the right to establish ... organisations of their own choosing without previous authorisation.” Article 3, meanwhile, further provides that “workers’ and employers’ organisations shall have the right to draw up their constitutions and rules ... to organise their administration and activities and to formulate their programmes.”
- 4.3** Article 5, by providing an exhaustive list of the exclusive purposes which unions and employer associations may pursue, is contrary to both Articles 2 and 3 of C87. Under C87, workers’ and employers’ organisations should have the right to include in their statutes the peaceful objectives that they consider necessary for the defence of the rights and interests of their members.¹⁹

Recommendation:

- 4.4** The first paragraph of Article 5 should be amended to read only: “All workers and employers have, without any distinction whatsoever, the rights to form a union or an employer association of their own choice.”

5. Article 10 – Structure of Unions, Employer Associations and Affiliation with Unions or Employer Associations

- 5.1** Article 10 of the TUL was left unchanged by the recent amendments. In two letters to the Ministry of Labour and Vocational Training (MoLVT), trade unions and associations requested that Article 10 also be amended, however, the requests contained those letters appear not to have been considered by the MoLVT.
- 5.2** Currently, Article 10 of the TUL specifies minimum membership requirements for three levels of union structures: local unions, union federations and union confederations. Under the enterprise model provided for by the TUL, a minimum of ten workers are required to form a local union in a given enterprise or establishment. Formation of a union federation requires at least seven registered local unions, whilst union confederations requires at least five registered union federations.

- 5.3** Trade unions, meanwhile, requested reform of the minimum membership requirements specified by Article 10. This would have reduced the minimum number of workers for formation of a local union to seven people. Unions also requested to reduce the number of registered local unions for formation of a union federation to five and the number of registered federations for formation of a union confederation to three.
- 5.4** In addition, unions requested for special provisions to be made for domestic workers. This included the freedom for domestic workers to join as a member of a union or union federation or any association of workers based on their free choice. Additionally, unions sought for domestic workers to be able to establish their own unions across multiple households.
- 5.5** Article 2 of C87 states that “workers and employers, without distinction whatsoever, shall have the right to ... join organisations of their own choosing without previous authorisation.” In 2017, the CEACR noted the difficulties faced by domestic workers and other informal economy workers in seeking to create or join unions as a result of the minimum membership requirements imposed by Article 10.²⁰ The CEACR additionally encouraged the government to “promote the full and effective enjoyment of these rights by domestic workers and workers in the informal economy” through the formation of unions by sector or profession.²¹ The CEACR’s suggestion takes a similar approach to the way in which associations of workers excluded from coverage by the TUL currently organise workers. For example, the Independent Democratic Association of the Informal Economy (IDEA) currently organises domestic and other informal economy workers such as tuk-tuk drivers, market vendors and hawkers directly as members of the association. Similarly, the Cambodian Independent Teachers’ Association (CITA) and the Cambodian Independent Civil Servants Association (CICA) organise teachers and civil servants directly as members of their respective associations.
- 5.6** Whilst the request for amendment of Article 10 submitted by trade unions to the MoLVT would serve to promote freedom of association by lowering minimum membership requirements as well as resolving issues faced by domestic workers in organising, the requests do not go far enough in promoting freedom of association for all workers. For example, workers in small businesses with less than ten (or seven, per the unions’ request) employees will effectively always be denied the right to unionise due to failure to meet minimum membership requirements. Additionally, the unions’ request does not include special provision for other informal economy workers or workers in enterprises employing less than the minimum number of workers required to form a local union (though the special provisions requested for domestic workers could also be extended to these other workers).

Recommendation:

- 5.7** Article 10 should be amended to make special provision for domestic workers and other informal economy workers either to form local unions with less than the minimum number of members required, or to join directly as members of a broader, sectoral union as suggested by the CEACR. Additionally, provisions should be made to enable formation of local unions by workers in enterprises employing less than the minimum number of workers required for formation of a local union.

6. Article 12 – Requirements for Applications for Registration

- 6.1** Article 12 was unchanged by the recent amendments to the TUL.
- 6.2** Under Article 12, unions are required to submit a number of documents in order to have their application for registration approved by the MoLVT. This includes submission of statutes, administrative regulations, lists of leaders, an affidavit guaranteeing that bank account details will be provided within 45 days following receipt of registration, as well as a list of founding members. Article 15 of the TUL provides that the procedures and application forms for registration of unions are to be defined by a Prakas of the MoLVT. Currently, these procedures and forms are determined by Prakas No. 249/16 on Registration of Trade Unions and Employer Associations. Under this Prakas, leaders must also submit photos of themselves and a curriculum vitae with personal and family information, including names, addresses, occupations and contact information of spouses and parents.²² Additionally, trade union leaders are required to submit personal statements affirming that they are literate in Khmer and have never been committed of a criminal offence.²³
- 6.3** Article 2 of C87 provides that workers have the right to establish trade unions “without previous authorisation.” In 2017, the direct contacts mission of the CEACR highlighted concerns regarding requirements for information which “may discourage or complicate the registration process” such as requests for detailed biographical information of leaders and their families or detailed lists of those participating in elections.²⁴ The MoLVT appears to have somewhat responded to these concerns, by removing requirements by leaders to provide information regarding family members through a directive issued in December 2018²⁵, however a formal amendment to Prakas 249 is yet to be made. During this mission, representatives of the Cambodian Government indicated that registration forms issued under Prakas 249 were not obligatory²⁶, however this seems to be at odds with the wording of provisions of both the TUL²⁷ and Prakas 249²⁸.
- 6.4** Following this mission, the CEACR requested the Cambodian Government take necessary measures to “ensure that the registration process is conducted swiftly in a simple, objective and transparent manner that does not entail any discretion or prior authorisation” and, through broad consultation with workers, to “remove requirements that, while not indispensable for the registration, may discourage or complicate the registration process, and to amend as needed and assess the application of the [TUL] and its regulations on registration in this respect.”²⁹
- 6.5** Statistics from the Cambodia Fundamental Freedoms Monitor indicate that registration has become easier for trade unions since the CEACR’s request. In 2017-18, only 45.8% of tracked trade unions were able to successfully register³⁰, with 81.08% reporting that they found registration forms difficult to complete.³¹ In 2018-19, this increased to 83%, with the majority of trade unions stating it was easier to complete registration forms.³² However, some of the registration requirements which the CEACR expressly noted such as detailed lists of those participating in union elections still remain.³³

- 6.6** The registration process and requirements under Article 12 of the TUL and Prakas 249 still amount to “previous authorisation” within the meaning of Article 2 of C87. Under the TUL, registration is to be submitted to and approved by the MoLVT. Additionally, Article 14 of the TUL considers non-registered trade unions to be illegal and imposes punishments on them for operating without approved registration under Article 80. As such, in order for unions to legally operate, they are required to receive prior authorisation from the authorities in the form of approved registration. Whilst submission of registration forms to the State does not of itself amount to prior authorisation if the registration is a mere formality³⁴, the processes outlined in the TUL and Prakas 249 exceed this. For example, despite an increase in the number of successful registrations in 2018-19, 54% of trade unions reported having to make multiple attempts before successfully receiving registration.³⁵

Recommendation:

- 6.7** Article 12 and Prakas 249 should be simplified to ensure registration procedures constitute a mere formality. To this effect, a number of requirements should be removed from the TUL such as submission of addresses for keeping of financial books and records³⁶, affidavits guaranteeing provision of bank account details within 45 days of receipt of registration³⁷, minutes of the election establishing the union³⁸ and name lists of members³⁹. Additionally, Prakas 249 should be amended to remove requirements relating to submission of photos and personal information of leaders and declarations of literacy and lack of criminal convictions⁴⁰, as well as to formalise the removal of the requirement for leaders to submit information regarding their families.

7. Article 13 – Requirements for Statutes

- 7.1** Article 13 was unchanged by the recent amendments to the TUL.
- 7.2** Article 13 sets out a number of requirements for trade union and employer association statutes. Under this Article, statutes must include provisions regarding the determination of safekeeping of ordinary financial records and regular publication of annual financial reports of the organisation, as well as qualifications for leaders at least in conformity with Articles 20 and 21 of the TUL. Additionally, statutes must determine set quorums of absolute majority (at least 50%+1) of total members for decision-making meetings on strikes as well as include requirements for secret ballots cast by at least 50%+1 of total members participating in such decision-making meetings. Further, under Article 13, statutes must specify the amount of union dues that members shall pay, as well as that the mode of monthly payment for the dues shall be determined by a general assembly of the union. Under Article 12, these statutes must also be submitted to the MoLVT as part of the registration process. Moreover, unions are also required to use the model statutes included as an Annex to Prakas 249/16.⁴¹
- 7.3** Article 3 of C87 states that workers’ and employers’ organisations “have the right to draw up their own constitutions and rules” and that the “public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.” International labour standards require national legislation to only lay down formal requirements respecting trade union constitutions, with provisions that go beyond such

formal requirements constituting “interference contrary to the right of workers’ organisations to draw up their constitutions and rules by virtue of Article 3 of [C87].”⁴² With respect to the statute requirements imposed by the TUL, the CEACR has stated that those requirements “detailing specific quorums or ballot for certain decisions go beyond formal requirements and the determination of these matters should be left to the decision of the trade union itself.”⁴³ To this effect, the CEACR requested the Cambodian Government to “consult with social partners with a view to removing these requirements which unduly restrict the right to draw up constitutions and rules without interference from the public authorities.”⁴⁴

7.4 However, other requirements specified by Article 13 also go beyond the “formal requirements” permitted by international labour standards. These include the determination of safekeeping of ordinary financial records and regular publication of annual financial reports, the identification of an amount of union dues that each member will pay and that the mode of monthly payment is to be determined by a general assembly of the union, as well as qualification requirements at least in conformity with Articles 20 and 21 of the TUL. These are all matters which should be decided by the union itself and which constitute an interference contrary to the right of workers’ organisations to draw up their own constitutions and rules in accordance with Article 3 of C87. In addition, the requirement that unions use the statutes attached in Annex 2 of Prakas 249/16 is also inconsistent with international labour standards.⁴⁵ As noted in Paragraph 6.3 above, though, the Government has indicated to the CEACR that these forms are not compulsory, however, the wording of both Article 15 of the TUL and Article 3 of Prakas 249/16 do not yet properly reflect this.

