

## **A HUMAN RIGHTS ANALYSIS OF THE DRAFT LAW ON TRADE UNIONS**

Prepared by the Office of the United Nations  
High Commissioner for Human Rights in Cambodia

### **Introduction**

The present analysis was prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia as a contribution to the consideration of this law. It provides an analysis of some key aspects of the initiative, in order to provide constructive elements to the process of drafting the Law on Trade Unions, which integrates the relevant international human rights standards. OHCHR offers it in the belief that the draft law holds direct implications in the ability of people to form and join trade unions, as an inherent part of the right to freedom of association.

The United Nations Human Rights Council has reaffirmed that the right to freedom of association, together with the right to peaceful assembly, are essential components of democracy, as they empower men and women to “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, *form and join trade unions* and cooperatives, and elect leaders to represent their interests and hold them accountable” (Human Rights Council resolution 15/21, preamble, emphasis added).

The UN Human Rights Council has “remind[ed] States of their obligation to respect and fully protect the rights of all individuals to ...associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, *trade unionists* and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to ...freedom of association are in accordance with their obligations under international human rights law.” (Human Rights Council resolutions 15/21, para. 1; 21/6, para. 1; and 24/5, para. 2, emphasis added).

To help Parliament abide by the international obligations binding on Cambodia, OHCHR has reviewed the compatibility of the draft with the applicable international human rights law. While freedom of association is provided for under a number of human rights instruments applicable in Cambodia (see Annex), including several Conventions of the International Labour Organization, the central points of reference are the following.

- Article 22 of the International Covenant on Civil and Political Rights (the “ICCPR”, the implementation of which is monitored by the United Nations Human Rights Committee, or “HRCte”):
  1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests;
  2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.
  
- Article 8 of the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”, the implementation of which is monitored by the United Nations Committee on Economic, Social and Cultural Rights, or “CESCR”):
  1. The States Parties to the present Covenant undertake to ensure:
    - a. The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
    - b. The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
    - c. The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
    - d. The right to strike, provided that it is exercised in conformity with the laws of the particular country.
  2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
  3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

ILO Freedom of Association and Protection of the Right to Organise Convention (“ILO Convention No. 87”, the implementation of which is monitored by the Committee on Freedom of Association of the Governing Body of ILO, or “CFA/ILO”)

**Article 2:** Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation

concerned, to join organisations of their own choosing without previous authorisation.

**Article 3:**

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

**Article 4:** Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

**Article 5:** Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

**Article 6:** The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

**Article 7:** The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

**Article 8:**

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Domestically, this fundamental right is protected under the Cambodian Constitution, articles 31 and 36, which read as follows:

**Article 31, para. 1**

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights, women's and children's rights.<sup>1</sup>

**Article 36, paras. 5-6**

Khmer citizens of either sex shall have the right to form and to be members of trade unions.

The organization and functioning of trade unions shall be determined by law.

The right to freedom of association has been reaffirmed on numerous occasions by the UN General Assembly<sup>2</sup>, the UN Human Rights Council<sup>3</sup>, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association<sup>4</sup> (SRFAA), the then UN Special

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<sup>1</sup> In its Decision No. 092/003/2007 of 10 July 2007 regarding the applicability of the international human rights treaties by the courts in Cambodia, the Constitutional Council clarified that “‘the law’ applicable in Cambodia ... refers to the national law including the Constitution which is the supreme law and other applicable laws as well as the international conventions that Cambodia has recognized.”

<sup>2</sup> General Assembly Resolutions A/RES/53/144 (1999) and A/RES/64/163 (2009).

<sup>3</sup> Human Rights Council resolutions on the rights to freedom of peaceful assembly and association, A/HRC/RES/15/21, A/HRC/RES/21/16, A/HRC/RES/24/5.

<sup>4</sup> Reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 para.

Representative and the Special Rapporteur on the situation of Human Rights Defenders<sup>5</sup>, and the UN Human Rights Committee<sup>6</sup>. The recommendations made to Cambodia during the Universal Periodic Review conducted by the Human Rights Council and accepted by the Royal Government<sup>7</sup>, and the latest Concluding Observations on Cambodia of the UN HRCte<sup>8</sup>, include several specifically on this basic right. The HRCte, in particular, concluded that “the State party should ensure that everyone can freely exercise his or her right to freedom of expression and association... In doing so, the State party should: ... (d) Review its current and pending legislation... to avoid the use of vague terminology and overly broad restrictions, to ensure that any restrictions on the exercise of freedom of expression and association comply with the strict requirements of articles 19 (3) and 22 of the Covenant.”

Freedom of association belongs to every person, regardless his or her age, nationality, political orientation, or past experience. Article 22, paragraph 2 of the ICCPR foresees that restrictions might need to be placed on the enjoyment of freedom of association under certain circumstances. However, these must be prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. According to the UN HRCte, the burden of proof is on the State party to explain why any restrictions it imposes are necessary.<sup>9</sup> The term “necessity” refers to both, whether a certain measure must be taken and the extent to which a measure is to be taken. The human rights mechanisms recommend that any restrictive measure should be put to a strict proportionality test to ensure that the limitations are in fact necessary to obtain the pursued aim.

International human rights law requires certainty in the law. In this regard, there are several provisions in this draft law that are vague or unclear, which could lead, for example, to the dissolution of a trade union based on subjective reasons, or to the arbitrary limitation of a union member’s rights enshrined in the ICCPR, ICESCR and ILO Conventions. Additionally, the draft law foresees an important role of the Ministry in charge of Labour vis-à-vis the functioning of trade unions and employer associations, which could interfere with their “right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes” without interference from the public authorities, as established in article 3 of ILO Convention No. 87.

OHCHR recognizes the efforts made by the Ministry of Labor and Vocational Training to negotiate the contents of the draft law with a range of concerned parties, although transparency

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13, A/HRC/23/39, paras. 15 and 17, A/HRC/26/29, paras. 16 to 21, A/HRC/29/25 para. 21.

<sup>5</sup> Reports of the Special Rapporteur on the situation of human rights defenders, A/59/401, A/64/226, A/67/292, and HRC/25/55.

<sup>6</sup> Human Rights Committee, General Comments No. 15 (1986) on the position of aliens under the Covenant, No. 23 (1994) on minority rights, No. 25 (1996) on the rights of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service, and No. 34 (2011) on freedoms of opinion and expression; Concluding Observations on Cambodia (CCPR/C/KHM/CO/2) among many concluding observations of the Human Rights Committee; Communication No. 1226/2003, Korneenko v. Belarus, Views adopted on 20 July 2012; No. 1383/2005, Katsora et al. v. Belarus, Views adopted on 25 October 2010; No. 1993/2010, Mikhailovskaya and Volchek v. Belarus, Views adopted on 24 July 2014, para. 7.3; No. 2165/2012, Pinchuk v. Belarus, Views adopted on 24 October 2014, among many decisions of the Human Rights Committee.

<sup>7</sup> Report of the Working Group on the Universal Periodic Review of Cambodia, 2014 A/HRC/26/16 and Add.1 Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/26/16/Add.1, recommendations 118.19, 118.104, 118.106, 118.107, 118.110, 118.111, and Report of the Working Group on the Universal Periodic Review of Cambodia, 2009 A/HRC/13/4, recommendations 51 and 56.

<sup>8</sup> Concluding observations of the Human Rights Committee on the second periodic report of Cambodia, CCPR/C/KHM/CO/2, March 2015.

<sup>9</sup> See Communication No. 1383/2005, Katsora et al. v. Belarus, Views adopted on 25 October 2010 and Communication No. 2165/2012, Pinchuk v. Belarus, Views adopted on 24 October 2014, among other decisions of the Human Rights Committee.

was not consistently guaranteed throughout. However, the right of participation requires that, before a bill is enacted into law, its contents be accessible not only the directly concerned parties but the general public at large. OHCHR regrets that its analysis of the draft law comes at this late stage – the result of its own exclusion from the consultation process until the draft reached the National Assembly.

In light of these observations and the fact that this draft law has not been circulated widely prior to its submission to Parliament, *OHCHR recommends that the present version of the draft law be given due consideration by Parliament on the basis of an in-depth public consultation.* Sufficient time should be allowed for, in order to enable the interested public to thoroughly review and debate the draft law, which Parliament should have at its disposal prior to taking action. Indeed, gathering all views through genuine, meaningful consultations prior to adoption should be routine practice with respect to all draft laws.

OHCHR offers its observations and recommendations in the hope of contributing to the adoption of a sound law on trade unions that fully respects human rights.

## **CHAPTER 1**

### **General Provisions**

**Article 1:** This law has a purpose to:

- Provide for the rights and freedoms of enterprises or establishments, and all persons who fall within the provisions of the labor law as well as personnel serving in the air and maritime transportation; and
- Determine the organization and the functioning of the professional organizations of workers and employers in the Kingdom of Cambodia.

