

Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on extreme poverty and human rights

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 36/32, 34/18 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the Draft Minimum Wage Law (the "Draft Law")**, which contains provisions that may unduly restrict public discourse on minimum wage and associated labour issues.

According to the information received:

In 2017, the Government proposed a Draft Minimum Wage Law that would set a minimum wage for Cambodian workers outside the garment industry. According to the Secretary of State of the Ministry of Labour and Vocational Training, Mam Vannak, "[t]his draft law will provide many benefits to workers and the nation as a whole because it was created to improve workers' living standards, increase work opportunities, boost work productivity and push more investment opportunities into Cambodia."

Article 5 of the Draft Law specifies the social and economic criteria that must be taken into account in the official determination of the minimum wage, including marital status, inflation rate, cost of living, productivity, competitiveness of the country, labour market situation, and the profitability of the sector.

In addition to provisions on the determination of minimum wage, the Draft Law contains provisions that would impose restrictions on research and discussion about the minimum wage.

Under article 16, any person or entity other than the National Minimum Wage Council is required to formulate a written request to the Ministry of Labour and Vocational Training for permission to conduct research on wage-related matters. Such research must be conducted in line with the social and economic criteria established under Article 5. The outcomes of such research must be reported to the Ministry of Labour and Vocational Training.

Under article 24, failure to conduct research on wage-related matters in line with the criteria specified under article 5 will result in a written warning. Failure to comply with this warning will result in fine of up till 5,000,000 (five million) riels.

Under article 25, individuals that commit any illegal act that causes obstruction or pressure on the discussion of minimum wage will be issued a written warning. Failure to comply with the warning shall result in a fine of up till 5,000,000 (five million) riels.

Under article 26, any individual who incites or provokes any objection to ministerial orders concerning determinations of minimum wage will be issued a written warning. Failure to comply with the warning shall result in a fine of up till 10,000,000 (ten million) riels.

We were informed that the third Tripartite consultation of the Draft Law between employers' associations, trade unions and the Royal Government of Cambodia took place last 31 January 2018, and that an additional Tripartite consultation will be held in order to share with its members the latest amended version of the Draft Law and further discuss pending issues.

Before explaining our concerns with the Draft Law, we wish to stress the Cambodian government's obligation to respect and protect the right to freedom of opinion and expression under article 19, as well as the rights to freedom of peaceful assembly and of association under article 21 and article 22 of the International Covenant on Civil and Political Rights ("ICCPR"), which Cambodia ratified on 26 May 1992. We also wish to underline that the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), also ratified by Cambodia on the same date, recognizes, in article 7 (a) (ii), the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, "[a] decent living for themselves and their families [...]". Finally, on 23 August 1999 Cambodia also ratified the International Labour Organization's Convention No. 87, which protects employers' and workers' organizations against mutual interference and promotes collective bargaining, and Convention No. 98, which protects workers who are exercising their right to organize, upholds the principle of non-interference between workers' and employers' organizations and promotes voluntary collective bargaining.

Concerning the right to freedom of opinion and expression, article 19(1) mandates that "[e]veryone shall have the right to hold opinions without interference". Indeed, the right to hold opinions, including "opinions of a political, scientific, historic, moral or religious nature," is so fundamental that it is "a right to which the Covenant permits no exception or restriction" (CCPR/C/GC/34). The right to hold opinions encompasses the right to "change an opinion whenever and for whatever reason a person so freely chooses," and also to "form an opinion and to develop this by way of reasoning" (CCPR/C/GC/34). Accordingly, this right is not simply "an abstract concept limited to what may be in one's mind," and may include activities such as research, online search

queries, and drafting of papers and publications (A/HRC/29/32). The Human Rights Committee has concluded the right to express an opinion necessarily includes “freedom not to express one’s opinion” (CCPR/C/GC/34).