Recommendation:

7.5 Article 13 should be amended to remove the following requirements:

- The determination of safekeeping of ordinary financial records and regular publication of annual financial reports of the union or the employer association;
- A set quorum by absolute majority (at least 50%+1) of the total members for a decision-making meeting on strike, amendment to the statutes and for a general assembly of the union;
- A requirement that a secret ballot is to be cast by at least 50%+1 (fifty percent plus 1) of the total members participating in the decision-making meeting on strike;
- An identified amount of union dues that each member shall pay, and for the mode of monthly payment for union contribution to be determined by a general assembly or an assembly of the union;
- Qualifications of leaders, managers and those responsible for the administration at least in conformity with Article 20 and Article 21.

7.6 Similar requirements included under Article 3 of Prakas 249/16 should also be removed. In addition, Prakas 249/16 should be amended to make it explicitly clear that the statutes attached in Annex 2 to the Prakas are not a compulsory form for unions and employer associations to use.

8. Article 14 – Effect of Registration

- 8.1** Article 14 was left unchanged by the recent amendments to the TUL. In the two letters discussed in the Introduction and Paragraph 5.1 above which were sent to the MoLVT regarding amendments to the TUL, trade unions requested that Article 14 be amended, but this appears not to have been accepted by the Ministry.
- 8.2** Article 14 provides that only registered unions or employer associations have legal personality. In addition, under this Article, any unions or employer associations that have not registered or have their registration deferred or revoked and continue to operate are considered illegal. The punishment for unions who operate without registration is specified by Article 80 which imposes initial admonishments and subsequently a maximum fine of 5,000,000 Khmer Riel (approximately USD\$1,230) for failure to comply with the admonishment.
- 8.3** Unions, meanwhile, proposed a significant reform of Article 14. Their request would have enabled founding members of unions to conduct union activities (e.g. collective dispute resolution, filing complaints and special protection from termination) with effect from the date of notification to the employer about the election to form the union. Additionally, unions requested the removal of the third paragraph of Article 14 which forbids unions from running businesses except for those specified in point “g” of Article 59 of the TUL.
- 8.4** Article 2 of C87 provides workers the right to establish trade unions “without previous authorisation.” Article 14, by denying legal personality to unions which have not had their registration approved by the MoLVT and imposing punishments on those unregistered unions for conducting activities, effectively requires unions to receive previous authorisation from the authorities. Whilst registration processes of themselves are not contrary to international labour standards, these processes should be a mere formality that do not entail any discretion or prior authorisation.⁴⁶ Denial of legal personality for unions which have not had their registration approved by the MoLVT, along with punishments for those who operate without this approved registration, clearly amounts to a requirement of prior authorisation from the authorities contrary to Article 2 of C87.
- 8.5** In this sense, the unions’ request for amendment of Article 14 appears to strike a better balance, by still requiring unions to register for purely formal purposes but providing legal personality and the right to conduct activities from the date of notification to the employer. This approach is far more consistent with international labour standards, by ensuring that registration of trade unions is a mere formality and does not amount to prior authorisation as it does under the current provisions.

Recommendation:

- 8.6** Article 14 should be amended in accordance with the request of trade unions by providing legal personality and the right to conduct activities and operate generally to unions with effect from the date of notification to the employer of an election to form the union.

9. Article 15 – Action on Application for Registration

- 9.1** Article 15 was left unchanged by the recent amendments to the TUL.
- 9.2** Article 15 provides that the procedures and form of application for registration of trade unions or employer associations is to be determined by a Prakas of the MoLVT, currently Prakas 249/16. As discussed in Paragraph 6.3 above, the Government has indicated to the CEACR that the various forms attached as annexes to Prakas 249/16 are not compulsory, but merely examples. However, the wording of both Article 15 and Prakas 249/16 give the impression that the attached forms are compulsory for usage.

Recommendation:

- 9.3** Article 15 and/or Prakas 249/16 should be amended to make it explicitly clear that the forms attached as annexes to the Prakas are not compulsory for usage by unions and employer associations.

10. Article 16 – Extended Time for Registration

- 10.1** Article 16 was left unchanged by the recent amendments to the TUL.
- 10.2** Article 16 enables extension of the 30-day period for decision on a union or employer's association registration specified by Article 12 in a number of circumstances. Under Article 16(d), this 30-day period may be extended if the statutes of the union or the employer association do not fulfill the conditions as required by the TUL or its implementing regulations. Additionally, under Article 16(e), the period may be extended if the leaders of the union or employer association do not fulfil the conditions stipulated in Articles 20 and 21 of the TUL.
- 10.3** Article 3 of C87 states that workers and employers' organisations have the right to draw up their own constitutions and rules and forbids the public authorities from "any interference which would restrict this right or impede the lawful exercise thereof." In previous cases, the CFA has stated that in order to be compliant with international labour standards, national legislation on unions' constitutions should only lay down formal requirements and not be subject to prior approval at the discretion of the public authorities.⁴⁷ In this sense, Article 16(d), by enabling the MoLVT to extend the deadline for provision of registration, has the effect of making unions' statutes subject to prior approval by the Ministry contrary to international standards.
- 10.4** Article 3 of C87 also provides that workers' and employers' organisation have the right to "elect their representatives in full freedom." The CFA has previously found that provisions which determine the eligibility of leaders based on matters such as age (as exists in Articles 20 and 21 of the TUL, and previously under Article 286 of the Labour Law (1997)) are inconsistent with international labour standards.⁴⁸

Recommendation:

- 10.5** Paragraphs (d) and (e) of Article 16 should be removed.
- 11.** Article 17 New – Maintenance of Registration and Article 18 – Notification for Correction
- 11.1** Article 17 as amended requires preparation of annual activity reports and annual financial reports audited by an “independent auditing institution which is legally registered in the Kingdom of Cambodia” in the event of a request from a very low percentage of members (10% for local unions and 5% for union federations/confederations) or from an external donor in order for the union to maintain its registration. Failure to comply with the requirements of Article 17 renders the union or employer association liable to revocation of registration upon the filing of a lawsuit by the MoLVT to the Labour Court under Article 18 of the TUL. The amended Article 17 also maintains requirements for unions to provide details of bank accounts within 45 days of receipt of registration, as well as to update all information (with the exception of changes in membership) within 15 working days.
- 11.2** Unions, meanwhile, requested that the requirements in Article 17 be altered to merely require preparation of annual and activity reports in a form determined by the union itself for the purpose of keeping members informed of relevant information. Unions requested that all other conditions included in Article 17 be removed.
- 11.3** In previous cases, the CFA has stated that the control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports and that the discretionary right of the authorities to carry out inspections and request information at any time entails a danger of interference in the internal administration of trade unions.⁴⁹ It has further said that provisions which require unions to forward documents annually to the Government with failure to do so within a specified time resulting in loss of registration is inconsistent with the right of unions to draw up their own Constitutions and rules and to organise their administration and activities without interference by the public authorities.⁵⁰
- 11.4** Whilst Article 17 as amended makes some small steps in the right direction by removing requirements to submit copies of annual financial and activity reports to the MoLVT, it still falls short of meeting international labour standards. The preparation and presentation of annual activity and financial reports, whilst beneficial to members in the form of increased transparency, is ultimately something which should be determined internally by those members in accordance with their freedom to organise their administration under C87. This is doubly so for the requirement that financial reports be audited by an independent auditing institution registered in the Kingdom of Cambodia. The institution used by the union to audit its financial reports similarly is a matter which should be determined by the union itself. As for donor requests, contracts between donors and organisations usually include clauses requiring that the organisation submit to financial audits and/or submit prior financial audit reports. It is therefore unnecessary to make additional provision for this under the TUL.

- 11.5** Moreover, trade unions are independent institutions collectively created by workers and are not state institutions nor organisations which fall underneath the auspices of the MoLVT with obligations to provide bank account details or financial, income, expense and activity reports to the authorities. With this in mind, the potential for revocation of registration under Article 18 upon failure to provide such information is an extreme overreach by the public authorities and inconsistent with the freedom of trade unions to organise their own administration.

Recommendation:

- 11.6** Article 17 should be amended in accordance with the unions' request by requiring only preparation of activity and financial reports in a form determined by the union for the purposes of keeping members updated of information. Article 18 should also be amended to remove the ability for the Minister of Labour and Vocational Training to file a lawsuit in court for the revocation of the union's registration upon failure to comply with Article 17, replacing the punishment with a fine for repeated failures to comply with the admonishments already provided for in the article.

