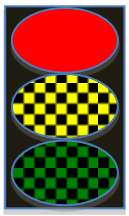
Fact Sheet: Trade Union Law 2016 (the "TUL")
CCHR Classification: RED
Snapshot: The Cambodian Center for Human Rights ("CCHR") has classified the Trade Union Law as red because, despite some welcome protections for freedom of association, the law contains a number of disproportionate restrictions on the rights of unions to conduct their activities freely, and is not consistent with Cambodia's domestic or international human rights obligations.



Introduction

This Fact Sheet provides an overview of the Trade Union Law, promulgated on 17 May 2016, and an analysis of key human rights issues raised by its provisions. This Fact Sheet is written by CCHR, a non-aligned, independent, non-governmental organization ("NGO") that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia ("Cambodia").

Background

The adoption of the TUL comes against a background of recent crackdowns on the rights of trade unions to conduct their activities freely, violent attacks on individual trade union members,[1] and in the shadow of the brutal suppression of worker protests following the 2013 election, when five protesters were killed by state security forces in a single incident in January 2014. The right to form and join trade unions and to bargain collectively will be of crucial importance in the coming months, following the start of discussions on a new minimum wage for the garment sector on 28 July.[2]

The Trade Union Law

Overall, the process leading to adoption of the TUL was characterized by a worrying lack of transparency and the absence of genuine consultation with stakeholders. First proposed in 2011, when consultations were held with trade unions, employers and the International Labour Organization ("ILO"), a new draft of the law was released publicly in October 2014.[3] Since then, no updated draft was made available to the public until very late in the legislative process, with only limited statements from the Ministry of Labor in September 2015 providing information on further proposed revisions.[4] A bipartisan committee of the National Assembly was convened in January 2016 and a public forum organized in March 2016. However, these resulted in very few amendments to the draft law, with those made including some

[1] See CCHR, 'Escalation of Violent Repression of Trade Union Activities' (Factsheet) (March 2016) http://bit.ly/1Y7HunD
[2] David and Baliga, 'As garment minimum wage talks begin, other sectors want in' *The Phnom Penh Post* (28 July 2016) http://bit.ly/2aoasv
[3] See letter from international trade union organizations dated 18 May 2015: http://bit.ly/29uytCq
[4] Human Rights Watch, 'Letter to Prime Minister Hun Sen,' (7 June 2015) http://bit.ly/2aNCkfv; Zsombor Peter, 'ILO Says Latest Draft Law on Trade Union an Improvement,' *The Cambodia Daily* (9 September 2015) http://bit.ly/1g8Bb0G

changes strongly opposed by unions,[5] demonstrating a lack of genuine engagement with and openness to civil society's concerns.

Some positive provisions in the final version, such as explicit recognition of the right not to be compelled to join a union (Article 7); and prohibition of discrimination by employers against workers due to their union activities (Article 63), should be welcomed. Nevertheless, there are many provisions within the TUL that still represent a grave threat to the ability of unions to effectively protect and promote the labor rights of their members. As adopted, the TUL is not consistent with the requirements of Cambodian domestic law, nor with Cambodia's obligations under international law.

Article 36 of the Constitution of the Kingdom of Cambodia (the "Constitution") enshrines the right for all citizens to form and be members of trade unions. This right is also explicitly recognized in Article 8 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), and in Article 22 of the International Covenant on Civil and Political Rights ("ICCPR") as a part of the right to freedom of association. Both covenants provide that "*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*." The right to freedom of association is further protected by ILO Convention #87, Freedom of Association and Protection of the Right to Organise, which Cambodia ratified in 1999. The right to strike is also explicitly protected by Article 8(d) of the ICESCR.

Concerns[6]

While under the Constitution and international law all persons enjoy the right to form and be members of trade unions, domestic legislation has an important role in specifying how individuals can exercise these rights in practice. However, in Article 1 of the TUL, the law's purpose is defined as being to protect the rights and freedoms only of "*persons who fall within the provisions of the labor law as well as personnel serving in the air and maritime transportation*." In this way many individuals – for example, civil servants, teachers, and domestic workers – are excluded from the rights and protections that are enshrined in the law.[7]

The TUL unjustifiably restricts the right to strike.[8] Strikes are a vital tool by which trade unions can advocate for the rights and interests of their members and an essential corrective to the imbalance of power in the workplace. Article 13 of the TUL provides that union statutes must require a decision to take strike action to be made by an absolute majority (50% +1) vote in favor by union members. This requirement will be difficult for unions to meet and seems designed purely to render the taking of lawful

[5] Sotheary, 'Meetings over law leave unions wanting,' *The Phnom Penh Post, (*21 January 2016*)* http://bit.ly/2aXcP92; Sotheary, 'All sides air union law views,' *The Phnom Penh Post,* (10 March 2016) http://bit.ly/2avMrqf

[6] While many of the provisions below apply equally to unions and employer associations, both of which benefit from protection under the right to freedom of association, the analysis below will focus on the position of unions, given their increased risk of being targeted for suppression under the law (see "Background" above).

[7] See ILO's statement on Trade Unions law in Cambodia (4 April 2016), http://bit.ly/1qnENBO

[8] For more detailed analysis of this and other provisions of the TUL, see Office of the United Nations High Commissioner for Human Rights in Cambodia, A Human Rights Analysis of the Draft Law on Trade Unions (30 March 2016), http://bit.ly/29g8akC; and International Center for Not-for-Profit Law, Analysis of Draft Trade Union Law (24 December 2015), http://bit.ly/29acsu7

strike action more difficult. Article 65 further restricts the right to strike by making it unlawful for unions "*to agitate for purely political purposes or for their personal ambitions;"* and "*to block an entrance and exit gate of the enterprise or establishment or to incite or threaten or to violently disturb or coerce non-striking workers by all means not to work and to close off public roads*." The broad scope and vague wording of these provisions makes them open to abuse by authorities seeking to characterize a legitimate strike action as unlawful.