**Article 2:** This law has an objective to:

- Protect the legitimate rights and interests of all persons who fall within the provisions of the labor law and personnel serving in the air and maritime transportation;
- Ensure the rights to collective bargaining between workers and employers;
- Promote harmonious industrial relations; and
- Contribute to the development of decent work, enhancement of productivity and investment.

**Article 3:** This law covers enterprises or establishments and all persons who fall within the provisions of the labor law.

This law also covers personnel serving in the air and maritime transportation.

**Comments:** OHCHR welcomes the explicit purposes set forth in articles 1 and 2 regarding the “rights and freedoms” of those who fall within the provisions of the law. It nevertheless considers that several points would benefit from further clarification.

That the draft should aim to “provide for the rights and freedoms of enterprises or establishments” would seem inaccurate and misplaced in a law on trade unions, given that the legal framework for the operation of enterprises and establishments is set out in the Law on Commercial Enterprises and numerous industry-specific laws, such as in construction, mining,

etc. The present draft law should, as its title suggests, set out a legal framework for the operation of trade unions as a vehicle for the exercise of the right to freedom of association and related rights.

OHCHR observes that the application of the law only to “persons who fall within the provisions of the labor law” is more restrictive than article 36 of the Constitution, which establishes that “Khmer citizens of either sex shall have the right to form and to be members of trade unions”. The ILO Committee on the Application of Conventions and Recommendations (CEACR) called on the Government to ensure that “civil servants, teachers, air and maritime transport workers, judges and domestic workers would be fully guaranteed the rights enshrined in the Convention [No. 87]”,<sup>10</sup> all of whom fall out of the scope of the Labor Law. Article 36 of the Constitution thus falls short of article 22 of the ICCPR and article 8 of the ICESCR under which Cambodia, as a State party to both treaties, has recognized the right of *everyone* to freely form and join trade unions of their choice. The draft law presents an opportunity to rectify the discrepancy to ensure conformity with international human rights law. In addition, the distinction of “personnel serving in the air and maritime transportation” would appear to have been added because they are not considered to be either workers under the Labor Law or employers, which would create gaps in every article of the draft law that does not explicitly include them.

To ensure that no misunderstanding arises as to the relative importance accorded to all of the stated purposes and objectives, OHCHR suggests to *state at the outset that the primary purpose of the law is to give effect to the highest law of the land by specifically referring to article 36 of the Constitution, as well as international human rights standards, with reference to article 22 of the ICCPR and article 8 of the ICESCR*. By extending *application to all persons*, the draft law would clearly accord equal importance and treatment to the rights of employers and workers. This would preclude the need for draft article 3, which could be removed altogether, and the need to make a distinction of “personnel serving in the air and maritime transportation”. If not all persons will be covered by the law, it is recommended to include a phrase stating that *for those workers who fall outside the provisions of this law, separate regulations shall be adopted to protect their right to form and join a trade union*.

**Article 4:** The key terms used in this law have the following definitions:

- A professional organization refers to a voluntarily and jointly established team or group of workers and employers aiming to cooperate with one another to carry out activities or to develop their own procedural rules for achieving specific professional objectives or goals. By virtue of this law, a professional organization of workers is called a union, whereas a professional organization of employers is called an association of employers.
- A shop steward is a workers’ representative elected through direct voting by workers.
- A body of the electorate is an electoral body.
- A union delegate is a union members’ representative elected through voting or appointed by his or her respective union.
- A local union refers to a professional organization that is established by workers jointly and voluntarily in the locality of that enterprise or establishment.
- A union federation refers to a professional organization, which is established jointly and voluntarily either by local unions within the same or similar

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<sup>10</sup> Observation (CEACR) - adopted 2014, published 104th ILC session (2015).

professions, or by unions in areas with the same or similar economic activities or geographical locations.

- A union confederation or a coalition of union federations or union alliance is a professional organization of workers that is established jointly and voluntarily by union federations.
- A national council of unions, which comprises of all union confederation(s), all coalitions of union federation(s) or union alliances, is to be the only legally unified representation of the entire union organization.
- An employer federation refers to a professional organization, which is established jointly and voluntarily by employer associations.
- Shutting down the operation completely refers to a closing of an enterprise or establishment according to the law and regulations in force.

**Comments:** Contrary to the aims of professional organizations as set out above “to cooperate with one another to carry out activities or to develop their own procedural rules,” the fundamental purpose of the right to form and join trade unions of one’s choice is to promote and protect one’s economic and social interests,<sup>11</sup> as recalled by the SRFAA.<sup>12</sup> This is affirmed in ILO Convention No. 87, whereby organizations are created “for furthering and defending the interests of workers and employers”. Cooperation and the development of internal rules are means by which workers and employers seek to achieve the ultimate aim of furthering their interests.

OHCHR suggests the following reformulation of the first bullet point:

*A professional organization refers to a voluntarily established group of workers or employers through which workers and employers promote and defend their respective interests. Toward this end, professional organizations develop their own procedural rules, undertake activities and negotiate in regard to their demands. Professional organizations may cooperate with one another to achieve specific professional objectives or goals. By virtue of this law, a professional organization of workers is called a union, whereas a professional organization of employers is called an association of employers.*

OHCHR further recommends removing the second to last bullet point on a national council of unions, as the rights and responsibilities of a national council of unions are not developed in the draft law. The lack of clarity about the implications of being “the only legally unified representation of the entire union organization” could be interpreted as an imposition on trade unions, which would be contrary to ILO Convention No. 87.

## CHAPTER 2

### Fundamental rights to establish and to join a union or employer association

**Article 5:** All workers and employers have, without any distinction whatsoever, the rights 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

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<sup>11</sup> ICESCR, article 8, para. 1.

<sup>12</sup> A/HRC/20/27, para. 53.

of the rights and the moral and material interests, both collectively and individually, of the persons covered by union or employer association statutes.

Workers have the right to:

- Take part in the formation of a union;
- Be a member of a union and under its rules;
- Participate in the legitimate activities of that union of which he or she is a member;
- Seek and hold an office in any union of which he or she is a member and under its rules;
- Take part in the election of representatives at the workplace where there is a regulation stipulating such election;
- Be elected or appointed and serve as a workplace representative when there is a regulation stipulating for such election or appointment; and
- Exercise any other rights provided for in this law.

Employers have the right to:

- Take part in the formation of an employers' association;
- Be a member of any such association according to its rules;
- Participate in the legitimate activities of such association of which they are a member;
- Hold an office in that association according to its rules; and
- Exercise any other rights provided for in this law.

Any unions or employer associations that include both employers and workers are forbidden.

**Comments:** According to articles 2 and 3 of the ILO Convention No. 87, workers and employers have a right to join a union or association without previous authorization. Under the ICCPR and ICESCR, they are also entitled to exercise other rights established in these treaties, including article 21 of the ICCPR regarding the right of peaceful assembly, as well as articles 7 and 8 of the ICESCR regarding the rights to strike, to receive fair wages and equal remuneration, decent living, safe and healthy working conditions, rest, leisure and reasonable limitation of working hours, among others. According to the rulings of the European Court on Human Rights, “that citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning”.<sup>13</sup>

OHCHR suggests *removing the phrase “for the exclusive purpose of”* in the leading paragraph, which would unduly restrict the right of the organizations to freely decide on their activities and programmes, protected by Convention No. 87, and also because the list presented in the article excludes internationally accepted rights, including the right to strike. OHCHR recommends revising the last phrase to read as follows: “*Exercise any other rights as provided for in this law and relevant international instruments to which Cambodia is a State Party.*”

**Article 6:** All workers or employers, regardless of race, color, sex, creed, religion, political opinion, nationality, social origin, or health status are free to be members of the union of their choice. No one, including any union, shall interfere with this right.

**Comments:** OHCHR welcomes the non-discrimination clause found in article 6, as a way of protecting those who wish to form or join a union. However, several criteria included in

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<sup>13</sup> European Court of Human Rights, App. No. 26695/95, 10 July 1998.

article 2 of the International Covenant on Civil and Political Rights, including other opinion, birth, language, property and other status are not included in the draft.

In order to clarify the language of the first sentence and ensure that those who wish to form or join an employer association will be free from discrimination, OHCHR suggests that it should read: “to be members of a union *or employer association* of their choice”. In the same line, it suggests *removal of the phrase “including any union”* from the last line to ensure equal treatment as employers, since “no one” is understood broadly. All criteria included in article 2 of ICCPR should also be included.

**Article 7:** The freedom of individuals as set out in Article 5 of this law also implies the freedom not to join a union or employer association and the freedom to withdraw at any time from those unions or associations that they join.

A worker may withdraw from a union through a signed or thumb printed letter to be submitted to his or her union and employer. Following such notification, the worker concerned shall be deemed to have automatically and immediately relinquished his or her membership. The employer must stop deducting his or her union dues for the union contribution. No one shall interfere with a worker’s rights to join or to leave a union.