12. Article 20 New – Requirements for Leaders, Managers and Those Responsible for the Administrative Affairs of Unions in the Enterprise or Establishment

- 12.1** The amendments to Article 20 remove several of the requirements for trade union leaders included in the original version of the TUL. Khmer literacy requirements have been removed for Cambodian nationals, whilst the making of a declaration that the individual has never been convicted of a criminal offence has been removed for both Cambodian and foreign nationals. Consequently, Cambodian nationals are still required to be at least 18 years age (or to have been emancipated under the provisions of the Civil Code) and to make a declaration of a specific residential address.
- 12.2** Foreign nationals, additionally, must be literate in Khmer, have been working in the Kingdom of Cambodia for a minimum of two years and have the right to reside and have a permanent residence in the Kingdom of Cambodia in accordance with the Law on Immigration. The ability for the MoLVT to ask for further information on individuals if necessary has also been removed.
- 12.3** The age requirements imposed on trade union leaders have been long criticised, with the CFA previously ruling that the precursor to Article 20 of the TUL – Article 286 of the Labour Law – was inconsistent with international standards by placing a minimum age requirement for trade union leaders.⁵¹ More recently, the CEACR has directly requested the Cambodian Government to remove minimum age and literacy requirements from the TUL.⁵² In other cases, the CFA has also ruled that requiring trade union leaders to make declarations of a specific residential address is contrary to C87.⁵³

Recommendation:

12.4 Article 20 should be further amended to comply with the CEACR’s request by removing minimum age requirements and the need to make a declaration of a specific residential address for Cambodian nationals. Minimum age requirements should also be removed for foreign nationals as well as Khmer literacy requirements.

13. Article 21 New – Requirements for Leaders, Managers and Those Responsible for the Administrative Affairs of Employer Associations

13.1 The recent TUL amendments make the same changes to minimum qualifications for leaders, managers and persons responsible for the administrative affairs of employer associations as those for trade unions in Article 20, with the exception that Khmer literacy is not a requirement for foreign nationals under the draft Article 21.

13.2 The same principles apply here as to Article 20 above with respect to minimum age and address requirements.

Recommendation:

13.3 Article 21 should be amended similarly to Article 20 to comply with the Observation of the CEACR by removing age and address requirements for Khmer nationals, as well as age requirements for foreign nationals.

14. Article 24 – Use of Finances and Assets in Accordance with the Statutes and the Law

14.1 Article 24 was left unchanged by the recent amendments. Trade unions also did not make any specific request for amendment of Article 24.

14.2 Article 24 states that deposits and transfers of union or employer association finances and assets to third parties, investment of funds and other legitimate business transactions may only be made in accordance with the provisions stipulated by the TUL or the statutes of the union or employer association. Additionally, in the event of any suspected irregularities in the usage or management of finances and assets, a “concerned party” has the right to request an audit by an independent auditor legally registered in the Kingdom of Cambodia.

14.3 The phrase “concerned party” (similar to that in Article 29 below) is extremely vague and not defined by the TUL. There is no guidance in the law as to the extent to which a party must be ‘concerned’ to be considered a concerned party. For example, is the employer of an enterprise always a concerned party when it comes to the usage of finance and assets by a local union established in the enterprise? Are union and employer association usages of finances and assets related to the labour sector⁵⁴ in such a manner as to make the MoLVT always a concerned party?

- 14.4** Under the amended Articles 17 and 27, a certain percentage of members (10% for local unions and employer associations and 5% for employer federations) are required in order to make a request for auditing of the organisation’s financial reports and statements. However, no such minimum requirement is included in Article 24. As such, it seems possible that a single member could make an effective request for an audit under Article 24, despite not meeting the minimum membership requirements under Articles 17 and 27.

Recommendation:

- 14.5** Amend Article 24 (or alternatively Article 4 – Definitions) to properly define the phrase “concerned party”. This definition should be framed such as to ensure that only genuinely concerned parties (e.g. members of the union or employer association concerned) are able to make audit requests under Article 24 and not parties who only have a mere tenuous link to usage of the finances and assets of the union or employer association.

15. Article 27 New – Maintenance of Financial Records

- 15.1** Article 27 as amended requires unions to keep financial records in conformity with a format determined by a Prakas of the MoLVT, whilst adding a requirement that these records be audited in case of a request from a low percentage of members (10% for local unions and 5% for union federations/confederations) or a donor. Unions or employer associations which fail to abide by this provision are subjected to admonishments and fines under Article 78.
- 15.2** Unions, meanwhile, requested amendments to this article similar to this requested for Article 17, requiring the preparation of financial records in a format determined by the union for the purposes of keeping members informed.
- 15.3** As with Article 17 as discussed in Paragraph 11.4 above, financial records, and particularly the form in which those records are to be maintained, are matters which should be determined internally by the union itself in accordance with the freedom of unions to organise their own administration under Article 3 of C87.⁵⁵ Similarly, requests from donors for financial audits is a matter best dealt with through contracts signed between the parties themselves.

Recommendation:

- 15.4** Article 27 should be amended similarly to Article 17 in accordance with the unions’ request by requiring unions and employer associations to maintain financial records in a form determined by the organisations themselves for the purposes of keeping members informed.

16. Article 28 New – Dissolution of Unions or Employer Associations

- 16.1** The amended Article 28 alters the second paragraph, providing that a union is automatically dissolved in the event of a complete closure of the enterprise or establishment, and when salaries and other benefits have been fully paid to the workers. It also changes the wording in

paragraph three from “Labour Court” to “Court” (however, Article 29 maintains the words “Labour Court”).

- 16.2** The CEACR has previously requested the Government to remove paragraph two of Article 28, noting that unions may have legitimate interests in continuing to operate after the dissolution of the enterprise (for example, to defend any claims of its members).⁵⁶
- 16.3** The proposed amendment to paragraph 2 of Article 28 does not satisfactorily respond to the CEACR’s Observation. As noted by the CEACR, unions may still have legitimate interests in pursuing or defending the claims of its members following the closure of an enterprise outside of those relating to full payment of salary and benefits. For example, in certain circumstances, a union may also wish to file a complaint against the company for improper deductions of union dues (e.g. deducting members’ dues and paying them to another union without authorisation). However, under paragraph 2 of Article 28, in the event that full payment of salary and benefits had occurred, the union would be prevented from pursuing or defending any other such claims.
- 16.4** Unions, additionally, had requested the deletion of paragraph 3 of Article 28 which enables dissolution by the Court under Article 29. No specific reason was provided for this request in writing; however, one reason could be associated with concerns over perceived shortcomings of first instance court officials in labour matters.⁵⁷ Whilst Article 29 maintains the words “Labour Court”, following Prime Minister Hun Sen’s announcement that labour courts are unnecessary in Cambodia⁵⁸ it seems that these cases will continue to be heard by the first instance courts. If first instance court officials do indeed lack capacity in handling labour matters, then the power to dissolve unions under Articles 28 and 29 of the TUL could be extended to the AC. Strengthening and empowering the AC is something which the Cambodian Government has previously indicated to the CEACR that it is committed on doing.⁵⁹

Recommendation:

- 16.5** Article 28 should be further amended to comply with the CEACR’s Observation by removing paragraph two to ensure that unions’ dissolution is decided only under the procedures laid down by its own statutes, or by a court ruling. The Government should also consider amending paragraph three of Article 28 (along with Article 29) to empower the AC by granting it the authority to dissolve trade unions and not a court of first instance.

17. Article 29 New – Grounds for Dissolution by Labour Court

- 17.1** The amendments to Article 29 remove paragraph (c) from the Article, following a request to do so from the CEACR.⁶⁰ However, the proposed amendments still allow a “concerned party” or 50% of total members of the union or employer association to file a complaint to the Labour Court for dissolution of the organisation. The phrase “concerned party” is not defined. With the removal of paragraph (c), the Labour Court is now only empowered to dissolve a union or employer association if its establishment or activities contravene the law or the objectives of

the organisation as stated in its statutes. Additionally, unions may be dissolved if they are no longer independent from the employer and are unable to restore their independence.

