

A HUMAN RIGHTS ANALYSIS OF THE DRAFT LAW ON MINIMUM WAGE

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

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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 draft 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 Minimum Wage. OHCHR offers it as the draft law holds direct implications in the ability of people to fully exercise their freedom of opinion, expression, assembly and association, as well as their right to just and favourable conditions of work.

Legal framework

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, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

- Article 7 of the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”, the implementation of which is monitored by the Committee on Economic, Social and Cultural Rights):

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

1. Remuneration which provides all workers, as a minimum, with:
 - a. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - b. A decent living for themselves and their families in accordance with the provisions of the present Covenant...

- Article 19 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 hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals.”

- Article 22:

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.

The United Nations Human Rights Council has reaffirmed “the rights contained in the International Covenant on Civil and Political Rights, in particular the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice, and the intrinsically linked rights to freedom of thought, conscience and religion, peaceful assembly and association and the right to take part in the conduct of public affairs.”¹ It has also called on States to “take all necessary measures to put an end to violations of these rights and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented.”²

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

¹ A/HRC/RES/12/16, para. 1.

² Ibid, para. 5(b).

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).

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.”³

The latest Concluding Observations on Cambodia of the HRCte⁴ include several recommendations specifically on these two basic rights. The HRCte 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.”

Drafting process

The right to participation means that, before a bill is enacted into law, its contents should be accessible not only to the directly concerned parties but the general public at large. In this regard, the Committee on Economic, Social and Cultural Rights has underlined “the importance of consultation in formulating, implementing, reviewing and monitoring laws and policies related to the right to just and favourable conditions of work, not only with traditional social partners such as workers and employers and their representative organizations, but also with other relevant organizations, such as those representing persons with disabilities, younger and older persons, women, workers in the informal economy, migrants and lesbian, gay, bisexual, transgender and intersex persons, as well as representatives of ethnic groups and indigenous communities.”⁵ For its part, the Committee on Freedom of Association of the Governing Body of ILO (CFA/ILO) has emphasized the value of having full and frank consultations with organizations of employers and workers during the preparation and application of legislation which affects their interests, adding that importance should be attached to the principle of consultation and cooperation between public authorities and employers’ and workers’ organizations.⁶

OHCHR notes that the third Tripartite consultation of the Law took place on 10 April 2018. We also take note that two consultative workshops with other stakeholders took place; however, participants had not received the latest draft of the law in advance and were not notified sufficiently

³ A/HRC/RES/15/21, para. 1; A/HRC/RES/21/6, para. 1; and A/HRC/RES/24/5, para. 2.

⁴ Concluding observations of the Human Rights Committee on the second periodic report of Cambodia, CCPR/C/KHM/CO/2, March 2015.

⁵ General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, para. 56.

⁶ Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth edition, 2006, paras. 1072.

in advance that the workshop would take place. So far, no broad consultation with the general public has been organized.

Recommendation: *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. 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 minimum wage that fully respects human rights.

Article 1

The purpose of this law is to:

- Enhance decent living, value, dignity, job opportunities, and productivity of workers.
- Enable more attractive business and investment environment

No comments

Article 2

This law has the following objectives:

- To ensure the minimum wage fixing for all workers under minimum wage law for all persons covered by Labour Law.
- To establish scientific minimum wage fixing procedure based on social and economic criteria.
- To form National Minimum Wage Council as a tripartite mechanism for research and recommendation on minimum wage and other benefits of all persons covered by Labour Law.

Article 3 Scope

The effect of this law covers those enterprises or institutions and individuals who are under the provisions of the Labor Law.

Comments for articles 2 and 3: OHCHR observes that the application of the law only to “those enterprises or institutions and individuals who are under the provisions of the Labor law” excludes various types of workers, including civil servants, air and maritime transportation workers, judges and domestic servants, thus restricting their capacity to participate in minimum wage discussions. 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]”,⁷ all of whom fall out of the scope of the Labor Law.

OHCHR recommends that, if not all persons will be covered by the law, there should be 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 fair wages and equal remuneration, in accordance with Article 7 of the ICESCR.

Chapter 2

Minimum Wage

Article 4

Wage at least equal to minimum wage which is the statutory lowest wage and determined by the Prakas of the Ministry in charge of labour.