**Comments:** OHCHR welcomes the recognition of the right of individuals to not join or to withdraw from a trade union or employer association. This article reflects the views of the SRFAA, who has stated that “[a]n important component of the right to freedom of association is that no one may be compelled to belong to an association.”<sup>14</sup>

**Article 8:** In accordance with the conditions set forth in this law, all members of a union or an employer association can participate in the leadership, management and administration of the union or association. The statutes of union or employer association, however, may reduce the conditions for the participation of retirees in these functions.

**Comments:** OHCHR submits that the provision on “may reduce the conditions for participation of retirees in these functions” is unnecessary. The nature of retirees’ participation or role in a trade union or employer association should be defined internally by each trade union or employer association, rather than by law, based on their “right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes” without interference from public authorities, as established in article 3 of ILO Convention No. 87. The CFA/ILO is of the view that “[t]he right to decide whether or not a trade union should represent retired workers for the defense of their specific interests is a question pertaining to the internal autonomy of all trade unions.”<sup>15</sup> The possibility should also not be dismissed of a retiree that has the confidence of a union or employer association, with the time to dedicate him or herself to a role more fully than others might, being selected to play that role.

OHCHR suggests the following reformulation: “*In accordance with the conditions set forth in this law and its own statutes, all members of a union or an employer association can participate in the leadership, management and administration of the union or association, respectively.*”

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<sup>14</sup> A/HRC/20/27, para. 55.

<sup>15</sup> Digest decision of Freedom of Association of ILO, para. 270.

**Article 9:** The national council of unions, unions and employer associations have the following rights:

- To draw up their own statutes and administrative regulations, their organization and functioning, and their work programs as long as they are not contrary to public orders, provisions and laws in effect; and
- To freely elect their representatives.

**Comments:** The inclusion in this provision of some of the rights established under international human rights and labor law is welcomed. However, article 8 of the ICESCR requires that trade unions should also enjoy the following rights (see introduction):

- to function freely;
- to strike;
- to establish national federations or confederations, and the right of the latter to form or join international trade-union organizations.

The reference to laws and regulations in effect or public orders restricts the rights of trade unions and employer associations to a greater extent than is allowed by international standards, which limits restrictions to “those prescribed by law *and* which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others” (emphasis added). Draft article 9 could potentially allow for any public authority to issue orders that could impair the functioning of a union, employer association or the national council of unions, irrespective of the legality of the orders issued. In addition, Article 8 of the ICESCR establishes an “and” rather than “or” with regard to the link between national legislation and public order. In this regard, the SRFAA has stated that [a]ny restrictions must, nevertheless, comply with States’ international human rights obligations as blanket restrictions shall not be considered lawful.”<sup>16</sup> The ICCPR foresees that restrictions might need to be placed on the enjoyment of freedom of association under certain circumstances, which are set forth in article 22, para. 2. According to the HRCte, the burden of proof is on the State party to explain why any restrictions it imposes are necessary.<sup>17</sup> In this regard, proportionality test should be carried out to ensure that the limitations are in fact necessary to obtain the pursued aim.

OHCHR proposes the following reformulation:

1. *A national council of unions, unions and employer associations have the following rights:*
  - *To draw up their own statutes and administrative regulations, their organization and functioning, and their work programs;*
  - *To freely elect their representatives;*
  - *To function freely;*
  - *To establish national federations or confederations, and the right of the latter to form or join international trade-union organizations.*
2. *Unions, union federations and confederations, and the national council of unions have the right to strike.*
3. *No restrictions may be placed on the exercise of these rights other than those prescribed by law and which are necessary in a democratic society in the*

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<sup>16</sup> A/HRC/20/27, para. 54.

<sup>17</sup> See Communication No. 1383/2005, Katsora et al. v. Belarus, Views adopted on 25 October 2010 and Communication No. 2165/2012, Pinchuk v. Belarus, Views adopted on 24 October 2014, among other decisions of the Human Rights Committee.

*interests of national security or public order or for the protection of the rights and freedoms of others.”*

See also comments on article 4, regarding the removal of the phrase “national council of unions”.

### **CHAPTER 3**

#### **Registration of unions or employer associations**

**Article 11:** In order for unions or employer associations to enjoy the rights and benefits as provided for in this law, the founders of a union or an employer association must register with the Ministry in charge of Labor. The Ministry in charge of Labor shall maintain registration records and may work together to publish them on a regular basis.

**Article 12:** An application for registration shall be approved and provided with certification, if it adequately meets all requirements, pursuant to the relevant provisions of this law. The application shall be accompanied by the following:

- a) An original copy of the union’s or employer association’s statutes, including a statement of its intents;
- b) An original copy of its administrative regulations that govern leadership and administration;
- c) A list of the names of leaders, managers, and those responsible for the administration of the union or employer association;
- d) An address where the financial books and records are to be kept;
- e) A guarantee letter to provide all information about the bank account within 45 (forty-five) from the date of obtaining registration;
- f) An attachment of the original copy of the official minutes of elections for establishment of a professional organization;

In regard to unions:

- a) A local union shall have a name list of all workers as its members composed of at least 10 (ten) workers at a given enterprise or establishment;
- b) A union federation shall have a name list of at least 7 (seven) registered local unions as affiliated members;
- c) A union confederation or a coalition of union federations shall have a name list of at least 5 (five) registered union federations as affiliated members.

In regard to employer associations:

- a) An employer association shall have a name list of at least 9 (nine) enterprises or establishments;
- b) An employer federation shall have a name list of at least 6 (six) employer associations as affiliated members.

If the Ministry in charge of Labor does not reply within 30 (thirty) working days following receipt of the registration form, the union or the employer association shall be considered to be registered. A copy of the statutes and the name list of leaders, managers and those responsible for the administration shall be furnished for the Municipal or Provincial Departments in charge of Labor where the union or

employer association was established, as well as for the Office of the Council of Ministers, the Ministry of Justice and the Ministry of Interior.

The filing of the statutes and the name list of leaders, managers and those responsible for the administration shall be re-submitted if any changes are made to the statutes or in the leaders, managers and those responsible for the administration.

**Comment:**

***Authorization at the discretion of the Government***

The phrase “shall be approved” in draft article 12 allows for the possibility of the registration procedure becoming an authorization procedure, which would be contrary to the ICESCR.<sup>18</sup> The CESCR has voiced concern for authorization regimes, calling upon State parties to consider repealing legal provisions requiring authorization before a trade union can legally exist.<sup>19</sup> The SRFAA “is of the opinion that a ‘notification procedure’, rather than a ‘prior authorization procedure’ that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by States”.<sup>20</sup> Moreover, in contrast to the considerable detail with which the requirements on unions for registration are set out, precise information on the process or criteria for the granting of approval has been omitted. This task is left to the Ministry of Labor to set out subsequently in a Prakas – an omission that confers a high degree of discretion to the Government and could constitute an infringement of international law, particularly when considered together with draft article 15.

***Regular publication of personal details***

The lack of clarification in the phrase “may work together to publish [registration records] on a regular basis” in draft article 11 could give rise to concerns expressed by the CFA/ILO that “[t]he establishment of a register containing data on trade union members does not respect rights of the person (including privacy rights) and such a register may be used to compile blacklists of workers.”<sup>21</sup>

***Recommendations***

OHCHR recommends revising the phrase “shall be approved” to ensure that the registration process, in practice, will not require approval. OHCHR recommends *revising the phrase “may work together to publish them on a regular basis”* from draft article 11, to specify the information that would be published.

**Article 13:** The statutes of any union or employer association seeking registration shall include:

- The name, logo, address, and a sample stamp of the union or the employer association;
- A description of the occupational or sectoral scope of the union or the employer association;
- The determination of safekeeping of ordinary financial records and regular publication of annual financial reports of the union or the employer association;

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<sup>18</sup> See OHCHR comments on draft article 9 on the permissible limitations to freedom of association under article 8 of the ICESCR.

<sup>19</sup> For example, see E/C.12/1/Add.62, para. 44.

<sup>20</sup> A/HRC/20/27, para. 58.

<sup>21</sup> Digest decision of Freedom of Association of ILO, para. 177.

- A set quorum by absolute majority (at least 50%+1) of the union's total members for a decision-making meeting on strike, amendment to the statutes and 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 members participating in decision-making meetings on strikes;
- A procedure for electing leaders through secret ballot;
- Limits to the holding of an office of leadership, managers and those responsible for administration, with a possibility of re-election;
- A specified amount of union dues that each member must pay, the mode of monthly payment for union contributions 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 of this law.
- Its statutes shall define whether a particular union has the intent to represent all workers in an enterprise or establishment or to represent only one or more than one category of workers as defined by the statutes. In the latter case, only the workers in that category or those categories are eligible to join that particular union.

**Comments:** Please see OHCHR comments on articles 20 and 21.

**Article 14:** Only registered unions or employer associations shall have a legal person status and legality. They have the rights to sue in the Labor Court and to acquire immobile or mobile properties, for free or for payment, and more generally they have the right to enter into contracts.

Any union or employer association that has not registered or has its registration deferred, denied or revoked that continues to operate, is considered illegal.