- 17.2** As with Article 24 above, the phrase “concerned party” here is undefined and extremely vague. For example, is an employer a “concerned party” for the purposes of applying to the Labour Court for dissolution of a local trade union in the enterprise? Are the MoLVT or other trade unions in the enterprise similarly parties concerned? As discussed in Paragraph 14.3 above, the TUL gives no guidance on what qualifies a party as a “concerned party” for the purposes of filing a complaint, leading to a situation in which an extremely broad range of groups could be interpreted as being a concerned party.
- 17.3** Unions had requested that Article 29 be amended to increase the 50% threshold for union members to file a lawsuit for dissolution of the union to two thirds of total members. Additionally, unions requested the deletion of paragraph (b), which enables dissolution of a union in the event that the union is no longer independent and is unable to restore its independence. This request was based on the vague language in which paragraph (b) is framed and which could therefore be used as a pretext for dissolution of unions.
- 17.4** In fact, the language of both paragraphs (a) and (b) is vague. For example, paragraph (a) enables dissolution of a union or employer association if its activities are contrary to the law or the organisation’s objectives as stated in its statutes. There is no specification of the number of violations under paragraph (a) required to trigger dissolution, suggesting that even a single minor breach could result in the dissolution of a union or employer association. In previous cases, the CFA has stated that the dissolution of trade union organisations is a measure which should only occur in extremely serious cases.⁶¹ However, based on the language of paragraph (a), even a single minor breach could result in dissolution of a union or employer association. Moreover, whilst the final paragraph of Article 29 empowers the Labour Court to determine a period of time for which a union or employer association is required to rectify the shortcomings stipulated in paragraph (a), no clear time limits are set out in the legislation. This could lead to instances of discriminatory treatment, with some unions or employer associations granted longer times to rectify shortcomings compared to others.
- 17.5** Paragraph (b), as unions noted, is also framed in vague language. Whilst independence of unions from employers is required by Article 2 of C98⁶², the wording of paragraph (b) gives no explanation as to what constitutes lack of independence from an employer nor as to what circumstances would need to exist in order to conclude that the union was unable to restore its independence. For example, if a local union president was to regularly accept bribes from the employer, this would likely indicate that the union was no longer independent. However, no guidance is provided by Article 29 as to how the court would then determine whether or not the union is able to restore its independence.
- 17.6** It should also be noted that paragraph (b) only refers to independence from employers but makes no mention of political parties. Whilst provisions imposing a general prohibition on political activities by trade unions for the promotion of their specific objectives are contrary to the principles of freedom of association⁶³, governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established with a political party.⁶⁴ To this effect, whilst relationships between trade

unions and political parties should not be prohibited, paragraph (b) should also consider trade unions' independence from the government.

Recommendation:

17.7 The language of paragraphs (a) and (b) should be amended to provide more clarity. Specifically, paragraph (a) should be amended to ensure that minor breaches do not result in the dissolution of trade unions and employer associations and that dissolution occurs only as a matter of last resort following serious breaches of the law. Paragraph (b), meanwhile, should be amended to further clarify what constitutes lack of independence, as well as the circumstances that must exist to conclude that a union is unable to restore its independence. Additionally, paragraph (b) should enable dissolution in the event that the union is no longer independent from the government and is unable to restore its independence. The final paragraph of Article 29 should also be amended to determine set time limits for rectification of the shortcomings in paragraphs (a) and (b).

18. Article 38 – Eligibility to Vote and to Stand as a Candidate

18.1 Article 38 was not changed as part of the recent amendments, nor did unions specifically request its amendment.

18.2 Article 38 sets out minimum eligibility requirements to vote and to stand as a candidate in enterprise shop steward elections. The right to vote in these elections is extended to all workers who are at least eighteen years of age and who have worked in the enterprise or establishment for at least three months and who have not otherwise forfeited their rights to vote. Meanwhile, in order to stand as a candidate in the election, workers must be at least 18 years of age, have worked in the enterprise or establishment for at least three months and have attained an educational level with the minimal ability to read and write Khmer.

18.3 The CEACR has previously directly requested the Cambodian Government to amend Article 38 to remove the minimum age and literacy requirements currently prescribed by the provision.⁶⁵ The principles discussed in Paragraph 12.3 above with respect to minimum qualification requirements under Article 20 and 21 of the TUL also apply to the minimum age and literacy requirements contained in Article 38.

18.4 The minimum employment seniority requirement specified by Article 38 is also contrary to international labour standards. Article 3 of C87 recognises the right of employees to elect their representatives in full freedom. The CFA has previously stated that minimum employment seniority requirements for trade union leaders are contrary to the rights provided for by Article 3 of C87.⁶⁶ As shop stewards are also employee representatives in the factory, preventing workers who have worked for less than three months in an enterprise from voting or standing as a candidate in shop steward elections constitutes a violation of their right to elect representatives in full freedom.

Recommendation:

18.5 Amend Article 38 to remove the minimum age, literacy and employment seniority requirements currently prescribed.

19. Article 43 – Protection of Shop Stewards

19.1 Article 43 was not changed by the recent amendments; however, unions separately had requested for the provision to be amended.

19.2 Currently, Article 43 provides that dismissal of a shop steward can only be carried out with authorisation from a labour inspector. This protection also applies to former shop stewards for three months following the end of their term and to unelected candidates for three months after proclamation of the results of the ballot. The labour inspector has a month to render a decision following receipt of a complaint from an employer seeking authorisation to terminate a shop steward. Upon receipt of that decision, the employer, worker or union have a period of two months to appeal to the Minister in charge of Labour, who in turn has two months to render a decision following receipt of the case.

19.3 Unions requested a number of changes to Article 43. In the event that the labour inspector orders reinstatement, unions requested that the employer be required to immediately reinstate the worker with full backpay and that labour inspectors implement these orders in person. Appeals of decisions of the labour inspector would be forwarded to the AC by the MoLVT within 48 hours of receipt of the case. In the event that the AC found in favour of the worker, the Minister of Labour and Vocational Training would be required to order the worker's reinstatement with full backpay.

19.4 The unions' proposal would serve to significantly expedite procedures under Article 43. Under the current procedures, there can be a period of up to five months between the initial submission of a complaint by an employer and the final rendering of a decision by the Minister. In comparison, the AC is required to render a decision within fifteen days of receipt of a case.⁶⁷ Expediting resolution procedures under Article 43 would provide significant benefits to the affected workers who are often left without any income as they await the outcomes of their cases. The Cambodian Government has previously indicated to the CEACR that it intended to enable the AC to rule on individual disputes such as these.⁶⁸ The Government has also indicated its intention to amend the Labour Law to enable the AC to rule on individual disputes.⁶⁹ Empowering the AC in this way would be consistent with the principle that the Government is responsible for ensuring that national procedures should be prompt, impartial and considered as such by the parties concerned.⁷⁰

19.5 The CFA has in previous cases criticised delays in resolution of wrongful termination cases in Cambodia⁷¹ and has repeatedly urged the Government to "take steps without delay to adopt an appropriate legislative framework to ensure that workers enjoy effective protection against acts of anti-union discrimination, including through the provision of sufficiently dissuasive sanctions and rapid, final and binding determinations."⁷²

19.6 Empowering the AC to hear appeals to labour inspector decisions would also serve to significantly simplify the labour dispute resolution process. The current procedures can result in instances where the termination of a shop steward is effectively complained of twice: once to the Minister of Labour and Vocational Training and once to the AC. For example, on 25 November 2018, two shop stewards were terminated at Monopia (Cambodia) Co., Ltd. after the factory received authorisation to dismiss the two workers from the Kampong Speu Department of Labour and Vocational Training on 19 November. The workers had originally complained to the Kampong Speu Department of Labour and Vocational Training on 14 November after the employer suspended the two workers' employment pending the labour inspector's decision. However, the workers had also appealed the labour inspector's decision to the Minister of Labour and Vocational Training on 22 November. Consequently, the AC, on 17 December, ruled that it was unable to consider the workers' demand for reinstatement as the point of dispute was still under the procedures of the Minister of Labour and Vocational Training as the maximum period of two months for the Minister to render a decision had not yet elapsed.⁷³ The Minister's decision was not issued until 3 January 2020.

Recommendation:

19.7 The Government should amend Article 43 in accordance with the request of unions by empowering the AC to rule on appeals to labour inspector decisions in order to expedite and simplify resolution procedures for cases of termination of shop stewards.

20. Article 47 – Complaints Against the Results of the Shop Steward Election

20.1 Article 47 was not changed by the recent amendments; however, unions had requested the article to be amended.

20.2 Article 47 requires complaints regarding shop steward elections, the right to stand for election and the fairness of the election of shop stewards to be referred to the Labour Court to settle. Unions, meanwhile, had requested that Article 47 be amended to provide that all complaints relating to the election, the right to stand for election and the unfairness of the election of shop stewards be submitted to the Minister in charge of Labour to resolve within 15 calendar days.

20.3 The unions' proposal would serve to significantly expedite resolution procedures under Article 47. Currently, no time limits for rendering a decision are specified under Article 47 following complaint to the Labour Courts. This has the effect that workers often have to look outside the domestic processes in order to resolve complaints relating to shop steward elections. For example, on 22 April 2019, management at Tien Sung Garment (Cambodia) Co., Ltd. organised shop steward elections without providing proper notice requirements to workers⁷⁴ and without properly communicating the nomination process to workers. Following this, the local trade union affiliate of the Cambodian Alliance of Trade Unions (CATU), instead of following procedures under Article 47 and complaining to court, filed complaints with purchasing brand New Balance who intervened to have the results overturned and a new election held within one week of the complaint having been made.

- 20.4** Workers and unions should be able to receive justice quickly with respect to complaints regarding shop steward elections, the right to stand for election and the fairness of the elections of shop stewards. This justice should primarily be able to be obtained through domestic resolution mechanisms. To this effect, workers and unions should be able to file complaints regarding shop steward elections, the right to stand for election and the fairness of the election to the respective Departments of Labour and Vocational Training. These disputes should also be classified as collective labour disputes so that in the event of non-conciliation by departmental officials, the complaint can be forwarded to the AC. Enabling the AC to rule on complaints under Article 47 would also be consistent with the principle discussed in Paragraph 19.4 above that national procedures should be prompt and impartial and considered as such by the parties.

Recommendation:

- 20.5** Article 47 should be amended to enable workers and unions to file complaints regarding shop steward elections, the right to stand for election and the fairness of the election to the Municipal and Provincial Departments of Labour and Vocational Training. In the event of non-conciliation, all these disputes should be forwarded to the AC for resolution.

