

Committee on the Application of Standards

Date: 20 mai 2021

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply written information to the Committee.

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

Cambodia (ratification: 1999)

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

The Government has provided the following written information, as well as copies of the Law on Amendments to the Law on Trade Unions 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 organize. 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 Convention No. 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 concerning the other members of the Cambodia Independent Teachers' Association (CITA) and its President named in the observation of Education International in October 2020. The cases are under judicial proceedings, and we will be able to provide detailed information and updates on the cases once we receive them from the Court via the Ministry of Justice (MoJ).

As guaranteed by the Constitution, all Cambodian citizens are treated equally 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 is making the utmost efforts to ensure a 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 Ministry of Labour and Vocational Training (MLVT) has contacted both the workers and factories in question to gather detailed information. However, it takes time to get feedback from them during the pandemic. Additional information will be submitted to the Committee in our report in reply to the direct request.

3. Trade union rights and civil liberties

Murders of trade unionists

With the latest updates concerning Case No. 2318 that we shared with the Committee on Freedom of Association 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 by the parties, and the complex nature of the criminal cases, which necessitate 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 follow-up training on “the Rights to Strike and Peaceful Demonstration” with 30 participants, who were police officers from the General Commissariat of National Police, to contribute to promoting freedom of association and harmony in industrial relations. The subjects of the training included the notions of labour disputes, labour dispute settlement, the notions of strikes, demonstrations and riots, preventive measures for strikes and demonstrations, mechanisms for strike and demonstration settlement, the international and national legal framework for peaceful assembly, and the definition, objectives and scope of the Law on Peaceful Demonstration.

4. Legislative issues: Law on Trade Unions

The MLVT would like to report that the Law on Amendments to the Law on Trade Unions (LTU) was promulgated on 3 January 2020; a copy of the Law on Amendments to the LTU and its explanatory note are attached for your consideration.

Right to organize and join trade unions of the civil servants, including teachers

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

The amended Article 3 includes within its scope domestic workers, personnel working in air and maritime transportation and those who work in the informal sector. Therefore, domestic workers, workers in the informal economy and teachers who are not civil servants are free to form a workers' 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 the Interior held a final meeting with CSOs after six consecutive meetings. As a result of the final meeting, the CSOs requested amendments to 17 articles of the LANGO. The working group will review the legality of the proposed amendments to the 17 articles.

Khmer literacy requirement

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

Dissolution of trade unions by the courts after the complete closure of enterprises/establishments under new article 28

The amendment was made in accordance with the comments of the Committee of Experts and the suggestion of the 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 the workers have been fulfilled in accordance with the court decision. This provision is aimed at determining requirements when a workers' union no longer maintains or possesses legal personality and this concern no longer exists in practice.

Right to request dissolution under new article 29

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

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

The MLVT would like to reaffirm our commitment to supporting the Arbitration Council, with 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 the Labour Law, which is under examination, to extend the scope of the Arbitration Council to settle individual labour disputes. However, the large number of individual disputes and collective labour disputes will

outweigh the capacity of this institution. Therefore, we need support from all stakeholders to sustain the effective functioning of this institution.

We would like to highlight that, to ensure the 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 the Arbitration Council also enables a party, in case of non-compliance with a binding arbitral award, to file a request with the court for its recognition and enforcement.