Comments: OHCHR suggests expanding the definition of minimum wage, taking into consideration the definition of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) “The minimum sum payable to a worker for the work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions.”⁸

Article 5

The elements to be considered when defining the minimum wage shall focus on economic status, cost of living and actual condition of the country.

Those elements are as follows:

- 1, Social criteria including family situation, inflation rate and cost of living.
2. Economic criteria including productivity, competitiveness of the country, labor market situation and the profitability of the sector.

⁷ Observation (CEACR) - adopted 2014, published 104th ILC session (2015).

⁸ ILO General Survey of the Reports on the Minimum Wage-Fixing Machinery Convention (No. 26) and Recommendation (No. 30), 1928; the Minimum Wage Fixing Machinery (Agriculture) Convention (No. 99) and Recommendation (No. 89), 1951; and the Minimum Wage Fixing Convention (No. 131) and Recommendation (No. 135), 1970; Report of the Committee of Experts on the Application of Conventions and Recommendations, 1992, para. 42.

In case of necessity the National Minimum Wage Council could adjust the criteria in minimum wage fixing criteria in accordance to economic activities, profession, jobs or regions based on economic and social situation of the country.

Comments: OHCHR welcomes the inclusion of social criteria as an element to be considered when defining the minimum wage. The Committee on Economic and Social Rights has stated that the minimum wage is meant to provide a “decent living” for workers and families. It “must be sufficient to enable the worker and his or her family to enjoy other rights, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs.”⁹ The Committee added that “The elements to take into account in fixing the minimum wage are flexible, although they must be technically sound, including the general level of wages in the country, the cost of living, social security contributions and benefits, and relative living standards.”¹⁰ Additionally, in its last concluding observations on Cambodia, the Committee recommended that Cambodia “establish a universal minimum wage that will enable all workers and their families to enjoy an adequate standard of living.”¹¹

However, although the requirements of economic and social development and achievement of a high level of employment also need to be considered, these should not be used to justify a minimum wage that does not ensure a decent living for workers and their families.¹²

Both the ILO’s Minimum Wage Fixing Convention (No. 131) and the Minimum Wage Fixing Recommendation (No. 135) establish that the following criteria should be taken into account in determining the level of minimum wages: (a) the needs of workers and their families; (b) the general level of wages in the country; (c) the cost of living and changes therein; (d) social security benefits; (e) the relative living standards of other social groups; (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.”¹³

The term “in case of necessity” is subjective, and could be interpreted to allow the National Minimum Wage Council broad discretion to make adjustments in a discriminatory and arbitrary manner. The main objective of the law is to ensure the minimum wage fixing for all workers covered by the Labour Law. However, this provision could lead to distinctions in treatment prohibited under article 3 of ILO Convention No. 87 and article 2 of the ICCPR, which establishes the enjoyment of all rights in the Covenant without discrimination of any kind, including based on race, sex, language, political opinion, national or social origin, property, birth or other status.

OHCHR recommends revising the article so it reads as follows: *The elements to be considered when defining the minimum wage shall set out a framework to develop a minimum wage that*

⁹ CESCR General Comment No. 23, para. 18.

¹⁰ CESCR General Comment No. 23, para. 21.

¹¹ Concluding observations of the Committee on Economic, Social and Cultural Rights on the first and second periodic reports of Cambodia, E/C.12/KHM/CO/1, para. 23.

¹² CESCR General Comment No. 23, para. 22.

¹³ See ILO Convention No. 131: Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (54th Conference session, Geneva, 22 Jun 1970), article 3; and ILO Recommendation R135: Recommendation concerning Minimum Wage Fixing, with Special Reference to Developing Countries (54th Conference Session, Geneva, 22 June 1970), para. 1.

ensure a decent living for workers. These elements should include: a. Social criteria including the level of wages in the country, inflation rate, the cost of living, social security benefits, and the needs of workers and their families. b. Economic criteria including economic development, levels of productivity, and the desirability of attaining and maintaining a high level of employment. The last paragraph should be deleted.

Article 6

Any written or verbal agreement that would remunerate the worker at a rate less than the minimum wage determined in the prakas of the Minister in Charge of Labor shall be abrogated.