21. Article 54 New – Most Representative Status at the Level of the Enterprise or Establishment

- 21.1** Article 54 provides for most representative status of trade unions in an enterprise or establishment. As part of the latest amendments, paragraph (c) of Article 54 was altered, changing the requirement for obtaining most representative status (MRS) from having an accurate list of the most members with an official membership identification card to having a list with the most due-paying members. The amended Article 54 still provides exclusive rights in collective dispute resolution to the MRS union.
- 21.2** Unions had requested that references to collective dispute resolution be removed from this Article. Provision of exclusive rights in collective dispute resolution to MRS unions is a clear violation of international standards.⁷⁵ The CEACR has also previously directly requested the Cambodian Government to amend the TUL “to ensure that organizations that do not have most representative status are not deprived of the essential means to defend the occupational interests of their members, such as making representations on their behalf and representing them in grievances.”⁷⁶
- 21.3** Under the amended paragraph (c), unions applying for MRS must have a list with the most due-paying members. These lists must be submitted to the relevant Department of Labour and Vocational Training under the provisions of Prakas 303/18.⁷⁷ In previous cases, the CFA has found that requirements for submission of lists of members for the purposes of determining most representative status may be contrary to international standards.⁷⁸ Submission of these lists can make acts of union discrimination easier and open up ordinary members to threats and intimidation to force them to resign from trade unions in order to undermine most representative status applications.

21.4 In previous cases, the CFA has ruled that determination of MRS should be determined through a majority vote of employees.⁷⁹ Whilst Article 54 of the TUL (along with corresponding provisions in Prakas 303/18) provide for elections to determine most representative status, there is also provision made for determination of most representative status without recourse to an election. For example, if the union has more than 30% of more of the total workers in a given enterprise or establishment where there is only one union, then no election will be held. However, a secret ballot should still be held in order to determine whether that union is truly representative of the majority of employees in that enterprise or establishment.

Recommendation:

21.5 Article 54 should be amended to remove references to collective dispute resolution. Additionally, requirements to submit lists of members should be removed from Article 54, as well as Prakas 303/18. Lastly, paragraph (c) of Article 54 along with corresponding provisions in Prakas 303/18 should be amended to require secret ballots of all employees in an enterprise or establishment to be held for the purposes of determining most representative status.

22. Article 55 New – Most Representative Status in One Profession or One Economic Activity or One Sector

22.1 The amendments change the criteria for obtaining MRS in an occupation, economic activity or sector. The applicant is still required to comply with paragraphs (a) and (b) of Article 54, and in addition to have a list of fee-paying members that are 30% or more of the total number of workers in the occupation, economic activity or sector. The proposed Article 55 still grants the exclusive right to resolve collective labour disputes to the “employer or employer association of that particular profession or economic activity or sector.”

22.2 Unions had requested, similar to Article 54, to remove references to collective labour dispute resolution in Article 55. The principles discussed in Article 54 regarding collective labour dispute, as well as submission of lists of fee-paying members, also apply to Article 55.

Recommendation:

22.3 Article 55 should be amended to remove references to collective dispute resolution and requirements to submit lists of fee-paying members.

23. Article 56 – Request for Certification of Most Representative Status and Article 57 – Determination of Most Representative Status by the Minister in Charge of Labour

23.1 Articles 56 and 57 were not altered by the amendments, nor were they specifically requested to be amended by trade unions.

- 23.2** Article 56 requires unions to request certification of most representative status from the MoLVT pursuant to the implementing procedures and formalities set out in a Prakas of the Minister in charge of Labour (currently Prakas 303/18). Article 57 requires the MoLVT to render an official decision on the recognition of MRS within thirty days of receipt of the case.
- 23.3** In previous cases, the CFA has stated that the determination of MRS should be done by an independent body⁸⁰ and determined through a majority vote of employees with organisations which fail to secure a sufficiently large number of votes guaranteed the right to ask for a new election after a stipulated period.⁸¹ Whilst procedures for secret ballots to determine most representative status⁸² as well as rights of minority unions to challenge a union's MRS after a stipulated period⁸³ currently exist, Articles 56 and 57 still provide that MRS is determined by the MoLVT and not an independent body. The AC, as an internationally-recognised independent and impartial body is one such body which could be empowered to perform this task.

Recommendation:

- 23.4** Articles 56 and 57 should be amended to provide for determination of most representative status to be undertaken by an independent body such as the AC.

24. Article 59 New – Rights and Roles of Minority Unions in the Enterprise or Establishment with a Most Representative Status Union

- 24.1** Article 59 was altered by the amendments through the insertion of a paragraph (i) which enables minority unions in enterprises where there is an MRS union to represent their own members in collective labour disputes that do not stem from a collective bargaining agreement. Unions which violate Article 59 are subject to admonishments and a maximum fine of five million Khmer Riel (approximately USD\$1230) under Article 86 of the TUL.
- 24.2** Unions requested that Article 59 be amended not through the insertion of paragraph (i), but rather through an amendment to the existing paragraph (c) to enable minority unions to represent their own members in individual labour disputes or collective labour disputes and other rights determined by law.
- 24.3** As discussed in Paragraph 21.2 above under Article 54, preventing minority unions from representing their members in disputes is contrary to international standards⁸⁴ and the CEACR has previously directly requested the Cambodian Government to take measures to ensure that minority unions are not deprived of the ability to make representations on their behalf and to represent them in grievances (for example, before the AC).⁸⁵

Recommendation:

- 24.4** Article 59 should be amended to enable minority unions in enterprises or establishments with an MRS union to represent their members in all collective and individual labour disputes.

25. Article 62 – Non-Discrimination on Account of Union Activities and Article 63 – Employers’ Actions Considered to be Unfair Practices

- 25.1** Articles 62 and 63 were not changed by the recent amendments, nor did trade unions specifically request their amendment.
- 25.2** Article 62 states that employers are not to discriminate against workers on the basis of their involvement in holding office or leadership in a union or for participation in union activities when making decisions on a number of matters such as contract termination, including dismissal and non-renewal of an employment contract.
- 25.3** Article 63 lists a number of actions considered to be unfair labour practices on the part of the employer. Amongst these is paragraph (b) which provides that it is an unfair labour practice by an employer to impose a condition of employment or employment renewal that requires a worker not to join a union or to withdraw from membership of the union to which he or she belongs.
- 25.4** The CFA has in previous cases involving Cambodia raised concerns regarding usage of fixed-duration employment contracts (FDCs) for anti-union purposes and the way in which long-term usage of FDCs can be a barrier to free exercise of trade union rights.⁸⁶ The CFA has also, in cases regarding Cambodia, reiterated the fundamental principle of freedom of association that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment.⁸⁷ However, the CFA has also recognised the difficulties that workers have in proving cases of anti-union discrimination in Cambodia and have suggested that this could be mitigated by requiring employers to prove that the decision to dismiss a worker has no connection with the worker’s union activities.⁸⁸ This is particularly so for workers employed on FDCs who are provided very few protections by the law against non-renewal of their employment contracts and on whom the legal burden of proof is effectively placed to prove that non-renewal came as a result of union discrimination.
- 25.5** Despite the CEACR’s recognition that Article 63 of the TUL explicitly refers to non-renewal of employment on union grounds as being an unfair labour practice by an employer⁸⁹, it remains extremely difficult for workers employed on FDCs to fully and freely exercise their freedom of association. This is particularly so for those employed on FDCs who dare to stand as leaders of independent trade unions. For example, on 15 January 2019, the local affiliate of CATU at G. W. Greenways Textile Co., Ltd. submitted a notification letter to management at the factory informing them of the date and location of an election to form a trade union in the factory.⁹⁰ On 22 January 2019, the results of that election were sent to the factory.⁹¹ On 18 February 2019, seven of the eleven candidates named in the notification letter sent to factory management were informed that their contracts would not be renewed. These seven included the President, Vice-President, Secretary and Treasurer of the local union. Whilst ordinarily these workers would be protected from dismissal without approval by a labour inspector under Article 67 of the TUL, because they were legally employed on FDCs (that is, they had worked in the factory for less than two years), the Department of Labour Disputes determined that their cases were ones of contract non-renewal and not dismissal.⁹² Therefore, the Department concluded, Article 67 of the TUL did not apply to their cases.

Recommendation:

- 25.6** Articles 62 and 63 should be further amended to provide greater protection to union members, leaders and activists employed on FDCs to respond concerns raised by the CFA in cases regarding Cambodia on the long-term usage of such contracts to undermine and restrict trade unions. This could be achieved by shifting the burden of proof in case of contract non-renewal from the employee to the employer and requiring the employer to provide evidence showing that the workers' contract was not renewed for reasons other than their union membership or participation.

26. Article 67 – Protection from Dismissal

- 26.1** Article 67 was not changed by the recent amendments.
- 26.2** Unions had requested the addition of a new paragraph to Article 67 which would require employers to immediately reinstate workers after receiving an order from a labour inspector. In the event of an employer's failure to comply, unions requested that the MoLVT be required to submit a complaint to court for enforcement.
- 26.3** Lack of enforcement actions by the MoLVT following issuance of orders by labour inspectors remains an issue. In some cases, companies, seemingly safe in the knowledge that no action will be taken to enforce these orders, often simply refuse to follow them. For example, on 11 January 2019, the Chief of the Department of Labour Disputes ordered Hota Footwear Co., Ltd. to reinstate five workers illegally terminated by the factory after formation of a local union.⁹³ However, these workers were never reinstated by the company, suggesting that no action was taken by the MoLVT or any subsidiary units to enforce the Department of Labour Disputes' letter.
- 26.5** As the case involving workers at G. W. Greenways as discussed in Paragraph 25.5 under Articles 62 and 63 above indicates, the current wording of Article 67 is also insufficient for the purposes of protecting workers employed on FDCs from contract non-renewal in retaliation for trade union activities.

