

Committee on the Application of Standards

Date: 20 May 2024

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 2024.

► Information on the application of ratified Conventions supplied by governments on the preliminary 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.

Obstacles to trade union registration

- The Trade Union Law (TUL) was amended in 2020 after a series of comprehensive tripartite consultative processes with trade unions and employers' associations with technical support from the ILO. Among others, the procedures for registering a trade union or employers' association were simplified under this amendment.
- Evidentially, before the adoption of the TUL in 2016, we had only 3,626 professional organizations that had been registered with the Ministry. But in 2017, that means one year after the TUL was adopted, we had 4,307 professional organizations, accounting for an 18.78 per cent increase. Following the amendment of the TUL in 2020, this number was increased to 5,484, accounting for a 27.33 per cent increase. As of March 2024, we have 6,317 professional organizations, accounting for a 74.21 per cent increase, comparing with the number of professional organizations before 2016. The statistics speak for themselves about freedom of association in Cambodia, and the concerns of one or two trade unions that resist change is not justified.
- Once again, Cambodia would like to resubmit our strong request for technical collaboration and support from the ILO to organize training to trade union federations and confederations on the registration processes so that they can further train their members. Meanwhile, the Ministry of Labour and Vocational Training (MLVT) has implemented three working shifts from 7 a.m. to 10.30 p.m., put some officials on standby during the weekend, and created a 24/7 hotline and telegram channels for workers and employers to check with the Ministry when they have any doubts or concerns relating to labour disputes and trade union registration.

Misclassification of collective labour disputes and Arbitration Council (AC)

- The collective labour dispute and individual dispute are very clearly defined in the Labour Law. So, its determination is not subjective.
- When there is any labour dispute, the focus should be made on how to settle it peacefully and quickly in a transparent and win-win manner so that industrial peace at the enterprise level could be restored rather than who to settle it.
- The MLVT has strengthened its dispute settlement mechanism, which resulted in the increasing number of disputes settled by the Ministry.
- Below is the statistics of labour disputes settled by the Ministry:

1 Labour Dispute Settlement								
Individual Labour Dispute		2018	2019	2020	2021	2022	2023	As of April 2024
Number of cases	Case	417	571	552	695	681	818	378
Conciliated	Case	197	287	329	453	389	670	309
Non-conciliated	Case	163	254	182	182	227	120	42
Dismissed	Case	57	30	41	60	65	28	27
Collective Labour Dispute		2018	2019	2020	2021	2022	2023	As of April 2024
Number of cases	Case	163	257	247	154	225	187	82
Conciliated	Case	99	128	156	100	153	159	73
Non-conciliated	Case	61	123	86	48	68	28	8
Dismissed	Case	3	6	5	6	4	–	1
2 Arbitration Council								
		2018	2019	2020	2021	2022	2023	As of April 2024
Number of cases referred to the AC	Case	53	121	66	43	53	22	5
Issued the Arbitral Award	Case	41	83	53	35	41	16	2
Settlement through agreements	Case	12	38	13	8	12	6	1

- It is imperative to emphasize that the role of the AC is not undermined by the decline in the number of disputes referred to this quasi-judicial body. In contrast, the Labour Law was amended in 2021 to extend the jurisdiction of the AC to hear individual disputes too. It is expected that the AC would be able to take on individual disputes by the end of 2024 or early 2025. By that time, there will be no more concern about the misclassification of collective labour disputes.
- The MLVT has had several meetings with the Arbitration Council Foundation (ACF) and other stakeholders regarding the provision of a new office location, strengthening of the capacity of arbitrators, and the contribution to support the operation of the institution.
- In March 2024, the MLVT had a meeting with representatives of the AC and ACF to discuss the sustainability of the AC and ACF. It was agreed that both the AC and ACF would be

institutionalized as state institutions. This development was welcomed by the Royal Government.

Police violence and arrest and imprisonment of trade union leaders

- In case trade union leaders suffered from any violence, they are encouraged to make complaints to the competent authorities and the MLVT. However, trade unionists are also citizens, so they shall also be responsible before the laws for their wrongdoings. In any circumstances, trade union membership cannot be construed as a shield for violating the law.
- In 2020 the Ministry in collaboration with the Office of the High Commissioner for Human Rights and the Royal Police Academy of Cambodia and with the support of the ILO, organized Training of Trainers (ToT) on the right to strike and peaceful demonstration to 120 police officers from various units of the National Police. After receiving this training, the trainers continued to train 550 police officers in their respective units. In addition, a series of drills with 161 participants were also conducted.
- The MLVT reiterates our strong request for the technical assistance from the ILO to develop Guidelines on how to handle strikes and peaceful demonstrations for police officers.