Unions or employer associations cannot run a business, except for the legal actions set forth in point "g" of Article 59 of this law.

**Article 15:** The procedure and form of application for the registration of unions or employer associations shall be determined by a Prakas of the Minister of the Ministry in charge of Labor.

**Comments:** The second paragraph in article 14 does not establish the consequences for a union or employer association that is considered illegal, in contravention to the protection measures specified in article 4 of Prakas No. 305 of 2001, which establishes that "[b]eginning when the application for registration is submitted, all workers who are founding members of a union, as well as those who voluntarily join the union during the application period, shall enjoy the same protection as shop stewards. This protection shall last for a period of up to 30 days following the date of registration of the union." With regard to article 15, it is important to ensure that the procedure and application form established by a Prakas does not allow for discretion to refuse registration.

OHCHR recommends a revision of article 14, paragraph 2, to ensure compliance with Prakas No. 305. It also suggests a revision of article 15, adding a sentence at the end stating that the content of the Prakas should not alter the requirements and procedures established in article 12.

**Article 16:** Extended time for registration may be provided for one of the following reasons:

- a) The stated objectives of the union or the employer association are not to defend or promote the rights and interests of persons that the statute of the union or the association has defined;
- b) The union is not independent. A union is considered to be not independent if it is:
  - under the control of an employer or employer association; and
  - it is under interference or influence of any kind from any employer or employer association;
- c) The union or the employer association does not fulfill the requirements set out in Article 12 of this law;
- d) The statutes of the union or the employer association do not fulfill the conditions required by this law or its implementing regulations;
- e) The leaders, managers and those responsible for the administration of the union or employer association do not fulfill all the conditions stipulated in Articles 20 and 21 of this law;
- f) The name of the union or the employer association is the same as that of a registered union or a registered employer association or so closely resembles that of a registered union or a registered employer association or so unclearly describes its coverage or objectives that the public is likely to be deceived or misunderstand.

The Ministry in charge of Labor must communicate in writing the reasons for extending time for the registration of a union or an employer association within 30 (thirty) working days following receipt of the application. Any union or employer association whose application has been time extended for 15 (fifteen) days from the day of notification is to correct and complete the gap, otherwise the application will be automatically denied.

**Comments:** This article refers not only to extended deadlines but to the denial of registration. The requirements, which are largely acceptable, should be formulated in more precise language, for example in paragraph a), to ensure that the provisions respect the principles of freedom of association as established in international standards, mainly article 3 of ILO Convention No. 87. To safeguard against unlawful or ill-founded decisions by the authorities responsible for registration, refusals to register a trade union must allow for recourse to a judicial authority.<sup>22</sup>

The last paragraph in article 16 establishes a procedure for extending time for the registration of a union or employer association. However, in failing to set out the process that should follow once a trade union or employer association provides additional information to “correct and complete the gap,” it creates a gap that could allow for discretionary decisions.

OHCHR suggests that draft article 16 be revised in order to *ensure the possibility of recourse to a judicial authority in cases where the Ministry in charge of Labor rejects registration*, as is foreseen with regard to the revocation of registration already granted or the dissolution of a trade union (see OHCHR comments on draft articles 17-19 and 28). OHCHR also recommends revising the language in paragraph a) and removing paragraph b), and creating a separate provision with objective criteria establishing freedom from interference for trade unions. OHCHR recommends adding to the last paragraph: *“With the submission of the information, the trade union or employer association shall be considered to be registered.”*

**Article 17:** In order to maintain the validity of approved registration, each union or employer association must:

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<sup>22</sup> Digest decision of Freedom of Association of ILO, para. 296.

- a) Submit its annual financial statements and annual activity reports, based on the financial books and records it keeps, to its members for information, and a copy of which shall be furnished for the Ministry in charge of Labor at the latest by the end of March of the following year. They should show:
- Total income during the reporting period, showing the amounts from all sources of income;
  - Expenditure of the union or the employer association;
  - Activities of the union or the employer association;
  - Number of members.
- b) Provide details of its bank accounts within 45 (forty-five) days following receipt of registration.
- c) Update the information required by this law and whenever changes are made thereto, within 15 (fifteen) working days except change of membership.

**Article 18:** In the event that a union or the employer association has not fulfilled the obligations stipulated in Article 17 of this law, the Ministry in charge of Labor shall send the first notification to the union or the employer association for correction within 45 (forty-five) days following receipt of the notification.

In case of failure in the first notification, the Ministry in charge of Labor shall give the second notification to the union or the employer association for correction within 15 (fifteen days) following receipt of the notification.

In the event that a union or the employer association fails to comply with the second notification, the Ministry in charge of Labor can send a second notification to the union or the employer association for correction within 30 (thirty) days following receipt of the notification.

In the event that a union or the employer association fails to comply with the second notification, the Ministry in charge of Labor can file a lawsuit to the Labor Court for revocation of registration of the union or the employer association.

**Article 19:** The Labor Court has the authority to revoke registration. The Ministry in charge of Labor can file a lawsuit to the labor court for revocation of the registration of a union or the employer association.

Registration is automatically revoked in the event of dissolution of a union or the employer association.

**Comments:** The grounds for revocation included in draft article 17 may exceed the permissible grounds for restrictions on the right to freedom of association contained in paragraph 2 of article 22 of the ICCPR and article 8 of the ICESCR, which establish the right to form and join trade unions for the protection of his interests with no restrictions “other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.” The CFA/ILO has established that measures of supervision over the administration of trade unions may be useful if they are employed only to prevent abuses and to protect the members of the trade union against mismanagement of their funds, such as a requirement to present financial statements annually. OHCHR welcomes the removal of the need to submit the number of the members of the union or the employer association within 15 working days, as the number of members could change daily and reporting it so frequently may have been excessive.

OHCHR welcomes the provision for the creation of a Labor Court in Cambodia, which in draft article 19 is given the authority to take decisions on motions by the Ministry of Labor for the revocation of registration. OHCHR welcomes the explicit establishment of a right of appeal to that court.

**Article 20:** Cambodian nationals who are leaders, managers and those responsible for the administration of a union shall meet the following requirements:

- a) Be at least 18 (eighteen) years of age;
- b) Declare a specific residential address;
- c) Declare that they have an educational level, with the minimal ability to read and write Khmer; and
- d) Declare that they have never been convicted of any criminal offense.

Foreign nationals who are leaders, managers and those responsible for the administration of unions shall meet the following requirements:

- a) Be at least 18 (eighteen) years of age;
- b) Be able to read and write Khmer;
- c) Have been working in the Kingdom of Cambodia for a minimum of 2 (two) years;
- d) Declare that they have never been convicted of any criminal offense; and
- e) Have the right to reside and have permanent residence in the Kingdom of Cambodia in accordance with the Immigration Law of the Kingdom of Cambodia.

The Ministry in charge of Labor may request further information if necessary.

**Article 21:** Cambodian nationals who are leaders, managers and those responsible for the administration of employer associations shall meet the following requirements:

- a) Be at least 18 (eighteen) years of age;
- b) Declare a specific residential address; and
- c) Declare that they have never been convicted of any criminal offense.

Foreign employers, who are eligible to stand for election to be leaders, managers and those responsible for the administration of employer associations must meet the following requirements:

- a) Be at least 18 (eighteen) years of age;
- b) Have the right to reside and have permanent residence in the Kingdom of Cambodia in accordance with the Immigration Law of the Kingdom of Cambodia;
- c) Have been investing or working for at least 2 (two) consecutive years in the Kingdom of Cambodia; and
- d) Declare that they have never been convicted of any criminal offense.

The Ministry of Labor may request further information if necessary.