Recommendation:

- 26.6** Article 67 should be amended to require stronger enforcement measures to be taken by the MoLVT following issuance of an order for reinstatement of a worker. Additionally, the language of Article 67 should be amended to provide greater protections to workers employed on FDCs from contract non-renewal in retaliation for trade union activities.

27. Article 89 – Coercion into Participation in a Strike

- 27.1** Article 89 imposes admonishments and a maximum fine of five million Khmer Riel (approximately USD\$1230) on any person who "coerces" workers to participate in a strike.

- 27.2** The word “coerce” in Article 89 is vague and undefined. No distinction is made between legal strikes, illegal strikes, peaceful strikes or violent strikes, with only the general word “strikes” used. It is conceivable, then, that a union leader who organises a legal, peaceful strike could be admonished and/or fined under the language of this Article for coercing other workers to join the strike. Imposing sanctions on those who lead or organise peaceful and legal strikes violates workers’ and unions’ legitimate rights to strike.⁹⁴

Recommendation:

- 27.3** Article 89 should either be repealed or amended to refer only to illegal and/or violent strikes.

28. Chapter 15 – Administrative Measures and Penalties

- 28.1** None of the provisions under Chapter 15 were changed through the recent amendments, nor were they requested to be amended by trade unions.
- 28.2** The fines under Chapter 15 of the TUL are extremely low, with the highest fine being a maximum of five million Khmer Riel (approximately USD\$1230). Whilst admonishments and fines exist for a number of offences under the law, no punishment is prescribed for anti-union actions such as discrimination on account of union activities under Article 62 nor for unfair labour practices on the part of employers under Article 63.
- 28.3** The CEACR has previously noted the low level of fines prescribed under Chapter 15 of the TUL and observed that “the effectiveness of legal provisions prohibiting acts of anti-union discrimination depends not only on the effectiveness of the remedies envisaged, but also the sanctions provided which should be effective and sufficiently dissuasive”.⁹⁵ In this regard, the CEACR concluded that the fines prescribed by Chapter 15 of the TUL “may be a deterrent for small and medium-sized enterprises, but would not appear to be so for high-productivity and large enterprise cases.”⁹⁶ The CFA, similarly, in previous regarding Cambodia has stated that “legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of anti-union discrimination to ensure the practical application of Articles 1 and 2 of C98.”⁹⁷
- 28.4** As discussed in some of the cases above, if a union complains regarding termination of a union leader and the relevant Department of Labour and Vocational Training finds that the termination was illegal, a letter will be issued to the employer instructing them to reinstate the workers and pay backpay. However, as also noted above, often, no enforcement action is taken by the MoLVT and the employer effectively faces no consequences for non-compliance as no penalty is prescribed for violation of Articles 62 and 63 of the TUL. For example, on 19 March 2019, the Department of Labour Disputes ordered C. F. Two Garment Co., Ltd. to reinstate two union election candidates illegally dismissed by the factory.⁹⁸ Whilst employers have a period of two months to object to such orders (along with a subsequent two-month period for the Minister to render a decision), by January 2020, the process should have been concluded already. However, both of these workers remain terminated and no action has been taken to enforce the letter.

Recommendation:

- 28.5** Fines under Chapter 15 of the TUL, specifically Article 79 (Acts of Illegal Obstruction of the Right to Establish a Union or an Employer Association), Article 82 (Breach of the Obligation to Organise Elections), Article 84 (Activities without Integrity and Good Faith), Article 87 (Illegal Obstruction of a Strike), Article 88 (Acts against Testimony Relating to Enforcement of the Labour Law), Article 93 (Illegal Lockout) and Article 94 (Responsibilities of Employer Associations) should be increased to provide sufficiently dissuasive sanctions against acts of anti-union discrimination. Additionally, provisions for punishment for violations of Articles 62 and 63 should also be introduced.

29. References

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- ¹ See e.g. Labour Law (1997), Chapter XI.
- ² Ananth Baliga and Daniel de Carteret, “Letter reveals ILO’s cautious criticisms of draft union law,” *Phnom Penh Post* (1 April 2016), available at: <https://www.phnompenhpost.com/national/letter-reveals-ilos-cautious-criticisms-draft-union-law>
- ³ Prak Chan Thul, “Cambodia passes disputed trade union law as tension flares,” *Reuters* (4 April 2016), available at: <https://www.reuters.com/article/us-cambodia-unions/cambodia-passes-disputed-trade-union-law-as-tension-flares-idUSKCN0X11HX>
- ⁴ Ibid.
- ⁵ Daniel de Carteret, “Cambodian Opposition, Activists Slam New Trade Union Law,” *VOA* (5 April 2016), available at: <https://www.voanews.com/east-asia-pacific/cambodian-opposition-activists-slam-new-trade-union-law>
- ⁶ Neou Vannarin, “Cambodia Labour Leaders Speak Out Against Union Law,” *VOA* (4 July 2016), available at: <https://www.voanews.com/east-asia-pacific/cambodia-labor-leaders-speak-out-against-union-law>
- ⁷ Fair Labor Association, “Leading Apparel and Footwear Brands Meet with Cambodian Government to Express Concerns About Worker Rights,” *Fair Labor Association* (23 October 2018): <https://www.fairlabor.org/blog/entry/leading-apparel-and-footwear-brands-meet-cambodian-government-express-concerns-about>
- ⁸ Fair Labor Association, “21 Companies Sourcing from Cambodia Express Concerns about Labour and Human Rights,” *Fair Labor Association* (2 May 2019): <https://www.fairlabor.org/blog/entry/21-companies-sourcing-cambodia-express-concerns-about-labor-and-human-rights>
- ⁹ Yon Sineat and Daphne Chen, “Controversial Trade Union Law having desired effect?” *Phnom Penh Post* (15 December 2017), available at: <https://www.phnompenhpost.com/national-politics/controversial-trade-union-law-having-desired-effect>
- ¹⁰ Arbitration Council Foundation, “2015 Annual Report,” p. 11: <https://www.arbitrationcouncil.org/download/annual-report-2015/?wpdmmdl=2839&refresh=5e05a33d2e03f1577427773>
- ¹¹ Arbitration Council Foundation, “2016 Annual Report,” p. 10: <https://www.arbitrationcouncil.org/download/annual-report-2016/?wpdmmdl=2841&refresh=5e05a33d2b3ea1577427773>
- ¹² Notification signed 7 March 2019 on the Overall Results on 2019 Work Results and Targets for 2019 and Implementation of Strategic Plan for the Labour and Vocational Training Sectors 2019 – 2023, p. 1.
- ¹³ Letter to Ith Samheng, Minister of Labour and Vocational Training, dated 9 May 2019 ; Letter to Ith Samheng, Minister of Labour and Vocational Training, dated 13 August 2019.
- ¹⁴ Human Rights Watch, ‘Joint Letter to Prime Minister Hun Sen’, signed 18 December 2019: <https://www.hrw.org/news/2019/12/18/joint-letter-prime-minister-hun-sen>
- ¹⁵ Parameswaran Ponnudurai, “EU Issues Damning Report on Cambodia Before Looming Deadline on Trade Benefits Decision,” *Radio Free Asia* (13 November 2019): <https://www.rfa.org/english/news/cambodia/eu-report-11132019225557.html>
- ¹⁶ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007), https://www.ccc.gov.kh/admin/uploads/dec_2007_92.pdf.
- ¹⁷ Observation Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999): “*The Committee must recall once again that some provisions in the LANGO contravene freedom of association rights of civil servants under the Convention, as it lacks provisions recognizing to civil servants’ associations the right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without interference of the public authorities, or the right to affiliate to federations or confederations, including at the international level, and subjects the registration of these associations to the authorization of the Ministry of Interior. The Committee must once again urge the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly. The Committee further encourages the Government to promote the full and effective enjoyment of these rights by domestic workers and workers in the informal economy and, to this effect, submit to tripartite*

consultations in the context of the application of the roadmap to give effect to the conclusions of the Conference Committee, the possibility of allowing the formation of unions by sector or profession.”

¹⁸ Committee on Freedom of Association Case No. 3064 (Cambodia) Report No. 377, par. 210: *“The Committee also recalls that according to Articles 2 and 9 of C87, all workers, with the sole exception of members of the armed forces and the police, should have the right to establish and join organizations of their own choosing. Therefore, civil servants, teachers, judges, air and maritime transport workers and domestic workers, like all other workers, should benefit from the right to freedom of association, whether through the draft Trade Union Law or other relevant legislative measures.”*

¹⁹ See e.g. Committee on Freedom of Association Case No. 2366 (Turkey) Report No. 342, par. 915.