Any written or verbal agreement that would remunerate the worker at a rate higher than the minimum wage determined in the prakas of the Minister in Charge of Labor shall be continued.

No comments

Article 7

For workers who are remunerated by piece rate pay, the wage shall be determined for workers with moderate skills who work during regular working hours to receive, for the same period of working hours, the wage that is at least equal to the guaranteed minimum wage in normal working hours and applicable to workers of its kind.

Workers who receive a piece rate-based wage shall be paid based on the actual outputs produced. In the event that the output produced is higher than the minimum wage, the workers shall be paid based on that higher amount. However, in case it is lower than the minimum wage, the employers shall supplement to make it equal to the guaranteed minimum wage.

No comments

Article 8

For equal working conditions, professional skills and output, equal remuneration shall also be provided to all workers who are under the scope of this law regardless of origin, sex or age.

Comments: OHCHR welcomes the inclusion of a non-discrimination clause. However, the article should include all the elements provided by the Committee on Economic and Social Rights, as it is the State party's obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to just and favourable conditions of work, without discrimination of any kind.¹⁴

¹⁴ CESCR General Comment No. 23, para. 65.

OHCHR recommends revising the article, so that it reads as follows: *...regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, sexual orientation and gender identity, health, nationality or any other status.*

Article 9

The minimum wage determined by a prakas of the Minister in Charge of Labor shall be established without distinction among professions or jobs. This may vary according to region based on economic factors that determine the standard of living.

The Minister in Charge of Labor may prioritize the scope in which the minimum wage is applicable based on the economic activities, professionalism, occupation and region according to the economic and social condition of the country after obtaining approval from the National Minimum Wage Council.

Comments: ILO Recommendation No. 135 establishes that “The system of minimum wages may be applied either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers.”¹⁵ However, it is the view of the ILO Committee of Experts that “whatever system is chosen at the national level, it needs to ensure respect for the principle of equal remuneration for work of equal value.”¹⁶

In this regard, the second paragraph of Article 9 contains vague language, such as the term “professionalism”, which could result in an arbitrary application of the minimum wage for certain types of workers. It also appears to be contrary to Article 7 of the law, and possibly to Article 7 of the ICESCR. Since the law does not foresee any “approval” process by the National Minimum Wage Council, this paragraph could allow the Ministry in Charge of Labor to unilaterally decide where the minimum wage is applied.

OHCHR recommends the provision of clear and precise terms in the second paragraph.

Chapter 3

Minimum Wage Discussion

Article 10

The discussion of the minimum wage shall conform to the following principles:

1. The discussion of minimum wage shall take place as per the set schedule by the Minister in charge of Labour.
2. The minimum wage shall be the predictable figure or variable rate that grows gradually steady

¹⁵ ILO Recommendation No. 135, para. 5(1).

¹⁶ General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135); Report of the Report of the Committee of Experts on the Application of Conventions and Recommendations, 103rd International Labour Conference, 2014, para. 199.

3. The win-win policy shall be adhered to
4. The discussion shall be based on the official and legal data of the national institution or any entity in charge of compiling statistics and adopting social and economic criteria stated in Article 5 of this law.

Comments: The previous version of the law included an annual discussion on minimum wage, which was welcomed by OHCHR, in line with the recommendation by the Committee on Economic and Social Rights. Although the Ministry might set a schedule with regular meetings, there is a risk that the revised formulation might lead to maintaining the same minimum wage for prolonged periods of time, if the law does not set fixed periodicity. In its General Comment No. 23, the Committee on Economic, Social and Cultural Rights recommended States parties to prioritize the “adoption of a periodically reviewed minimum wage, indexed at least to the cost of living, and maintain a mechanism to do this. Workers, employers and their representative organizations should participate directly in the operation of such a mechanism.”¹⁷.

Several points of the article would benefit from further clarification. It would be helpful to ensure that all terms within this article are clear, so that they may not be interpreted in a subjective manner.

In this sense, the term “predictable” under paragraph 2 and the “win-win policy” in paragraph 3 should be clearly defined.