**Comments:** As a party to ILO Convention No. 87, according to which “workers’ and employers’ organisations shall have the right to.... elect their representatives in full freedom” and “public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof” and to the ICCPR, ICESCR and the United Nations Convention on the Rights of the Child (CRC), Cambodia should reconsider some of the requirements set out in draft articles 20 and 21. According to the CFA/ILO, “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 the conditions of eligibility

of leaders or in the conduct of the elections themselves.”<sup>23</sup> The Committee specifies that the determination of conditions of eligibility for union membership or union office is a matter that should be left to the discretion of union by-laws and the public authorities should refrain from any intervention which might impair the exercise of this right by trade union organizations.<sup>24</sup>

### ***Age requirements***

Draft articles 20 and 21 would restrict the ability of minors to serve as leaders, managers and those responsible for the administration of unions or employer associations seeking registration by requiring persons in these roles to have attained at least 18 years of age, while the Cambodia Labor Law allows them to work from the age of 15 years. These requirements contravene article 15 of the CRC, under which Cambodia has accepted to “recognize the rights of the child to freedom of association and freedom of peaceful assembly”, subject to restrictions under the same circumstances as those set out in Article 22 (2) of the ICCPR. The CESCR is similarly concerned about the “severe restrictions” found in laws relating to the right to form and join trade unions, including minimum age requirements.<sup>25</sup> The Committee of Experts on the Application of Conventions and Recommendations (CEACR) stated that requirements that candidates for trade union office should have reached the age of majority, or be able to read and write were incompatible with the Convention, and trusted that the Government of Cambodia would bear in mind these principles when finalizing the draft law.<sup>26</sup>

### ***Criminal history***

The requirement established in draft article 20 (d) is incompatible with the right to freedom of association. The CFA/ILO has stated that “a law which generally prohibits access to trade union office because of any conviction is incompatible with the principles of freedom of association, when the activity condemned is not prejudicial to the aptitude and integrity required to exercise trade union office.”<sup>27</sup> It considers that a “[c]onviction on account of offences the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the exercise of trade union functions should not constitute grounds for disqualification from holding trade union office...”<sup>28</sup> The CEACR has also requested the Government of Cambodia to take into account the principle that conviction on account of offences, the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the exercise of trade union functions, should not constitute grounds for disqualification from holding trade union office.<sup>29</sup>

### ***Literacy and language requirements***

Draft article 20 imposes minimum education and language requirements on Cambodian nationals who lead, manage or administer unions, but not on those who perform equivalent functions in employer associations. It also imposes a language requirement to be able to read and write Khmer only upon the foreign nationals who lead, manage or administer unions, but not upon those who perform equivalent functions in employer associations. These requirements could constitute distinctions in treatment that are prohibited under article 3 of ILO Convention No. 87 and are also contrary to article 2 of the ICCPR, which establishes the enjoyment of all rights in the Covenant without discrimination of any kind, including based on language. (See also comment above on age requirements).

### ***Recommendations***

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<sup>23</sup> Digest decision of Freedom of Association of ILO, para. 391.

<sup>24</sup> Digest decision of Freedom of Association of ILO, paras. 405 and 731.

<sup>25</sup> E/C.12/MEX/CO/4, paras. 16 and 34.

<sup>26</sup> Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016).

<sup>27</sup> Digest decision of Freedom of Association of ILO, para. 421.

<sup>28</sup> Digest decision of Freedom of Association of ILO, para. 422.

<sup>29</sup> Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016).

OHCHR suggests a revision of articles 20 and 21 to ensure their compliance with international standards, as indicated above. These include, among others, revisions to the requirements on minimum age, and well as to ensure that the requirements for foreigners are the same as those for nationals, equal for those serving in unions as for those serving in employer associations, criminal history, literacy and language.<sup>30</sup>

## CHAPTER 4:

### Finances of a union or an employer association

**Article 22:** The sources of financial resources and contributions of a union or an employer association are derived from:

- a) Dues from the membership of the union or the employer association, the amount of which shall be determined in the statutes of the union or the employer association;
- b) Income earned from income-generating activities in accordance with the provisions of this law; and
- c) Donations or financial resources legally received from the members of the union or employer association or from other parties to serve legitimate activities.

**Article 23:** The finances and assets of unions or employer associations at all levels shall be separated from the private finances and assets of their leaders, managers and those responsible for the administration, and their members.

**Article 24:** The deposit and transfer of a union's or an employer association's finances and assets to other parties, investment of funds and other legitimate business transactions by the union or the employer association can only be made in accordance with the provisions as stipulated in this law or the statutes of the union or the employer association.

In case of suspected irregularities in the use or management of the finances and assets the parties concerned have the right to ask for an audit by an independent auditor that is legally registered in the Kingdom of Cambodia.

**Article 25:** Leaders, managers and those responsible for administration shall be responsible for the use and management of the finances and assets of the union or employer association.

**Comments:** A trade union should be free to run and administer its funds without restriction and interference. The CFA/ILO has emphasized that “provisions which give the authorities the right to restrict the freedom of a trade union to administer and utilize its funds as it wishes for normal and lawful trade union purposes are incompatible with the principles of freedom of association”<sup>31</sup>. According to the Committee, “any form of state control is incompatible with the principles of freedom of association and should be abolished since it permits interference by the authorities in the financial management of trade unions”<sup>32</sup>. With regard to the last paragraph, it is unclear who the “party concerned” could be, whether the members of a union could request an audit of their own union and the same for members of an employer association on their own association, or if an employer association may request an audit of a union and vice versa, or if audits of either could be initiated by the public authorities.

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<sup>30</sup> Digest decision of Freedom of Association of ILO, para. 420.

<sup>31</sup> Digest decision of Freedom of Association of ILO, para. 485.

<sup>32</sup> Digest decision of Freedom of Association of ILO, para. 467.

Book 3 of the Criminal Code already prohibits the illicit use of funds, precluding the need for such a prohibition to be repeated in the present law.

OHCHR suggests *removing these articles*, as provisions on raising and administering funds and resolving conflicts thereon within unions and employer associations should be contained in their own statutes.

**Article 26:** Employers may deduct union dues from the wages of workers who are members in order to transfer them to the union, provided a written request for the deduction has been made by the worker. The practical implementation formalities shall be determined by a *Prakas* of the Minister in charge of Labor.

A most representative status (MRS) union, which represents all workers covered by a collective bargaining agreement (CBA), has the exclusive right to negotiate in order to include in a collective bargaining agreement a reasonable fee equivalent to dues and other fees. The payment of such a fee shall be made only one time.

**Comment:** OHCHR welcomes the formalization of a procedure by which members may pay their dues voluntarily through an automatic deduction from their wages. This is consistent with the views of the CFA/ILO, which considers that the principles of freedom of association allows for such collection of union dues, as long as the membership of trade unions requests in writing that union dues be deducted from their wages<sup>33</sup>. It notes that the draft law foresees that its practical implementation “shall be determined by a *Prakas* of the Minister in charge of Labor.”

OHCHR recommends *including a provision whereby the Prakas of the Ministry in charge of Labor will be developed in close cooperation with trade unions and employer associations*.

## CHAPTER 5

### Dissolution of unions or employer associations

**Article 28:** A union or employer association shall be dissolved by any of the following means:

1. A union or an employer association is dissolved in accordance with its respective statutes.
2. A union shall be automatically dissolved in the event of a complete closure of the enterprise or establishment.
3. A union or an employer association shall be dissolved by the Labor Court.

**Comments:** OHCHR welcomes the designation, in paragraph 3, of the Labor Court as the only competent body to dissolve a trade union or employer association external to the concerned organization itself. This is consistent with article 4 of ILO Convention No. 87, which prohibits non-judicial bodies from handling any matters related to the dissolution of trade unions or employer associations. Paragraph 2 would seem to address only unions specific to a single enterprise or establishment, not considering unions whose membership might be employed in several.

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<sup>33</sup> Digest decision of Freedom of Association of ILO, para. 476.

OHCHR recommends that draft article 28 be amended to *specify that paragraph 2 applies only to unions operating in regard to a single enterprise or establishment.*

**Article 29:** The concerned party or 50% (fifty percent) of the total members of a union or the employer association have the right to file a request to the Labor Court to dissolve the union or employer association in question.

A union or employer association shall be dissolved by the Labor Court for any of the following reasons:

- a) The establishment or activities of the union or employer association contravene the law or the objectives of the union or employer association as stated in the statutes;
- b) The union is not independent from employers and the union is unable to restore its independence;
- c) The leaders, managers and those responsible for the administration were found to have committed a serious misconduct or an offense in the capacity of the union or employer association.

The Labor Court may determine a period for which the union or the employer association is required to rectify the shortcomings set out in points “a”, “b” and “c” above before it takes a decision.

**Comment:** OHCHR welcomes the provision for allowing concerned parties or 50% (fifty percent) of the total members of a union or the employer association the right to take the initiative of filing for dissolution of the organization in question to the Labor Court. The positioning of first and second paragraphs, however, leaves it unclear as to whether that is the exclusive right of the concerned parties or the majority of their respective members, or whether the Labor Court may also take action to dissolve an organization independently of any request from within that organization.

The CFA/ILO has stated that “...in the interest of labor relations, the dissolution of a trade union or employer organization should only be taken as a last resort, and after exhausting other possibilities with less serious effects for the organization as a whole.”<sup>34</sup> The potentially grave consequences of draft article 29 should be reviewed against the obligations on Cambodia pursuant to article 8 (paragraph 1) of the ICESCR and article 22 of the ICCPR. External interference in the internal operations of a professional organization might be warranted in cases of truly extraordinary circumstances when the ordinary democratic functioning of a membership organization would be unable to address the situation. The justification for judicial involvement as reflected in draft article 29 falls short of the threshold for extraordinary circumstances and the approach does not reflect dissolution being used as a last resort. Rather, draft article 29 allows for the dissolution of professional organizations on the grounds of problems that should be left to their members to deal with, including a lack of adherence to their own objectives and internal statutes (paragraph a) and a lack of independence from the counterpart enterprise or establishment (paragraph b).

