

## Committee on the Application of Standards

**Date:** 20 May 2021

*Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 20 May 2021.*

### ▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

#### Cambodia

#### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

**(Ratification: 1999)**

The Government has provided the following written information, as well as copies of the Law on Amendments to the Law on Trade Union and its explanatory note.

Cambodia, through its ratification of the ILO's Convention No. 87, is committed to uphold and promote freedom of association and to protect the right to organise. In this connection, the Ministry of Labour and Vocational Training (MLVT) of the Kingdom of Cambodia would like to provide updates on the application of the Convention 87 as follows:

#### 1. Allegation made by Education International

We regret that Mr. RONG Chhun was arrested on 31 July 2020. We would like to take this opportunity to highlight that he was arrested for his activities along the border with intent to incite social disorder, chaos, and upheaval affecting national security, which were not related to exercising trade union activities.

We share the same regret to the other members of the Cambodia Independent Teachers' Association (CITA) and its President named in the Observation of the Education International in October 2020. While the cases are under judicial proceedings, we will be able to provide detailed information and the updates of the cases once we receive it from the Court via the Ministry of Justice.

As guaranteed by the Constitution, all Cambodian citizens are equally treated before the law regardless of their political affiliation, profession or social status, and so on. Detainees or prisoners are prosecuted and convicted not because of who they are but because of offences they have committed.

Cambodia makes its utmost effort in rendering conducive environment for the exercise of trade union rights free from violence and intimidation; however, legitimate union rights should not be construed as a shield for law-breakers which denigrates the rule of law and undermines law-abiding citizens.

## **2. Allegation made by the International Trade Union Confederation**

Following the receipt of the observation made by the International Trade Union Confederation dated 1 September 2019 concerning the allegedly violent repression of strikes by hired criminals and the detention of union leaders organizing strike action in the garment sector, the MLVT has contacted both workers and factories in questions to gather detailed information. However, it takes time to get feedback from them during this pandemic. Additional information will be submitted to the Committee in our report to the Direct Request.

## **3. Trade union rights and civil liberties**

### **– Murders of trade unionists**

With the latest updates concerning the Case No. 2318 that we shared with the Committee in our communication dated 31 January 2020, there is no further update due to the COVID-19 Pandemic.

### **– Incidents during the January 2014 demonstrations**

As previously reported, the MLVT and the MoJ have established a Working Group and requested the concerned trade unions to provide information on their court cases so that the MLVT and MoJ can follow up with the court in order to expedite the settlement in accordance with the applicable legal procedures. With respect to these pending cases, the courts have encountered certain challenges, in particular the lack of collaboration from the parties, and the complex nature of the criminal cases, which necessitates further investigation. Some involve civil damages which require mutual consent from both claimants and respondents to end the civil complaints. The MLVT and the MoJ will further provide legal support to the parties to wrap up all the outstanding cases in full accordance with the prevailing legal procedures.

### **– Training of police forces in relation to industrial and protest action**

In October 2019, the MLVT in collaboration with the Ministry of Interior, the ILO, and the Office of the United Nations High Commissioner for Human Rights-Cambodia (OHCHR-Cambodia) organized a two-day training of trainers (ToT) on “the Rights to Strike and Peaceful Demonstration” conducted in four sessions with 128 participants and a follow-up training on “the Rights to Strike and Peaceful Demonstration” with 30 participants, who are policemen, from General Commissariat of National Police, to contribute to promoting freedom of association and harmony in industrial relations. The subjects of the training compose of the Notions of Labour Dispute, Labour Dispute Settlement, the Notions of Strike, Demonstration and Riot, Preventive Measures to the Strike and Demonstration, Mechanism for Strike and Demonstration Settlement, International and Municipal Legal Framework on Peaceful Assembly, and Definition, Objectives and Scope of the Law on Peaceful Demonstration.

#### 4. Legislative Issues: Law on Trade Union (LTU)

The MLVT would like to update you that the Law on Amendments to the LTU was promulgated on 3 January 2020; a copy of the Law on Amendments to the LTU and its explanatory note are enclosed herewith for your consideration.

- Rights to organize and join trade union for the civil servants including teachers

We would like to reiterate that, in line with the Convention No. 87, the Law on Association and Non-Governmental Organizations (LANGO) and LTU were adopted to promote freedom of association and provide the same rights and benefits to both workers and employers in private and public sectors.

The amended Article 3 includes domestic workers, personnel working in the air and maritime transportation and those who work in the informal sector under its scope of coverage. Therefore, domestic workers, workers in the informal economy, and teachers who are not civil servants are free to form a worker union of their own choice to promote or protect their interests as long as the conditions stipulated under the LTU are satisfied.

On 6 July 2020, the working group in charge of Amendments to the LANGO of the Ministry of Interior hold a final meeting with CSOs after six consecutive meetings. As a result of the final meeting, the CSOs requested amendments to 17 articles of LANGO. The working group will review the legality of the proposed amendment to 17 articles.

- Khmer literacy requirement

In Cambodian context, in particular in promoting harmonious industrial relations, the Khmer literacy requirement for foreign nationals who want to be a trade union leader is requisite and this requirement is not incompatible with Convention No. 87. The agreement on this requirement has been reached following discussions in the tripartite consultative workshops, and in practice there is no concern raised with respect to this issue.

- Dissolution of trade union by court after the complete closure of enterprises/establishments under Article 28 new

The amendment was made in accordance with the comments from CEACR and the suggestion from trade unions during the tripartite consultation workshops. Under the amended provision, a local worker union will not be dissolved immediately when the enterprise is closed; it will be dissolved when the employer's obligations towards their workers had been fulfilled in accordance with the court decision. This provision is aimed to determine requirements in which a worker union no longer maintains or possesses its legal personality and this concern no longer exists in practice.

- Right to request for dissolution under Article 29 new

We would like to clarify that, according to the legal provision, the request made by party concerned or 50% of a union's member is not a ground for dissolution of a trade union by the court. As set forth under the same article, the court may decide to dissolve if it is found that the ground for dissolution is satisfied and the organisation fails to rectify its shortcomings within a timeframe set by judicial discretion.

## 5. Application of the Convention in practice: Independent Adjudication Mechanism

The MLVT would like to reaffirm our commitment to support Arbitration Council, gathering both technical and financial support from stakeholders to ensure the sustainability of this institution. The Ministry's commitment is shown among others through the current draft amendment to Labour Law which is under process to extend the scope of Arbitration Council to settle individual labour disputes. However, this is seen that the large number of individual disputes plus collective labour disputes will outweigh the capacity of this institution to handle. Therefore, we need support from all stakeholders to sustain the effective functioning of this institution.

We would like to highlight that, to ensure effective enforcement of binding awards, the Labour Law requires enforceable arbitral awards to be registered in the same way as a collective agreement.

The ministerial regulation (Prakas) on Arbitration Council also affords a party, in case of non-compliance with a binding arbitral award, to file with the court a request for its recognition and enforcement.