Second, article 19(2)’s protection of the right to freedom of expression mandates that everyone possesses the right “to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” This broad language encapsulates “political discourse” and “commentary on one’s own and on public affairs”. Indeed, article 19(2) facilitates the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives” that the UN Human Rights Committee deems “essential for any society” (CCPR/C/GC/34). Article 19 thereby serves as the “foundation stone for every free and democratic society,” and provides the basis for which individuals may assert other internationally recognized human rights, like the right to vote, the right to privacy, and the right to work.

Article 19(3) imposes a three-part test for determining when restrictions on expression are legitimate. First, under article 19(3) of the Covenant, restrictions on expression must be “provided by law”, requiring that the restriction is made available to the public and provides “sufficient precision to enable an individual to regulate his or her conduct accordingly” (CCPR/C/GC/34). Second, the restriction must be necessary to ensure “respect of the rights or reputations of others” or “for the protection of national security or of public order, or of public health and morals.” Finally, any restrictions on freedom of expression in accordance with article 19(3) “must conform to the strict tests of necessity and proportionality” (CCPR/C/GC/34). To meet these requirements, a State must demonstrate “in specific and individualized fashion the precise nature of the threat” that it seeks to address, and a “direct and immediate connection between the expression and the threat.” Restrictive measures “must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected” (CCPR/C/GC/34).

Regarding the rights to freedom of peaceful assembly and of association provided in articles 21 and 22 of the ICCPR, we wish to refer to Resolution 24/5 of the Human Rights Council, which reminds “States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

The rights to freedom of peaceful assembly and of association are fundamental worker rights. Since they enable people to voice and represent their interests, they are key to the realization of both democracy and dignity, to holding Governments accountable and to empowering human agency. These rights are also a means to level the

unequal relationship between workers and employers, thereby helping workers correct abuses and gain access to fair wages, safe working conditions and a collective voice (A/71/385, para. 16).

Finally, according to the Committee on Economic, Social and Cultural Rights, a minimum wage provides a means of ensuring remuneration for a decent living for workers and their families. In its General Comment No. 23, the Committee holds that the ICESCR obliges States Parties to, inter alia, fix the minimum wage with reference to the requirements of a decent living, apply the minimum wage systematically, ensure that the minimum wage does not contribute to direct or indirect discrimination on prohibited grounds, ensure the enforcement of the minimum wage and provide adequate information about the minimum wage to workers. Restricting research and limiting public debate on the minimum wage undermines the ability of Cambodia to meet its obligations under the ICESCR, since it is likely to severely limit information available about the application and impact of the minimum wage. It is furthermore likely to hinder international human rights bodies, including the Committee, to evaluate Cambodia's progress towards the effective implementation of article 16 and 17 of the ICESCR.

The full text of the human rights instruments and standards outlined above are available at www.ohchr.org and can be provided upon request.

In light of the aforementioned standards of international human rights law, we are concerned that provisions of the Draft Law would unduly restrict freedom of expression under article 19, as well as the rights to freedom of peaceful assembly and of association as set forth in articles 21 and 22 of the ICCPR. We are furthermore concerned that restrictions on the ability to conduct independent research and to freely engage in discussion and debate on the minimum wage may hinder the realization of the right to just and favourable conditions of work (article 7 ICESCR).

Article 23 of the Draft Law would impose severe penalties on any member of the Tripartite Council who consults unapproved economic or social data when making a minimum wage proposal. We are concerned that penalizing Council members for consulting non-approved data sources would infringe on the capacity of Council members to *form* an opinion about these issues – an inviolable right under article 19(1) of the Covenant. Furthermore, we are concerned that the restrictions on what data may be consulted – coupled with the threat of severe fines – would have a disproportionate chilling effect on public and political discourse about the minimum wage.