Paragraph 4 should be coherent with the last paragraph of Article 16 which allows independent investigations to be carried out and it could recognize that other national or international findings could be taken into account in the discussion on the minimum wage.

OHCHR recommends that:

- The discussion of minimum wage take place at least annually, as it was stated in the previous draft. Reference could be added to the recommendation of a Minimum Wage Council. The last part of paragraph 1 should be deleted [as per the set schedule by the Minister in charge of Labour] and should be replaced by “annually”.
- The terms “predictable” under paragraph 2 and the “win-win policy” in paragraph 3 should be precisely defined. In case they are not, we recommend deleting these paragraphs.
- OHCHR further suggests the inclusion of other national and international findings and sources of data produced by relevant stakeholders in paragraph 4

Article 11

The Minister in charge of Labour will issue Prakas to determine the schedule of minimum wage fixing after receiving recommendation from the National Minimum Wage Council.

¹⁷ CESCR General Comment No. 23, para. 20.

In the event of force majeure or an emergency, the Minister in Charge of Labor may issue a prakas to suspend or adjust the schedule for discussion of the minimum wage. In this case, the previous year's minimum wage shall be further applied until the new minimum wage is determined.

Comments: See comments to article 10 above. The previous version of the draft provided a fixed timeline for the discussion on minimum wage, which gave the process regularity and ensured a periodic discussion of the minimum wage. OHCHR welcomes the inclusion of the reference to the recommendation by the Minimum Wage Council. While the Committee on Economic, Social and Cultural Rights recognizes that minimum wages may be frozen, it has established that this “measure has to be taken as a last resort and must be of a temporary nature, bearing in mind the needs of workers in vulnerable situations, with a return to the standard procedures of periodic review and increase in the minimum wage as swiftly as possible.”¹⁸ In this regard, the terms “force majeure” and “emergency” would require further precision, to clarify in which situations the Ministry in Charge of Labor may suspend or adjust the schedule for discussions, to ensure legal certainty and avoid subjective interpretations. Additionally, postponing the discussions rather than suspending them would contribute to ensure transparency and dialogue among the members of the National Minimum Wage Council. If the discussion is postponed and the new minimum wage is adopted after 1 January, it should still be effective from 1 January, and therefore workers should be paid retroactively for any difference.

OHCHR recommends that the terms “force majeure” and “emergency” be defined in the law, to provide legal certainty. It also recommends that the schedule for discussion of the minimum wage not be suspended, and that the minimum wage be effective from 1 January, even if the discussion is postponed.

Article 12

To participate in the discussion of minimum wage, each party to the National Minimum Wage Council shall seek its official position using the criteria stated in Article 5 of this law.

In the event that its own official position cannot be unanimously reached, each party shall reach a decision based on the majority voice through an internal vote to determine its official position and shall not violate the official position decided by its party for discussion.

The decision on the figures or rate of variable of minimum wage by the National Minimum Wage Council shall be based on the rules unanimously approved by the members present at the meeting. In the event that an agreement on any points cannot be unanimously reached 2 (two) times at 2 (two) different meetings, the decision shall be made based on the majority through secret vote at the second meeting. In the case of a tied vote, the voice of the chair shall take precedence.

¹⁸ CESCR General Comment No. 23, para. 22.

Comments: Using a majority to decide on the rate of increase of the minimum wage could result in the representatives of workers being constantly outvoted by the other two parties in the National Minimum Wage Council.

OHCHR recommends revising the last paragraph of Article 12, which would read as follows: “...*the decision shall be made based on the majority of each group represented in the National Minimum Wage Council through secret vote at the second meeting.*”

Article 13

After the decision has been made on the figures or rate of adjustment of minimum wage in accordance with the procedure stated in Article 12 of this law, the National Minimum Wage Council shall use this result as the recommendation for the Minister in Charge of Labor. If necessary, the Minister in Charge of Labor may request for an agreement in principle from the Royal Government before issuing the prakas on Determination of Minimum Wage for implementation in the subsequent year.

The minimum wage of each year will come into effect from the 1st January of the year.

No comments.

Article 14

The employer shall permanently post the prakas on Determination of Minimum Wage at the workplace and recruitment area.