²⁰ Observation Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999): *“The Committee further notes that the DCM observed in its conclusions that workers’ organizations and associations expressed deep concern at: ... (ii) the difficulties faced by domestic workers and workers in the informal economy in general seeking to create or join unions, since the LTU provides for an enterprise union model, whose requirements are often very difficult to meet by these workers, and does not allow for the creation of unions by sector or profession.”*

²¹ Ibid : *“The Committee further encourages the Government to promote the full and effective enjoyment of these rights by domestic workers and workers in the informal economy and, to this effect, submit to tripartite consultations in the context of the application of the roadmap to give effect to the conclusions of the Conference Committee, the possibility of allowing the formation of unions by sector or profession.”*

²² Prakas No. 249 K.B/BR.K signed 27 June 2016 on Registration of Trade Unions and Employer Associations, Article 3.

²³ Ibid.

²⁴ Direct Request (CEACR) – adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999).

²⁵ Instruction No. 039 K.B/S.N.N.K.B.K signed 14 December 2018 on Facilitating Procedures and Forms for Registration of Trade Unions.

²⁶ Direct Request (CEACR) – adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999).

²⁷ See e.g. Article 15.

²⁸ See e.g. Article 3 and accompanying Annexes to the Prakas.

²⁹ Direct Request (CEACR) – adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999).

³⁰ ACILS, ADHOC and CCHR, ‘Cambodia Fundamental Freedoms Monitor: Second Annual Report,’ (April 2017 – March 2018), p. 24.

³¹ Ibid., p. 25.

³² ACILS, ADHOC and CCHR, ‘Cambodia Fundamental Freedoms Monitor: Third Annual Report,’ (April 2018 – March 2019), p. 25.

³³ Prakas No. 249 K.B/BR.K signed 27 June 2016 on Registration of Trade Unions and Employer Associations, Article 3 and Annex 7.

³⁴ See e.g. Committee on Freedom of Association Case No. 122 (Venezuela) Report No. 20, par. 67: *“In a number of previous cases the Committee has recognised that it is a common practice for States to provide in their legislation such formalities as seem to them proper to ensure the normal functioning of trade unions and has considered that, in particular, when the conditions attached to the registration of a trade union are purely formal, they should not be interpreted as infringing the freedom of the workers.”*

³⁵ ACILS, ADHOC and CCHR, ‘Cambodia Fundamental Freedoms Monitor: Third Annual Report,’ (April 2018 – April 2019), p. 25.

³⁶ Law on Trade Unions (2016), Article 12(d).

³⁷ Ibid., Article 12(e).

³⁸ Ibid., Article 12(f).

³⁹ Ibid., Article 12(g).

⁴⁰ Prakas No. 249 K.B/BR.K signed 27 June 2016 on Registration of Trade Unions and Employer Associations, Article 3.

⁴¹ Ibid., Article 3 and Annex 2.

⁴² See e.g. Direct Request (CEACR) – adopted 2016, published 106th session (2017) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999).

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ See e.g. Committee on Freedom of Association Case No. 2988 (Qatar) Report No. 376, par. 139: *“...the Committee advises that any obligation on a trade union to base its constitution on a compulsory model (apart from certain purely formal clauses) would infringe the rules which ensure freedom of association.”*

⁴⁶ Direct Request (CEACR) – adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999).

⁴⁷ See e.g. Committee on Freedom of Association Case No. 1629 (South Korea) Report No. 1629, par. 265: *“...the Committee is of the view that in order for the right of workers' organizations to draw up their constitutions and rules in full freedom to be fully guaranteed, national legislation should only lay down formal requirements as regards trade union constitutions, and the constitutions and rules should not be subject to prior approval at the discretion of the public authorities.”*

⁴⁸ See e.g. Committee on Freedom of Association Case No. 2443 (Cambodia) Report No. 343, par. 310: *“The Committee notes the Government's indication that the Arbitration Council had issued an award rejecting Mr. Sok Vy's claim for reinstatement. According to the complainant and a translated version of the arbitration award, the Arbitration Council upheld Mr. Sok Vy's dismissal for serious misconduct as he had falsified his ID, listing his age as 25 years old in order to fulfil the requirement, as set forth in section 286 of the Cambodian Labour Law, that trade union office bearers be at least 25 years old. In this regard, the Committee recalls that the right of workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining conditions of eligibility of leaders or in the conduct of the elections themselves. The Committee therefore considers that the Arbitration Council's finding of serious misconduct is based on a legal requirement that is incompatible with the principles of freedom of association. Accordingly, the Committee asks the Government to amend section 286 of the Labour Law so as to remove the age restriction on the right of workers to elect their own representatives in full freedom, and to keep it informed of developments in this regard.”*

⁴⁹ See e.g. Committee on Freedom of Association Case No. 1911 (Ecuador) Report No. 308, par. 254.

⁵⁰ See e.g. Committee on Freedom of Association Case No. 422 (Ecuador) Report No. 103, pars. 160 – 163.

⁵¹ Committee on Freedom of Association Case No. 2443 (Cambodia) Report No. 343, par. 310 (see note 33 above).

⁵² Observation CEACR – adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999): *“As to the minimum age and the literacy criteria, the Committee recalls once again that it considers to be incompatible with the Convention the requirements that candidates for trade union office should have reached the age of majority, or be able to read and write (see the 2012 General Survey on the fundamental Conventions, paragraph 104). Duly noting that the Government indicates that the civil code emancipation procedure already provides for the possibility to recognize full legal capacity to minors, the Committee considers that the Government could remove the age of majority requirement from the LTU for minors who have reached the statutory minimum age for wage employment (persons of 15 years of age, under section 177 of the Labour Law). The Committee once again requests the Government to, in the context of its ongoing consultations on the application of the LTU, take the necessary measures to amend sections 20, 21 and 38 of the LTU to: (i) guarantee the right of minors who have reached the statutory minimum age for wage employment to be candidates for trade union office; (ii) to remove the requirement to read and to write Khmer from the eligibility criteria; and (iii) to ensure full respect with the abovementioned principle concerning disqualification from trade union office because of criminal offences.”*

⁵³ See e.g. Committee on Freedom of Association Case No. 2868 (Panama) Report No. 363, par. 1005: *“...it is contrary to C87 to demand information from the founders of an organization such as their telephone number, marital status or home address (this indirectly excludes from membership workers with no fixed abode or those who cannot afford to pay for a telephone).”*

⁵⁴ Sub-Decree No. 283 ANKR.BK, signed 14 November 2014 on The Organisation and Functions of the Ministry of Labour and Vocational Training, Article 3.

⁵⁵ See e.g. Direct Request (CEACR) – adopted 2016, published 106th session (2017) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999): *“It recalls that national legislation should only lay down formal requirements respecting trade union constitutions, and that provisions which go beyond these formal requirements may constitute interference contrary to the right of workers' organizations to draw up their constitutions and rules by virtue of Article 3 of the Convention.”*

⁵⁶ Observation CEACR – adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999) *“In its previous comments the Committee had requested the Government to amend paragraph 2 of section 28 of the LTU, providing that a union is automatically dissolved in the event of a complete closure of the enterprise or establishment. The Committee notes that the Government states that the provision is not contrary to the Convention as it only contemplates the automatic dissolution of the union resulting from the closure of its enterprise or establishment – and it does not constitute a decision of the administrative authority. The Committee observes in this regard that a union may have a legitimate interest to continue to operate after the dissolution of the enterprise concerned (for example, to defend any claims of its members).”* ; *“Recalling that the dissolution of a workers’ or employers’ organization should only be decided under the procedures laid down by their statutes, or by a court ruling, the Committee requests the Government to take the necessary measures to amend section 28 of the LTU accordingly by removing its paragraph 2.”*

⁵⁷ Khmer Times, “Labour Court to Be Ready Next Year,” (6 July 2016), available at:

<https://www.khmertimeskh.com/25492/labor-court-to-be-ready-next-year/>

⁵⁸ Ben Sokhean and Ananth Baliga, “Hun Sen says no need for labour courts, proposes solution to mass faintings,” *Phnom Penh Post* (7 February 2018), available at: <https://www.phnompenhpost.com/national/hun-sen-says-no-need-labour-courts-proposes-solution-mass-faintings>

⁵⁹ Observation CEACR – adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999): *“The Government clarifies that the draft law also aims to strengthen and empower the Arbitration Council (AC). The Government states that it shares with social partners a recognition of the effectiveness of the AC, and that it intends to promote its role, including by empowering it to hear individual disputes.”*

⁶⁰ Ibid: *“The Committee requests the Government to take the necessary measures to amend section 29 of the LTU to leave to the unions’ or employers’ associations own rules and by-laws the determination of the procedures for their dissolution by their members. The Committee must recall that if it is found that trade union officers have committed serious misconduct or offences through actions going beyond the limits of normal trade union activity – including actions carried out on behalf of the trade union – they may be prosecuted under the applicable legal provisions and in accordance with ordinary judicial procedures, without triggering the dissolution of the trade union and depriving it of all possibility of action. The Committee requests the Government to take the necessary measures to amend section 29 of the LTU by removing its paragraph (c).”*

⁶¹ See e.g. Committee on Freedom of Association Case No. 2520 (Pakistan), Report No. 348, par. 1031.

⁶² International Labor Organisation Convention No. 98 on the Right to Organise and Collective Bargaining (1949) Article 2: *“1. Workers’ and employers’ organisations shall enjoy adequate protection against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration. 2. In particular, acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’ organisations, or to support workers’ organisations by financial or other means, with the object of placing such organisations under the control of employers or employers’ organisations, shall be deemed to constitute acts of interference within the meaning of this Article.”*

⁶³ See e.g. Committee on Freedom of Association Case No. 3050 (Indonesia), Report No. 374, par. 476.