Persecution of union leaders for participating in peaceful strikes

- No trade union member in Cambodia has ever been arrested or persecuted for their participation in or organizing a peaceful strike. In contrast, conducting violent strikes by destroying public or private property, blocking factory gates to stop other workers from entering to work, blocking public roads, and violating health measures during the COVID-19 pandemic, is not a peaceful strike; it is a criminal offence under the criminal law because it violates the rights of others, especially the right to live. In this regard, the Convention provides no special privilege of impunity to trade unionists for such action. The legal action is consistent with the decision of the Committee on Freedom of Association of the ILO, which states that “Penal sanctions should only be imposed if, in the framework of a strike, violence against persons and property or other serious violations of the ordinary criminal law are committed, and this on the basis of the laws and regulations punishing such acts”.

Progresses on implementation of DCM 2022

- The progress on the implementation of recommendations relating to the criminal charges against trade unionists involved in the 2014 demonstration, trade union registration, the Arbitration Council, criminalization and politicization of trade union activity as provided for by the 2022 direct contacts mission (DCM) report are illustrated in this report.
- In respect of the recommendation on the collective bargaining agreement (CBA), the procedures for a trade union to receive the most representative status (MRS) to enable them to sign the CBA was simplified through the amendment of article 55 of the TUL. Following the amendment of this article, the number of MRS trade unions increased over time, from 525 MRS trade unions in 2019 to 624 MRS unions as of March 2024.

Murder of trade unionists

- We understand the concerns of all stakeholders on the need to conclude the ongoing investigations and to bring the perpetrators and instigators of these crimes to justice. However, we urge all stakeholders to understand that the case faces great practical

challenges, especially when the victim's family and the witnesses did not provide cooperation in the re-investigation.

- Nevertheless, the National Commission on Reviewing the Application of the International Labour Conventions (NCRILC) ratified by Cambodia – a tripartite mechanism dedicated to resolving all concerns and requests related to the implementation of the International Labour Conventions ratified by Cambodia, including Case No. 2318 and Case No. 3424 – has recently been modified through a decision dated 2 January 2024 under the new Government. The first meeting of this NCRILC was scheduled for 28 May 2024.

Criminal charges against trade unionists in relation to incidents during January 2014 demonstration

- In relation to the violence that happened in early 2014 on Veng Sreng Road, we would like to re-emphasize that such action was not a strike but a riot.
- The charges against the six trade union leaders who were involved with that riot were dropped by the Court of Appeals. Therefore, this case has been completely closed.
- For the remaining cases, on 27 April 2022, the Cambodian Labour Confederation (CLC) sent a letter to the MLVT providing the information of eight pending court cases. However, based on the report from the Ministry of Justice, none of them were related to the exercise of legitimate trade union activities.
- Since early 2024, the MLVT has had 4 meetings with CLC to revisit all pending court cases and non-court cases based on the request of CLC. It was agreed that the meeting shall be conducted consecutively once a week to expedite the processes.

Rights of civil servants and domestic workers to freedom of association

- Freedom of association in Cambodia can be exercised not only through the TUL, but also the Law on Associations and Non-Governmental Organizations (LANGO). Therefore, private teachers and domestic workers can exercise their freedom of association in accordance with the TUL while state schoolteachers are free to form associations in accordance with the LANGO. The reason for the different legal framework for governing freedom of association is due to the administrative system and the separation of powers of state institutions responsible for the registration of professional organizations.

Financial audit and maintenance of registration

- Relating to this concern, we would like to clarify that article 17 of the TUL was already amended to eliminate the requirement for trade unions to submit their financial reports to the MLVT; this financial report is only for their members and donors. Trade union members or donors can request for an auditing of that financial report. This requirement is not exceptional because trade unions are normally required by their donors to submit an audited financial report. It also does not contradict the decision of the CFA.

Right to elect representatives freely

- Regarding the requirement to be able to read and write Khmer for foreign workers who wish to become trade union leaders, we would like to inform the Committee that the amendments to article 20 and article 21 of the TUL were the result of tripartite consultations and agreements to address trade unions' concerns. This requirement is in line with the

decision of the CFA which decided that “Requiring literacy for foreign workers to become trade union leaders and individuals in charge of administration is not contrary to Convention 87. Inequality occurs only when regulations require at least 60 per cent of trade union members to be able to read and write before they can form a union”.

Dissolution of trade unions

- Regarding to trade union dissolution, unlike in other countries, the MLVT does not have the authority to dissolve a trade union.
- On the other hand, under the amendment of the TUL, local trade unions will be dissolved only when the employer’s obligations to the workers have been cleared. Obviously, this amendment was made to protect the interests of workers and unions when the enterprise is closed. The unions also welcomed the amendment. Moreover, when the enterprise is closed down, there will be no more workers working in that enterprise for the trade union to represent. It is therefore impractical to maintain that trade union although the enterprise is permanently closed down.

In a nutshell, Cambodia stands firm in its commitment to fostering a conducive environment where freedom of association is upheld and safeguarded. With an aspiration to promote harmonious industrial relations, quarterly meetings between all trade union federations and confederations and the MLVT were scheduled. Two meetings have already been conducted since late 2023.

Given the progress and dedication demonstrated, Cambodia respectfully requests the Committee to consider withdrawing Cambodia’s individual case on Convention No. 87 from the list of 24 individual cases.