Comments: In order to ensure that all workers are aware of the new minimum wage, the employer should widely disseminate the prakas on Determination of Minimum Wage among its workers.

OHCHR recommends revising the Article 14 so that it reads as follows: ...*recruitment area and disseminate widely among its workers.*

Chapter 4

National Minimum Wage Council

Article 15

The National Minimum Wage Council shall be established as a subordinate body of the Minister in Charge of Labor.

No comments.

Article 16

The National Minimum Wage Council shall perform the following duties:

- Conduct scientific studies on matter related to minimum wage;
- Facilitate and enable all relevant parties to study, meet and discuss the minimum wage;
- Provide recommendations on minimum wage, benefits and the scope of minimum wage implementation to the Minister in Charge of Labor;
- Disseminate and raise awareness and social dialogue on the determination of minimum wage;
- Perform other tasks related to wage issues as requested by the Minister in charge of Labor.

When required, the National Minimum Wage Council may establish a Technical Working Group to assist in carrying out its tasks.

Any persons beside National Minimum Wage Council conducting the study on minimum wage have to submit the findings and sources of related data to the National Minimum Wage Council within 15 days after the completion of the study.

Comments: OHCHR welcomes that independent research has been included in the list of documents accepted to part of the discussion on Minimum Wage Law. However, the 15 day time limitation for presentation of the independent minimum wage research appears to be overly restrictive. Researchers should be able to undertake such studies researchers should be able to publish them at an appropriate time, regardless of whether it has been shared or not with the Council. Additionally, as article 26 has been maintained, penalties could be applied if the research is not submitted to the council in the 15-day deadline which appears to be overly restrictive.

There is also a lack of clarity on the way the research will be treated by the Council once submitted. It should be specified that the research is the property of the author, who may publish and disseminate it as the author deems fit.

The UN Human Rights Committee has stressed that the right to freedom of expression includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others. It includes political discourse, commentary on one’s own and on public affairs, discussion of human rights, journalism and teaching, among others. It even includes expressions that may be regarded as deeply offensive, controversial, false or even shocking. The Human Rights Committee has also asked States to ensure that domestic laws “are not used in such a way as to deter individuals from exercising their right to freedom of expression, and in particular for human rights defenders to carry out independent research and publish the results.”

The CFA/ILO “has pointed out that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers constitute civil liberties which are essential for the normal exercise of trade union rights.” It has also been of the view that the right to express opinions is an essential aspect of trade union rights, including the freedom to criticize the government’s economic and social policy. It has added that “The full exercise of

trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities...”. It has also stated “Legislation which permits the competent authorities to ban any organization which carries on any normal trade union activity, such as campaigning for a minimum wage, is incompatible with the generally accepted principle that the public authorities should refrain from any interference which would restrict the right of workers’ organizations to organize their activities and to formulate their programmes, or which would impede the lawful exercise of this right.”

Article 19 of the ICCPR allows for the limitation of certain provisions of the right to freedom of expression, although no exception or restriction is allowed to the right to freedom of opinion. As stated by the Human Rights Committee, “[t]hese restrictions must be provided by law; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality.” The law restricting this right must meet standards of clarity and precision. With regard to subparagraph (a), “the term rights includes human rights as recognized in the Covenant and more generally in international human rights law”. Subparagraph (b) cannot be used to invoke laws that “suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information. Nor is it generally appropriate to include in the remit of such laws such categories of information as those relating to the commercial sector, banking and scientific progress.”

In order to justify a restriction, a State must establish a direct and immediate connection between the expression and the threat. The measure used must impair free expression as little as possible, thus, it requires the application of the least intrusive measure to accomplish the objective. Finally, the impact of the measure must be proportionate and the harm that it causes to free expression must not outweigh its benefits. As such, 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.

In the case of the draft Law on Minimum Wage, there are no established justifications as to why these rights could be limited. Although the limitation would be established by law, it does not meet the aims of respecting the rights or reputations of others, or protection of national security, public order, public health or morals. The harm it would cause by limiting people’s freedom of association and resulting expression is not proportional to the benefits it seeks. As a result, the 15-day deadline would be contrary to international human rights standards.