⁶⁴ See e.g. Committee on Freedom of Association Case No. 1865 (Republic of Korea), Report No. 340, par. 763.

⁶⁵ Direct Request (CEACR) – adopted 2016, published 106th ILC session (2017) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999): *“The Committee draws the Government’s attention to the fact that the amendments requested above for section 20 concerning trade union office also apply to section 38 concerning eligibility criteria to vote and to stand as a candidate for representative elections, which contains similar provisions. The Committee requests the Government to take the necessary measures to amend section 38 of the LTU according to the abovementioned principles on minimum age and literacy requirements.”*

⁶⁶ See e.g. Committee on Freedom of Association Case No. 514 (Colombia), Report No. 129, par. 113.

⁶⁷ Labour Law (1997), Article 313.

⁶⁸ Observation (CEACR) – adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999): *“The Government states that it shares with social partners a recognition of the effectiveness of the AC, and that it intends to promote its role, including by empowering it to hear individual disputes.”*

⁶⁹ Notification on Tripartite Consultation Workshop on Amendments to the Labour Law, signed 13 January 2020.

⁷⁰ See e.g. Committee on Freedom of Association Case No. 2468 (Cambodia) Report No. 344 (March 2007), par. 436.

⁷¹ See e.g. Committee on Freedom of Association Case No. 2655 (Cambodia) Report No. 359 (March 2011), par. 313: *"Finally, the Committee notes with regret the considerable length of time that has elapsed since the dismissals of the workers concerned – respectively, in February 2005, ... December 2006 ... and April 2007..."* and Committee on Freedom of Association Case No. 2468 (Cambodia), Report No. 344 (March 2007), par. 436.

⁷² See e.g. Committee on Freedom of Association Case No. 2655 (Cambodia), Report No. 355 (November 2009), par. 353 ; Committee on Freedom of Association Case No. 2655 (Cambodia), Report No. 359 (March 2011), par. 313 ; Committee on Freedom of Association Case No. 2468 (Cambodia), Report No. 344 (March 2007), par. 436.

⁷³ Arbitration Council Award No. 106/19 – Monophia, p. 11.

⁷⁴ Prakas No. 302 K.B/BR.K.K.B.K signed 2 July 2018 on Shop Stewards in the Enterprise and Establishment, Article 2.

⁷⁵ See e.g. Committee on Freedom of Association Case No. 3123 (Paraguay) Report No. 378 (June 2016), par. 627: *"In this regard, the Committee considers that neither the legislation nor the application thereof should limit the right of employers' and workers' organizations to represent their members..."* ; Committee on Freedom of Association Case No. 1385 (New Zealand) Report No. 259 (November 1988), par. 545: *"...minority organizations should be permitted to carry out their activities and at least to have the right to speak on behalf of their members and to represent them."*

⁷⁶ Direct Request (CEACR) adopted 2017, published 107th ILC session (2018) on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Cambodia (Ratification: 1999): *"While acknowledging that under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), most representative unions may be recognized as having exclusive collective bargaining rights, the Committee requests the Government to take all necessary measures, in the context of the application of the roadmap and of the drafting of relevant Prakas (regulations), to ensure that organizations that do not have most representative status are not deprived of the essential means to defend the occupational interests of their members, such as making representations on their behalf and representing them in grievances (for example, before the Arbitration Council), including through the benefit derived from their affiliation to higher level organizations."*

⁷⁷ Prakas No. 303 K.B/BR.K.K.B.K signed 2 July 2018 on Most Representative Status of Trade Unions and the Manner and Procedures for Receiving Most Representative Status, Articles 5 and 6.

⁷⁸ See e.g. Committee on Freedom of Association Case No. 2132 (Madagascar) Report No. 327 (March 2002), par. 661: *"In the case in question, the Committee considers that it is unnecessary to draw up a list of trade union members in order to determine the number of members; this will be evident from the record of trade union membership dues, and there is no need for a list of names which could make acts of anti-union discrimination easier."* ; Committee on Freedom of Association Case No. 2153 (Algeria) Report No. 348 (November 2007), par. 22: *"The Committee has in the past been obliged to recall the risk of reprisals and anti-union discrimination inherent in demands for lists of the names of members of an organization and copies of their membership cards."* ; Case No. 2153 (Algeria) Report No. 344 (March 2007), par. 23: *"It recalls that the requirement imposed by the authorities, that a list be provided of a given organization's members as well as copies of their membership cards, is not consistent with the criteria of representativeness established by the Committee. The Committee can only refer back to its previous conclusions regarding the danger of reprisals and anti-union discrimination inherent in a requirement of this type."*

⁷⁹ See e.g. Committee on Freedom of Association Case No. 1741 (Argentina) Report No. 300, par. 55: *"...it is not necessarily incompatible with the Convention to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit. This is the case, however, only if a number of safeguards are provided that include the following: (a) certification to be made by an independent body; (b) the representative organization to be chosen by a majority vote of the employees in the unit concerned; and (c) the right of an organization which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period."*

⁸⁰ See e.g. Committee on Freedom of Association Case No. 3155 (Bosnia & Herzegovina) Report No. 378 (June 2016), par. 111: *"The determination to ascertain or verify the representative character of trade unions can best be ensured when strong guarantees of secrecy and impartiality are offered. Thus, verification of the representative character of a union should a priori be carried out by an independent and impartial body."*

⁸¹ See e.g. Committee on Freedom of Association Case No. 1741 (Argentina) Report No. 300 (November 1995), par. 55.

⁸² Prakas No. 303 K.B/BR.K.K.B.K signed 2 July 2018 on Most Representative Status of Trade Unions and the Manner and Procedures for Receiving Most Representative Status, Article 4.

⁸³ Law on Trade Unions (2016), Article 60.

⁸⁴ See note 60.

⁸⁵ See note 61.

⁸⁶ Committee on Freedom of Association Case No. 3064 (Cambodia) Report No. 377 (March 2016), par. 213: *"The Committee recalls that fixed-term contracts should not be used deliberately for anti-union purposes and that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights."*

⁸⁷ Committee on Freedom of Association Case No. 2262 (Cambodia) Report No. 342 (June 2006), par. 231: *"...the Committee cannot but recall that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment; and that protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. Such guarantee in the case of trade union officials is also necessary to ensure the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom."*

⁸⁸ Committee on Freedom of Association Case No. 2655 (Cambodia) Report No. 363 (March 2012), par. 385: *"In this regard, the Committee wishes to recall that it may often be difficult, if not impossible, for workers to furnish proof of an act of anti-union discrimination of which they have been the victim, and that, besides preventive machinery to forestall anti-union discrimination, a further means of ensuring effective protection could be to make it compulsory for each employer to prove that the motive for the decision to dismiss a worker has no connection with the worker's union activities."*

⁸⁹ Direct request (CEACR) – adopted 2016, published 106th ILC session (2017) on Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Cambodia (Ratification: 1999): *"The Committee notes that sections 62 and 63 of the Law on Trade Unions define a wide range of labour practices which may constitute anti-union discrimination. Bearing in mind previous allegations from the International Trade Union Confederation (ITUC) concerning the increased use of fixed-duration contracts and its connection with anti-union discrimination practices, the Committee duly notes that section 63 of the Law explicitly refers to the non-renewal of employment on union grounds as an unfair labour practice by the employer."*

⁹⁰ Notification Letter of the Cambodian Trade Union of G. W. Greenways Textile Co., Ltd to the Director of G. W. Greenways Textile Co., Ltd. signed 15 January 2019.

⁹¹ Notification Letter of the Cambodian Trade Union of G. W. Greenways Textile Co., Ltd. to the Director of G. W. Greenways Textile Co., Ltd. signed 22 January 2019.

⁹² Letter No. 285 KB/OK/VK signed 21 March 2019 from the Chief of the Department of Labour Disputes to Mrs. Keo Sophon and Mrs. Keo Sophat; Letter No. 286 KB/OK/VK signed 21 March 2019 from the Chief of the Department of Labour Disputes to Mrs. Theoun Tim.

⁹³ Letter No. 032 K.B/AK/VK signed 11 January 2019 from the Chief of the Department of Labour Disputes to the Director of Hota Footwear Co., Ltd.

⁹⁴ See e.g. Committee on Freedom of Association Case No. 3030 (Mali) Report No. 374 (March 2015), par. 536: *"In general terms, the Committee recalls the following internationally recognized principles of freedom of association as regards exercising the right to strike at the national level: no one should be penalized for carrying out or attempting to carry out a legitimate strike."*

⁹⁵ Observation CEACR– adopted 2016, published 106th ILC session (2017) on Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Cambodia (Ratification: 1999).

⁹⁶ Ibid.

⁹⁷ See e.g. Committee on Freedom of Association Case No. 2443 (Cambodia) Report No. 343 (November 2006), par. 315 ; Committee on Freedom of Association Case No. 2468 (Cambodia) Report No. 344 (March 2007), par. 436 and see similar comments in Committee of Freedom of Association Case No. 2655 (Cambodia) Report No. 355 (November 2009), par. 353 and Case No. 2655 (Cambodia) Report No. 359 (March 2011), par. 313.

⁹⁸ Letter No. 266 KB/OK/VK signed 19 March 2019 from the Chief of the Department of Labour Disputes to the Director of C. F. Two Garment Co., Ltd.