The TUL contains burdensome mandatory registration requirements, which unjustifiably restrict the ability of unions to carry out their activities. Unions should be presumed to be operating lawfully and registration should be voluntary, based on a system of notification rather than authorization, aimed only at obtaining legal capacity; it should not be a prerequisite for the ability to function lawfully. Under the TUL (Articles 12 – 16), registration is necessary in order for a union or employer association to function: otherwise it is unable to enjoy the rights and benefits provided for in the law, or to have legal personality, and will be "*considered to be illegal*." Continuing to operate an unregistered union also entails a five million riel fine (Article 80). Registration is subject to prior authorization by the Ministry of Labor, which can refuse to register a union if it fails to meet a list of complex and burdensome requirements.[9] The TUL provides no possibility of appeal to an independent judicial authority in the event that registration is denied. These requirements include the provision of a lengthy list of documents, including a list of leaders, managers, and those responsible for the administration of the union. The difficulty of complying with these requirements is exacerbated by Article 15, which provides that the Minister of Labor can change the requirements at any time. The vaguely worded provision in Article 11 that the Minister of Labor "*shall maintain registration records and may work together to publish them on a regular basis*" members and leaders, also creates a risk that this information may be used to compile blacklists of workers.[10]

A union must comply with a variety of burdensome reporting requirements in order to maintain its registration and so continue to function lawfully (Article 17). These requirements include annual provision of financial statements and activity reports based on the union's financial records, detailing all income and its sources, expenditure, activities, and number of members; and the updating of any of the information required for registration (with the exception of changes in membership) within 15 days of any change. If these requirements are not complied with, the Ministry of Labor may apply to the Labor Court for revocation of the union's registration (Article 18 and 19).[11] Article 27 allows the Minister of Labor to change the requirements for how financial records are kept at any time, creating further uncertainty for unions as to how they may comply with their obligations. Failure to comply with financial

[9] The power to grant registration and enforce registration rules is delegated to provincial labor and vocational training departments, or the Labor Dispute Department of the Ministry of Labor in the case of Phnom Penh, by Ministry of Labor and Vocational Training Prakas No. 250 'On the delegation of positions for the implementation of the Trade Union Law.' This increases the risk that these provisions will be applied in an inconsistent manner across Cambodia.

[10] See 326th Report, of the ILO Committee on Freedom of Association, Case No. 2067 (Venezuela), para. 512.

[11] On 5 July 2016 Labor Minister Ith Samheng stated that Labor Courts would be instituted by 2017 http://bit.ly/29MLF4p As provided by Article 98, until the Labor Court is established, all disputes arising as a result of the application of the TUL shall be referred to a common court for settlement.

reporting requirements also carries a sanction of five million riel. Complex reporting obligations of this nature distract resources from the pursuit of the union's primary function of promoting and protecting the interests of its members, and creates potential for abuse, as failure to comply may be used to justify revocation of a union's registration.

The TUL defines the potential grounds for dissolution of a union in excessively vague and ambiguous terms that could easily be manipulated to cover a wide range of legitimate union activity, or to intimidate and harass union leaders. In particular, Article 29 provides that a union may be dissolved on the grounds that its activities "*contravene the law or the objectives of the union as stated in the statutes*;" or that its "*leaders, managers and those responsible for the administration were found* [guilty] *of committing a serious misconduct or an offense in the capacity of the union or the employer association*" Such broad, vaguely worded provisions are open to abuse to threaten, harass, or illegitimately restrict the operation of unions.

Finally, perhaps the most troubling provision of the TUL is contained in Article 65(f), which provides that it is unlawful for a union "*to agitate for purely political purposes or for their personal ambitions or committing acts of violence at the workplace and other places*." Unions have long been legitimate centers of political activity; indeed their key objectives of protecting and promoting the rights of workers will inevitably entail engagement with political issues, institutions and processes. Similarly, regardless of the moral or social merits of "*personal ambitions*" it cannot seriously be argued that they should render a union's activities unlawful. The subjective and broad nature of these terms also means that they could easily be abused by authorities to characterize a union's activities as unlawful.

Conclusion and Recommendations

CCHR classifies each law according to how acceptable it is in terms of its consistency with the Constitution and Cambodia's obligations under domestic and international law, and the clarity of its provisions. Due to the number of serious concerns the TUL raises, as highlighted by this Fact Sheet, CCHR classifies the TUL as RED.[12] The TUL contains a number of unjustified and disproportionate restrictions on the ability of unions and their members to conduct their activities freely and is not consistent with Cambodia's obligations under domestic and international law.

In order to address the shortcomings of the TUL outlined above, the Royal Government of Cambodia – through the National Assembly – should review the TUL and amend it to bring it into line with domestic and international human rights standards. In particular, by extending the law's protections to all individuals; removing excessive restrictions on the right to strike; removing mandatory registration requirements for a union to function lawfully; reviewing complex reporting requirements; and clarifying any excessively broad, vague, or ambiguous terms. Where the Minister of Labor or other governmental authorities enjoy powers granted under the law, they should seek to exercise them in a manner that will have the least restrictive effect on right to freedom of association.

[12] Laws that are classified as green are acceptable in the opinion of CCHR; laws classified as yellow contain a number of concerns that should be reviewed and amended; and laws classified as red are repressive and/or in violation of the Constitution and/or the country's obligations under domestic and international law, and should therefore be rejected, annulled or re-drafted, as appropriate.

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