OHCHR recommends revising the last paragraph of article 16 as follows: *Any persons beside the National Minimum Wage Council may conduct studies on minimum wage and submit the findings to the National Minimum Wage Council. The authors may also publish and disseminate the findings at any time.*

Article 17

The National Minimum Wage Council composes of at least 48 (forty-eight) regular members with equal representation from the tripartite, as the following:

- 1 One-third are representatives from the Royal Government
2. One-third are representatives from workers
3. One-third are representatives from employers

The Minister in Charge Labor or 1 (one) representative from the Ministry in Charge of Labor shall serve as the chairperson of the National Minimum Wage Council.

The National Minimum Wage Council shall be composed of 2 (two) vice-chairpersons 1 (one) of whom is selected from the worker representatives and another one from the employer representatives through their respective internal elections.

The National Minimum Wage Council shall have alternate members equal to the number of the regular members to work in place of any regular members who are absent.

The Minister in Charge of Labor may request adjustment of the number of the National Minimum Wage Council members to the Royal Government as necessary, but there shall not be fewer than 48 (forty-eight) members.

The salary of the members of the National Minimum Wage Council shall be the responsibility of their concerned Ministry, institution, or industrial entity .

No comments.

Article 18

The composition, organization and function of the National Minimum Wage Council shall be determined by subdecree.

The regular and alternate members of the National Minimum Wage Council shall be determined by a prakas of the Ministry in Charge of Labor.

Comments: The composition of the National Minimum Wage Council is essential for its functioning, and should guarantee national and multi-sectoral representativeness of its members, particularly the representatives of the workers and employers. With regard to the representatives of workers, they should also be independent from their employer and employers' organizations, as well as from the authorities. Establishing the composition, organization and function with a certain level of precision in the law, would provide those affected by it with legal certainty.

OHCHR recommends establishing the composition, organization and function, as well as the membership of the National Minimum Wage Council, in this law, ensuring national and multi-sectoral representativeness of workers and employers.

Article 19

An employer whose worker is a regular or alternate member of the National Minimum Wage Council shall give the person necessary time to attend official meetings related to the National Minimum Wage Council.

All meetings as stated in the above paragraph shall be paid as normal working time and considered as such for calculating seniority and the right to take leave.

Workers who are members of the National Minimum Wage Council are subject to the same protection granted by law as that of applied to shop stewards.

No comments.

Article 20

Other than the meetings determined by the Prakas by the Minister in charge of labour stated in Article 11 of this law , the chairperson of the National Minimum Wage Council may convene the council at any time as deemed necessary or requested by any of the vice chairpersons. The request must specify the valid reason and necessity.

The members of National Minimum Wage Council have to participate in the meeting as per the set schedule and invitation by the chairman of the National Minimum Wage Council. The required quorum for all meetings of the National Minimum Wage Council shall have at least 50%+1 (fifty per cent plus one) of all members of the National Minimum Wage Council.

Members of the National Minimum Wage Council shall attend the meetings as determined and invited by the chairperson of the National Minimum Wage Council.

The General Secretariat of the National Minimum Wage Council shall make the meeting invitation letter and attach it with relevant documents related to the meeting to be provided to the regular and alternate members within at least 15 (fifteen) days prior to the meeting. In an emergency, the period for the invitation is based on the actual situation.

When requested by the chairperson or one of the vice chairpersons, the National Minimum Wage Council may invite any qualified individual other than the members to attend and provide comments on the issues to be discussed, but that individual shall not be entitled to voting at the meeting.

The meeting minutes need to be signed by the chairperson of the National Minimum Wage Council attached with the attendance list and sent to all full and reserved members within 15 (fifteen) days after the meeting.

Comments: OHCHR acknowledges the need to have a valid reason for the National Minimum Wage Council to meet. However, it does not consider that there should be a need to specify the “necessity” of the meeting, if there is already a valid reason for it. Additionally, because the National Minimum Wage Council is composed of only three parties, in order to ensure adequate representation of each party, the required quorum should apply to each party, and not to the National Minimum Wage Council as a whole. Paragraph two and paragraph four seem to be repetitive, and although they both establish the obligatory attendance of the meetings, it does not establish what happens if one of the members does not attend, nor does it establish any reasons that would justify an absence. In this regard, OHCHR recommends including a provision to designate an alternate member for each party.