With respect to the matter addressed in paragraph (c), it is recalled that all individuals in Cambodia are legally bound to respect the laws of the nation, including the civil and criminal codes. The CFA/ILO is of the view that “[i]f there is grave suspicion that trade union leaders have committed acts which are punishable by law, they should be subject to ordinary judicial proceedings in order to determine their responsibilities...”<sup>35</sup> The dissolution of an

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<sup>34</sup> Digest decision of Freedom of Association of ILO, para. 678.

<sup>35</sup> Digest decision of Freedom of Association of ILO, para. 278.

organization “because of a judgment that illegal activities have been carried out by some leaders or members constitutes a clear violation of the principles of freedom of association”.<sup>36</sup> The draft law would thus comply with international standards if it clearly upheld individual accountability in the event of legally defined misconduct, in lieu of proceeding to dissolve the entire organization.

OHCHR proposes that a link be established between the first and second paragraphs of draft article 29 so that action by a Labor Court can clearly be initiated only by the concerned organization or the majority of its membership, as follows: “*Pursuant to such a request, a union or employer association may be dissolved by the Labor Court, as a matter of last resort, for either of the following reasons:*” (a) and (b). OHCHR suggests the *deletion of current paragraph (c)*. It further recommends that a provision be added establishing the *procedure to be followed by the Labor Court, including an appeal procedure*, to ensure that professional organizations facing dissolution can exercise their rights to due process, including the right of defense.

**Article 30:** Even though a union or an employer association has been dissolved, the leaders, managers and those responsible for the administration of the union or the employer association may not be absolved of their responsibilities and obligations to their members or other parties from the day formal dissolution is declared.

The leaders, managers and those responsible for the administration of a union or the employer association that was dissolved by the Labor Court cannot lead or be responsible for the administration of a union or an employer association for 5 (five) years following the date of the verdict rendered by the Court.

**Comments:** Draft article 30 raises questions, when a union or employers association has been dissolved, as to the specific responsibilities and obligations that its leaders, managers and those responsible for the administration are required to continue to assume. Those responsibilities should be set out in detail. While welcoming the fact that the dissolution of trade unions or employer associations are to be decided by an independent Labor Court, OHCHR considers that post-dissolution matters should also be decided concurrently by the Court in order to ensure that decision are free from external interference and to avoid arbitrary and discriminatory impact. An alternative would be for the trade unions or employer associations themselves to set up a written mechanism detailing the procedure in which the post-dissolution matters should be handled.

OHCHR notes that the second paragraph fails to distinguish between the various possible reasons for the dissolution of an organization. By article 28, paragraph 2, an organization could be dissolved “in the event of a complete closure of the [associated] enterprise or establishment” which involves no misconduct on the part of its leaders or administrators. Recalling that article 3 of ILO Convention No. 87 provides for the rights of workers' and employers' organisations to elect their representatives “in full freedom”, OHCHR is of the view that the suitability of the leaders of a dissolved organization to lead another is the right of its members alone to determine.

OHCHR recommends that draft article 30, paragraph 1, be reformulated to *specify the post-dissolution responsibilities* of the leaders, managers and those responsible for the administration of any dissolved unions or the employer associations. OHCHR suggests that this draft article should provide that in the case of the dissolution of a professional organization, within the parameters of those responsibilities, the Labor Court should set forth a post-dissolution plan for residual matters, such as the disposal of assets. OHCHR further recommends that draft article 30, *paragraph 2, be removed*.

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<sup>36</sup> Digest decision of Freedom of Association of ILO, para. 692.

**Article 31:** In case of the dissolution of a union or an employer association, the assets of the union or employer association are allotted as prescribed in the statutes, or if there is no such statutory provision, they are allotted according to the rules determined by the General Assembly. If there are no such statutory provisions nor a decision from the General Assembly, the Labor Court may transfer the union's or the employer association's assets in the form of a donation to another similar, legally constituted union or association or to relief associations or to providers of social providence.

**Comments:** The draft article is mostly in compliance with ILO standards in that the statutes of any dissolved organization or a decision by its governing body are the first points of reference with respect to the distribution of its assets. Beyond that, the CFA/ILO has indicated that the assets of a dissolved organization should be "distributed among its former members or handed over to the organization that succeeds it, meaning the organization or organizations which pursue the aims for which the dissolved union was established, and which pursue them in the same spirit".<sup>37</sup> Additionally, it states that "...where there is no specific rule, the assets should be at the disposal of the workers concerned."<sup>38</sup>

OHCHR suggests modifying the last phrase of draft article 31 to read: "*If there are no such statutory provisions and nor a decision from the General Assembly, the Labor Court may distribute the assets of the dissolved union or the employer association among its former members or place them at the disposal of the workers concerned.*"

## CHAPTER 7

### Rights and duties of unions

**Article 49:** Leaders, managers and those responsible for the administration of a union shall be directly elected by members of that union and can stand for re-election.

Union members shall vote on any policy that may potentially affect their membership by secret ballot.

Union members shall not be required to pay membership fees that are excessive or determined arbitrarily. No officer or agent of the union shall collect fees unless he or she is duly authorized to do so in conformity with the statutes of the union.

Each worker can be a member of only one (1) union in the same enterprise or establishment at the same time. If any worker who has already been the member of a particular union moves to join with another union within the same enterprise or establishment, the last other union shall notify the employer and the worker concerned should become a member of the last union.

**Comments:** This article is similar to article 5 of the present draft law, which refers to the rights of workers to take part in the election of representatives at the workplace; be elected or appointed and serve as a workplace representative when there is a regulation stipulating for such elections or appointments; and to exercise any other rights provided for in this law, among others. It also incorporates additional elements regarding membership fees, which are incorporated in article 26, paragraph 2.

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<sup>37</sup> Digest decision of Freedom of Association of ILO, para. 706.

<sup>38</sup> Digest decision of Freedom of Association of ILO, para. 707.

OHCHR recommends *merging draft articles 2 and 49* to avoid duplication or confusion. With regard to the third paragraph on membership fees, this could be added to article 26, on the same matter.

## CHAPTER 8

### Duties of employers and employer associations

**Article 51:** The most representative status union has a duty to engage with employers in good faith for the purpose of representing the interests of its members in determining the terms and conditions of employment and of ensuring compliance with the agreed terms and conditions and legitimate rights. This duty of good faith includes a duty to meet with employers, attend meetings on time and promptly for the purpose of discussion to resolve problems or collectively negotiate to sign a collective agreement with respect to the terms and conditions of employment in accordance with the provisions of this law, as well as to consider grievance proposals or any questions arising from such an agreement. This duty includes a duty to compromise or object with reasonable consideration if requested by either party.

**Article 53:** All employers and employer associations have the duty to negotiate with unions and their legal representatives in good faith for the purpose of representing the interests of its members and accepting compliance with the agreed terms and conditions, and legitimate rights.

This duty of good faith includes a duty, in respect of the certified most representative status union, to meet and convene promptly and in a timely manner for the purpose of negotiating a collective bargaining agreement with regard to the terms and conditions of employment in accordance with the provisions of this law, as well as to consider proposals for dealing with any grievances or questions arising under such agreement. The duty goes beyond merely ordinary meetings and consultations and includes providing the most representative status union with facilities for carrying out negotiations, providing all information relevant to negotiations as requested by the union, implementing a contract or a written memorandum incorporating such agreements if requested by either party, but does not oblige an employer or an employer association to agree to any specific proposal put forward by the union.

Both negotiating parties shall respect the principles of integrity and good faith.

**Comments:** Welcoming the obligation imposed on both unions and employers to engage with each other in good faith, OHCHR observes that draft article 53 places less duties on employers and employer associations than does draft article 51 on unions, putting the two parties on unequal footing. While unions have "...a duty to compromise or object with reasonable consideration if requested by either party", employers have a "duty to negotiate with unions and their legal representatives in good faith ... and accepting compliance with the agreed terms and conditions ..." but are not obliged to comply themselves.

Thus, when problems relating to disagreements between employers and unions are brought to a Labour Court, it appears that unions and employers would be held to different standards of conduct, resulting in violations of article 14(1) of the ICCPR, which states that "[a]ll persons shall be equal before the courts and tribunals. In its General Comment No. 32, the HRCte explained that "[t]his guarantee not only applies to courts and tribunals addressed in the second sentence of this paragraph of article 14, but must also be respected whenever domestic law

entrusts a judicial body with a judicial task.”<sup>39</sup> The right to equality “...ensures that the parties to the proceedings in question are treated without any discrimination.”<sup>40</sup> Additionally, the CFA/ILO emphasizes the importance of “both employers and trade unions bargain[ing] in good faith and mak[ing] every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties.”<sup>41</sup>

OHCHR recommends *revising the wording of draft articles 51 and 53 to ensure equality between unions and employers.*

## CHAPTER 9

### Representation by the most representative status union

**Article 56:** A union shall request certification of most representative status from the Ministry in charge of Labor, pursuant to the implementing procedures and formalities to be set out in Prakas of the Minister in charge of Labor.