Article 16 of the Draft Law requires written permission to conduct research on minimum wage issues, and compels the disclosure of research findings to the Government. We are concerned that this would effectively require individuals to seek Government's authorization to develop knowledge and opinions about the minimum wage, in violation of article 19(1). We are also concerned that the obligation to report research findings would effectively force individuals to disclose their opinions, again in violation of article 19(1). Additionally, these restrictions would interfere with the capacity of activists, academics, and other sectors of the public to seek, receive, and

impart information about the minimum wage, and we are concerned that they do not serve any legitimate aim specified under article 19(3).

Article 25 of the Draft Law would impose significant penalties on individuals who “commits any illegal act that causes obstruction or pressure on the discussion of minimum wage determination”. However, the failure to specify the activities that constitute “obstruction” or “pressure” confers on the Government broad discretion to define the scope of illegal acts, raising the threat that the provision might be invoked to restrict legitimate expression and public gatherings and assemblies without adequate justification. The threat of severe fines is also likely to exacerbate the chilling effect on public discourse concerning the minimum wage.

Article 26 of the Draft Law would impose severe fines on anyone who objects to official determinations of the minimum wage. We are gravely concerned that such a broadly formulated prohibition would effectively grant authorities virtually unfettered discretion to suppress critical coverage or dissent about the Government’s positions on minimum wage and related labour conditions, creating censorship powers that are disproportionate to any legitimate Government aim. We are concerned that these restrictions on research and discussion about the minimum wage, when taken together, would disproportionately impair news reporting, academic research, and activism about critical economic and social issues in Cambodia.

These articles could severely impair workers’ ability to collectively raise their voice and could therefore impinge on the exercise their rights to freedom of expression, of peaceful assembly and of association. Both trade unions and the right to strike are fundamental tools to achieving workers’ rights, as they provide mechanisms through which workers can stand up for their interests collectively, and engage with big business and government on a more equal footing. We recall that the State is obligated to protect these rights for all workers, as guaranteed in articles 6-8 in the International Covenant on Economic, Social and Cultural Rights (acceded by Cambodia on 26 May 1992) and reiterated in A/71/385, para. 54. We wish to underline that these rights are a critical tool in levelling the unequal relationship between workers and employers, and represent the cornerstone in helping workers correct abuses and gain access to fair wages and safe working conditions.

Finally, we encourage Your Excellency’s Government to organize Tripartite consultations and Consultative Workshops with relevant organizations, associations and citizens. We also encourage to share the Draft Law publicly before its review and adoption by the Council of Ministers, in order to allow sufficient time for interested members of the general public or their representatives to review and comment the draft. According to the Human Rights Committee’s General Comment No. 25, citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives. As such, and following the principle of participation, the contents of draft laws should be made accessible not only to those directly concerned, but to the general public. In addition, the public should also have the possibility of freely debating the draft law and having their say on their adoption. Such consultation is of

particular significance when this law will impact a majority of citizens. In this regard, according to the General Comment No. 23 of the Committee on Economic, Social and Cultural Rights, “the importance of consultation in formulating, implementing, reviewing and monitoring laws and policies related to the right to just and favourable conditions of work, not only with traditional social partners such as workers and employers and their representative organizations, but also with other relevant organizations, such as those representing persons with disabilities, younger and older persons, women, workers in the informal economy, migrants and lesbian, gay, bisexual, transgender and intersex persons, as well as representatives of ethnic groups and indigenous communities.”

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the restrictions on research and discussion about the minimum wage are compatible with Your Excellency’s Government’s obligations under article 19(3), article 21 and article 22 of the ICCPR, as well as article 7 (a) of the ICESCR.
3. Please explain what safeguards Your Excellency’s Government is establishing to ensure the capacity to seek, receive, and impart information concerning wage-related matters.
4. Please provide information concerning the status of the Draft Law in the Parliament of Cambodia.

We would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

In view of the above comments, we urge the Cambodian Government to take all steps necessary to conduct a comprehensive review of the Draft Law and ensure its compliance with international human rights standards.

Finally, we would like to inform your government that this communication will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression:

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>

Please accept, Excellency, the assurances of our highest consideration.

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