OHCHR recommends removing the term “necessity” from the first paragraph. It also suggests that the third paragraph should be modified to read as follows: *The required quorum for all meetings of the National Minimum Wage Council shall have at least 50%+1 (fifty per cent plus one) of each party to the National Minimum Wage Council.* OHCHR suggests a revision of paragraph 2 as follows: *The members of National Minimum Wage Council have to participate in the meeting as per the set schedule and invitation by the chairman of the National Minimum Wage Council, unless they present a valid excuse. In their absence, the designated alternate member shall attend.* Following the inclusion of paragraph 2, OHCHR also recommends deleting paragraph 4.

Article 21

The National Minimum Wage Council has one general secretariat as the executive body under the Ministry in Charge of Labor.

The organization and functioning of the secretariat of the National Minimum Wage Council shall be determined by subdecree.

The National Minimum Wage Council shall have its own budget package, which as part of the budget of the Ministry in Charge of Labour, for its operations.

The National Minimum Wage Council is entitled to receive and to arrange the use of fund obtained from various sources for its operations.

Comments: In order to provide those affected by this law legal certainty, the organization and functioning of the secretariat should be established in the law. This additional precision is one of the foundations of the principle of legality.

OHCHR recommends establishing the organization and functioning of the secretariat in this law.

Chapter 5

Administrative Action and Punishment

Article 22

The punishment in this chapter includes written warnings and transitional punishments.

The written warning and transitional punishment is within the competency of the Ministry in Charge of Labor.

The payment of a transitional fine leads to the extinguishment of criminal action.

In the event that the offender refuses to pay the transitional fine, the case shall be forwarded to the court for further action in accordance with the procedure.

Formalities and procedures related to punishment shall be determined by the Minister in charge of Labour.

Comments: OHCHR recommends adding a provision establishing the right to appeal a transitional fee, before sending the matter to the courts for criminal action.

Article 23

There must be a written warning for any individual who violates the provisions of Article 5 of this law.

In the event of refusal to comply with the above warning, he/she shall be subject to a transitional fine of not more than 5,000,000 (five million) riels.

Comments: See comments to Article 5 above.

OHCHR recommends deleting this article.

Article 24

The fine of not more than 20,000,000 (twenty million) riels shall be imposed on any employer who violated the provisions of Articles 4, 6, 7 or 8 of this law.

In addition to the above punishment, the employer who pays the worker at a rate of less than the minimum wage shall repay the violated amount to the employees applying the earned interest in a rate determined by the law.

Comments: See comments to Articles 4, 7 and 8 above.

OHCHR recommends revising the article to ensure that each worker who does not receive the minimum wage should be considered as a separate infraction. Additionally, a provision should be included with a higher fee for repeated infractions.

Article 25

There must be a written warning for any employer who violates the provisions of Article 14 of this law.

In the event of refusal to comply with the above warning, he/she shall be subject to a transitional fine of not more than 5,000,000 (five million) riels.

Comments: See comments to Article 14 above.

Article 26

There must be a written warning for any individual who violates the provisions of paragraph 3 of Article 16 of this law.

In the event of refusal to comply with the above warning, he/she shall be subject to a transitional fine of not more than 10,000,000 (ten million) riels.

Comments: See comments to article 16 above.

Article 27

There must be a written warning for any employer who violates the provisions of Article 19 of this law.

In the event of refusal to comply with the above warning, he/she shall be subject to a transitional fine of not more than 10,000,000 (ten million) riels.

Comments: No comments..

Article 28

The implementation of the provisions of Chapter 5 (Administrative Action and Punishment) of this law shall not obstruct the implementation of the Law on Trade Unions, the Labor Law, or other criminal laws, in the case that the violation of any of the provisions of this law is an offense stated in any of those laws.

No comments

Chapter 6

Final Provisions

Article 29

Articles 104, 105, 106, 107, 108 and 109 of the Labour Code were promulgated by the Royal Kram (edict) No. CN/RKM/0397/01 dated March 13, 1997 and all provisions contrary to this law shall be abrogated.

No comments

Article 30

This law shall be declared as a matter of great urgency.

No comments.