**Article 57:** Within 30 (thirty) working days at the latest after receipt of the request, the Ministry in charge of Labor shall give an official decision on the recognition of most representative status if the union meets the criteria as stated in this law. If it is necessary to review the most representative status of any union, the Minister in charge of Labor may conduct an investigation.

The Ministry in charge of Labor can suspend or revoke the most representative status of a union if there is a breach in or a lack of criteria as set forth in this law.

**Comments:** According to the CFA/ILO, “[t]he determination of the most representative trade union should always be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse”,<sup>42</sup> and “such a determination should not be left to the discretion of governments.”<sup>43</sup> The CFA/ILO established that a number of safeguards must be in place for the certification of the most representative union to be compatible with ILO Convention No. 98, including: “(a) certification to be made by an independent body; (b) the representative organizations to be chosen by a majority vote of the employees in the unit concerned; (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; (d) the right of an organization other than the certificated organizations to demand a new election after a fixed period, often 12 months, has elapsed since the previous election.”<sup>44</sup>

OHCHR suggests revising the text to *ensure that the above-mentioned safeguards are in place during the certification process, including certification by an independent body.*

**Article 60:** The most representative status certification of a union cannot be challenged for two years from the date of receipt of certification, except in the

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<sup>39</sup> CCPR/C/GC/32, para. 7.

<sup>40</sup> CCPR/C/GC/21, para. 8.

<sup>41</sup> Digest decision of Freedom of Association of ILO, para. 935.

<sup>42</sup> Digest decision of Freedom of Association of ILO, para. 347.

<sup>43</sup> Digest decision of Freedom of Association of ILO, para. 348.

<sup>44</sup> Digest decision of Freedom of Association of ILO, para. 969.

following cases in which a most representative status union may lose this status indefinitely:

- a) When the union has been found to have consistently failed to meet its duties as set out in Article 58 of this law, based on factual evidence;
- b) When the registration of the union has been revoked;
- c) When the union has been dissolved;
- d) When there is the factual evidence that the union is no longer the MRS.

When most representative status exceeds 2 (two) years, any union operating in the same enterprise or establishment can challenge this status by seeking recognition through the procedures set by *Prakas* of the Minister in charge of Labor.

Decisions of the Minister in charge of Labor in cases corresponding to point “a” of this Article may be appealed through the Labor Court.

The Ministry in charge of Labor shall maintain records of unions with Most Representative Status and may collaborate to publish the list of most representative status unions every 12 (twelve) months.

**Comments:** See OHCHR comments on draft articles 56 and 57, particularly with regard to the need for an independent body to carry out certification.

OHCHR recommends revising this article in light of the comments and recommendations on draft articles 56 and 57 to *provide for an independent body to carry out MRS certification.*

## CHAPTER 10

### Unfair labor practices by employers

**Article 62:** Employers shall not discriminate against workers on the basis of their holding office or exercising leadership in unions or their participation in union activities when making decisions concerning recruitment, leadership, assignment, promotion, position, remuneration and benefits, disciplinary measures and contract termination, including for dismissal and non-renewal of any employment contract that is subsequently [found to be] against the established procedures.

**Comments:** OHCHR welcomes the non-discrimination provisions in draft article 62. To comply with article 1 of ILO Convention No. 98 (Right to Organise and Collective Bargaining Convention), it should ensure that all workers “enjoy adequate protection against acts of anti-union discrimination in respect of their employment,” not only those who hold office or leadership roles, or who participate in union activities.

OHCHR suggests revising the article so that it reads: “*workers shall enjoy adequate protection against acts of anti-union discrimination on the basis of membership in a union, participation in union activities, or any leadership role in a union that they may have assumed...*”.

## CHAPTER 11

### Unfair [labor] practices by unions

**Article 65:** It shall be considered as unlawful for a union or its representatives to commit any of the following practices:

- a) To restrain or coerce workers in the exercise of their rights to self-organization of the union. However, the union shall have the rights to prescribe its own rules with respect to the recruitment or retention of membership;
- b) To cause or attempt to cause an employer to discriminate against workers, including dismissal of workers in non-compliance with the legal procedures and the normative conditions, on any of the grounds that the workers in question have denied to be a member of or have requested to leave the union;
- c) To violate the duty of integrity and good faith to bargain collectively, provided it is an MRS union;
- d) To make trouble or attempt to cause an employer to pay or deliver or agree to pay or deliver any amount of money or other valuable things, which straightly characterize for services which are not performed or not to be performed, including a demand for a service fee to a union's negotiations;
- e) To violate or cause to violate a statute, employment contract, Memorandum of Understanding (MoU), agreement, collective bargaining agreement or legal regulations, or to interrupt the process of collective bargaining and the implementation of a collective bargaining agreement;
- f) To agitate for purely political purposes or for their personal ambitions, or to commit acts of violence at the workplace and other places;
- g) To cause a congestion or block an entrance and exit gate in the premises of the enterprise or establishment or to violently incite or threaten or prevent or coerce, through all means, non-striking workers not to work and close public streets;
- h) To lead a strike or demonstration that contravenes the legal procedures;
- i) To destroy individual, collective or public properties.

**Comments:** Some of the acts prohibited in this article are already prohibited in the Criminal Code (e.g., (f) to commit acts of violence and (i) to destroy individual, collective and public properties); as such, there is no need to include them here as new crimes. Paragraph (f) aims to prohibit certain motivations, which could lead to the arbitrary limitation of rights enshrined in the ICCPR, ICESCR and ILO Conventions. The term “for purely political purposes” is dangerously susceptible to abuse, putting at risk the ability of unions to promote a position in the interest of their members if it should coincide with the platform of political actors. There is a need to clarify whether (e) is intended to protect the bargaining purpose against interference by a union not party to it. Otherwise, the prohibition of interrupting the process of collective bargaining could be seen as an interference in the voluntary bargaining process. If (g) is intended to allow unionists to stand peacefully before an enterprise or establishment expressing their demands or grievances, without blocking access to its entrances or exits or public roads, OHCHR would understand (g) to be unproblematic. Provision must be made for the possibility of the numbers of sympathizing workers in a strike to swell such that gates and roads might effectively become congested; the responsibility in such cases could not be necessarily attributed to unionists.

OHCHR recommends the *removal of those crimes that are already prohibited in the Criminal Code, as well as terms that are not clearly defined and could lead to ambiguity in their application.* OHCHR specifically recommends the *deletion of paragraph (e), or clarify if it refers only to interference by a union not party to not, and paragraph (f).*

**Article 68:** Any union leader and manager, and those responsible for the administration of the union, who have been legally laid off temporarily for economic or other lawful reasons shall retain the right of access to the enterprise or establishment. Any union leader and manager, and those responsible for the administration of the union, who have been laid off permanently shall be entitled to access the enterprise or establishment with 60 (sixty) days from the date of such permanent termination for the purpose of fulfilling the responsibilities of her or his office in accordance with their mandate without affecting the normal operation of the enterprise or establishment.

Any leader, manager, and those responsible for the administration of the union who committed an act of wrongdoing and were dismissed on legal ground shall resign from that union, and he or she has no further right to access the enterprise or establishment.

**Comments:** According to the CFA/ILO, “[a] provision depriving dismissed workers of the right to union membership is incompatible with the principles of freedom of association since it deprives the persons concerned of joining the organization of their choice”<sup>45</sup> as established in article 2 of ILO Convention 87.

OHCHR recommends the removal of the prohibition of union membership of dismissed workers as established in the second paragraph.

## CHAPTER 13

### Collective bargaining agreements and collective bargaining

**Article 69:** The purpose of the collective bargaining agreement (CBA) is to determine the working and employment conditions and other conditions of workers, including personnel serving in the air and maritime transportation, and to regulate relationships between employers and workers or unions as well as between unions and employer associations.

CBAs should specify the scope of their application, which may be:

- a. Geographical framework:
  - At a workshop or site level
  - At an enterprise or establishment level
  - At a provincial or municipal level
  - At a national level;
- b. Occupational framework:
  - A particular occupation
  - A number of combined occupations or similar occupations
  - An economic activity or a particular sector of economic activity
  - Many economic activities or many sectors of economic activities.
- c. Sectoral framework
- d. Air and maritime transport framework

The provisions of a CBA shall be more favorable towards workers, including personnel serving in the air and maritime transportation, than those of the laws and

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<sup>45</sup> Digest decision of Freedom of Association of ILO, para. 268.

regulations in effect. However, they must not be contrary to the provisions of the public order and laws in effect. All demands by both employers and workers for rights, benefits, and working conditions which deviate from the laws, regulations and internal rules of the enterprises or establishments shall be settled through an orderly collective bargaining process.

In a given enterprise or establishment there shall be only one collective bargaining agreement.

In the air transportation, there shall be only one collective bargaining agreement.

In the maritime transportation, there shall also be only one collective bargaining agreement.

**Comments:** The Committee has also established that “[s]ystems of collective bargaining... where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company are both compatible with the principles of freedom of association.”<sup>46</sup> This could include different occupations within the same enterprise to be covered by separate collective bargaining agreements.

