CCHR, Solidarity Center and the International Trade Union Confederation publish joint legal analysis of the Draft Law on a Minimum Wage

The Cambodian Center for Human Rights (“CCHR”), the International Trade Union Confederation (“ITUC”), and Solidarity Center (“SC”), release today a joint legal analysis of the Royal Government of Cambodia (“RGC”)’s draft Law on a Minimum Wage (“the Draft Law”). While we welcome the proposed introduction of a minimum wage for workers outside the garment sector in the Kingdom of Cambodia (“Cambodia”) for the first time, we express our serious concerns about the many regressive provisions of the Draft Law which pose an enormous threat to the fundamental freedoms of expression, association and assembly. In its current form, the Draft Law runs afoul of numerous human rights protections enshrined in the Constitution of the Kingdom of Cambodia (the “Constitution”) and international human rights law. The legal analysis is available to download in both Khmer and English.

The Draft Law, in its current form, would severely restrict the legitimate activities of unions, workers, civil society organizations (“CSOs”), journalists and academics. The proposed ban on any form of ‘objection’ to the agreed-upon minimum wage (Article 26), and the prohibition on conducting independent research related to the minimum wage (Article 23), would constitute severe violations of the fundamental freedoms of expression, assembly and association. The excessive fines in the Draft Law’s punishment provisions - which disproportionately target workers and civil society, rather than employers - along with the criminal penalties for non-payment of fines (Article 22), combine to effectively criminalize the peaceful exercise of fundamental freedoms. The Draft Law’s processes for wage-setting also raise a number of additional concerns. The participation of independent/democratic unions is not guaranteed, and the organization and functioning of the National Minimum Wage Council are not outlined in the draft law, leaving the details at the discretion of a ministerial Sub-decree (Article 18). The Minister in Charge of Labor (the “Minister”) is given significant discretion to set different minimum wages based on employment sector and geographic region, threatening to undercut the objectives and spirit of the law, overall.

The aim of this analysis is to recommend amendments and additions to the Draft Law, which would bring it into line with international human rights law and constitutional human rights guarantees. For the purpose of this analysis, CCHR, SC, and ITUC compared the Draft Law with international standards and best practices, including the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and Conventions of the International Labor Organization (“ILO”).

CCHR’s Executive Director Chak Sopheap comments:

“This Draft Law in its current form poses a massive and direct threat to the fundamental freedoms of trade unionists, CSOs, journalists and academics in Cambodia. As it stands, the draft could potentially
criminalize all forms of protest in relation to the minimum wage, which has been the motivation for some of the biggest demonstrations in recent memory. The draft further threatens to severely curtail academic freedom, with its outrageous prohibition on independent research. It is an affront to the constitutionally protected fundamental freedoms of expression, association and assembly, and must not proceed.”

SC’s Acting Legal Director Jeff Vogt comments:

“While the proposed expansion of the minimum wage to more sectors is, in theory, a welcome development, this draft contains numerous punitive provisions that undercut the stated objectives of the law. It is critical that the government enact a minimum wage law that provides a solid legal foundation for the tripartite negotiation of a living wage. As currently drafted, this law fails to provide that foundation.”

ITUC’s Human and Trade Union Rights Asia Pacific Officer Monina Wong comments:

“The Draft Law contains a litany of provisions completely at odds with the interests and rights of Cambodian workers and their representatives. In its current form, the Draft Law has the potential to criminalize trade unionists and other activists for their legitimate work.”

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