OHCHR suggests removing the clause which sets a limit of one collective bargaining agreement for each enterprise or establishment, to ensure the article’s compatibility with the principles of freedom of association.

**Article 70:** A collective bargaining agreement (CBA) is concluded for either a definite or an indefinite duration.

When a CBA is for a definite duration, it lasts for at least 3 (three) years. Upon its expiration, it shall retain the same effect unless it has been denied or revised by either party, on the condition of retaining a 3-month notice.

When a CBA is for an indefinite duration, it can be appealed to be refused; however, it remains in effect for a period of 1 (one) year from the date of the receipt of appeal.

The notice of refusal does not prevent the upholding of the CBA from being implemented by other mutual signatories.

**Comments:** To safeguard the right of unions to bargain freely with employers, this article should take into consideration that “[t]he duration of collective agreements is primarily a matter for the parties involved, but if government action is being considered any legislation should reflect tripartite agreement.”<sup>47</sup>

OHCHR proposes the *elimination of the possibility of CBA’s of “indefinite duration”* in paragraphs 1 and 3, and suggest the following alternative text for paragraph 3: “*CBA’s may be valid for up to 2 (two) years*”.

**Article 71:** Parties to collective bargaining must be given full rights by their members through a written letter of authorization or by proxy as prescribed in this law to conduct and conclude collective bargaining. Interference, incitement and interruptions by any other person(s) who are not involved in collective bargaining agreement shall be prohibited.

The practical implementation procedures shall be determined by Prakas of the Minister in charge of Labor.

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<sup>46</sup> Digest decision of Freedom of Association of ILO, para. 950.

<sup>47</sup> Digest decision of Freedom of Association of ILO, para. 1047.

**Comments:** Acts by which minority unions demand to express their views should not be considered as “interference, incitement or interruptions.” OHCHR suggests revising the wording of the sentence and setting out the precise meaning of the term “full rights”. Additionally, the law should foresee the possibility of unions receiving advice from other parties, such as labor experts, during the negotiating process.

**Article 72:** The established bargaining council of unions and employers has full rights on behalf of all workers and employers at all bargaining levels, whether for the signing of collective bargaining agreement between an employer and many non-MRS unions or between many employers and many non-MRS unions.

The practical implementation procedures shall be determined by Prakas of the Minister in charge of Labor.

**Comments:** OHCHR suggests that it would be useful to set out precise definitions of the terms “bargaining council” and “full rights”.

**Article 73:** Once concluded, a CBA may be applied temporarily and promptly by both parties if this is stated clearly in an article. The CBA shall be registered with the Ministry in charge of Labor. The CBA shall come into effect 1 (one) day after it is registered.

The provisions of the CBA shall be applicable to the employer(s) and all workers who fall within the scope of that agreement. The Ministry in charge of Labor may cooperate to publish the list of the registered CBAs on an annual basis.

**Comments:** Recalling paragraph 8(a) of the Collective Agreements Recommendation of the ILO (Recommendation No. 91), by which employers are called upon to inform all concerned workers about the results of collective bargaining, OHCHR suggests adding to the first paragraph a requirement that *employers, upon the conclusion of a CBA, must expeditiously inform all workers of the contents of the CBA.*

**Article 74:** All collective bargaining agreements must explicitly contain a clause on labor dispute resolution procedures, guaranteeing the minimum essential services and other services and public order before they can be registered.

**Comments:** OHCHR welcomes the introduction of an obligation to foresee within CBA’s the establishment of dispute resolution procedures. The draft article contains an unclear term, “other services,” which is sufficiently vague that a CBA might be invalidated for spurious reasons.

OHCHR recommends that “*other services*” be precisely defined or deleted.

## CHAPTER 14

### Settlement of unions’ and employer associations’ disputes

**Article 75:** Disputes arising between one union and another shall be settled through compromise and mutual understanding with utmost efforts of all parties concerned in disputes and by the National Council of Unions.

Disputes arising between one employer association and another, as well as disputes arising between union(s), or the National Council of Unions and employer association(s), shall be settled through in-depth discussions and with utmost efforts of all parties concerned, ensuring the minimum essential services and public order.

If the discussions referred to in paragraphs 1 and 2 of this article do not lead to mutual agreement, disputes shall be settled in accordance with the applicable laws and regulations in force.

**Comments:** please see comments on article 4, regarding the removal of the reference to the national council of unions.

## CHAPTER 15

### Administrative measures and penalties

**Article 76:** Sanctions in this chapter include written admonishments and transitional penalties.

**Comments:** OHCHR considers that due to the different nature and seriousness of the acts that are subject to administrative measures and penalties, the latter should be revised to ensure the proportionality between the seriousness of the acts and the penalties.

OHCHR recommends *revising the fines in articles 77 to 95, to ensure their proportionality with the gravity of each act subject to penalties.*

**Article 77:** The written admonishments and transitional penalties fall within the jurisdiction of the Minister in charge of Labor.

The payment of the transitional fines leads to the extinguishment of criminal action.

In the event that the offender fails to pay the transitional fine, the case file shall be forwarded to a court of law.

**Comments:** OHCHR considers that, to ensure consistency with the rest of the draft law, the second paragraph in this article should *refer to the Labor Court* instead of the more general reference to a court of law.

**Article 79:** Any persons shall be admonished in writing for illegally obstructing:

- the right to establish a union or employer association;
- the right to join a union or employer association;
- the right not to join a union or employer association;
- the freedom to join in the leadership or those responsible for the administration of the union or employer association;

Any persons shall also be admonished in writing for acts of discrimination on any of the following grounds:

- race, ethnicity, and nationality,

- political tendency,
- gender, creed, religion,
- health status,
- physical disabilities.

Failure to comply with the admonishment in paragraph 1 above shall be subject to a transitional fine not exceeding 1,000,000 (one million) riel.

Failure to comply with the admonishment in paragraph 2 above shall be subject to translation fine not exceeding 5,000,000 (five million) riel.

**Comments:** OHCHR welcomes the fact that admonishment for discrimination is foreseen in draft article 79. Several additional elements would need to be listed for full conformity with international human rights law, which also prohibits discrimination on the basis of language, national or social origin, property, birth or other status. OHCHR observes a notable difference in treatment between two types of offenses of comparable gravity: compelling persons who prefer not to join an organization to do so incurs a fine 5 (five) times higher than preventing persons from forming or joining an organization of their choice.

OHCHR recommends *adding language, national or social origin, property, birth or other status as prohibited grounds for discrimination*, in accordance with article 2.1 of the ICCPR and article 2.2. of the ICESCR. To prevent discretionary application of this article, OHCHR suggests changing the term “political tendency” to “*political or other opinion*”. OHCHR also recommends that the two types of offenses set out in the two paragraphs be subject to equal fines.

**Article 80:** Any persons who operate a union or an employer association without registration, pursuant to this law, shall be admonished in writing.

The provision of paragraph 1 above shall also be applicable to any union or employer association that is revoked or dissolved.

Failure to comply with the admonishment above shall be subject to a transitional fine not exceeding 5,000,000 (five million) riel.

**Comments:** Please see OHCHR comments to articles 11-12 and 17-19.

**Article 81:** Any person who carries out activities beyond the scope of geography, profession or sector defined in his/her governing statutes shall be admonished in writing.

Failure to comply with the admonishment above shall be subject to a transitional fine not exceeding 5,000,000 (five million) riel.

**Comments:** In order to prevent the discretionary application of transitional fines, it is recommended that the nature of the “activities” and “scope” contained in this article is clearly defined.

**Article 82:** Any union or employer association shall be admonished in writing for breach of obligations set forth in Article 35 of this law.

Failure to comply with the admonishment above shall be subject to a transitional fine not exceeding 5,000,000 (five million) riel.

**Comments:** See comments to draft articles 22-25 above.

**Article 86:** Any minority unions in an enterprise or establishment with a certified MRS union remaining valid that violate the provisions of paragraphs 1 and 2 of Article 59 of this law shall be admonished in writing.

Failure to comply with the admonishment above shall be subject to a transitional fine not exceeding 5,000,000 (five million) riels.

**Comments:** See OHCHR comments on draft article 26.

**Article 88:** Any employers who have dismissed or terminated a worker who has testified or is about to testify in relation to the enforcement of the Labor Law or other labor standards shall be admonished in writing.

Failure to comply with the admonishment above shall be subject to a transitional fine not exceeding 5,000,000 (five million) riels.

**Comments:** The actions subject to penalties are limited to the actual dismissal of a worker but do not include threats to dismiss him/her. OHCHR recommends adding threats to the actions subject to penalties.

**Article 94:** An employer association that conducts an illegal lockout following receipt of a written admonishment shall be subject to a transitional fine up to 10,000,000 (ten million) riels.

**Comments:** The wording in the above article is not clear with regard to the written admonishment.

OHCHR recommends revising the wording to ensure clarity on whether the transitional fine is put into place at the same time as a written admonishment.