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Prime Minister Samdech Hun Sen
Government Peace Building, No. 38
Confederation Russia Blvd (110)
Phnom Penh
Cambodia

December 18, 2019

Re: Cambodia's Law on Trade Unions and Cases Against Union Leaders

Dear Prime Minister,

We, the undersigned Cambodian and international civil society organizations, are deeply concerned about the proposed amendments to the Law on Trade Unions ("TUL"), as [approved](#) by the Cambodian Senate on December 9, 2019. The 10 proposed amendments to articles 3, 17, 20, 21, 27, 28, 29, 54, 55, and 59 fall short of international labor rights standards and were adopted without an inclusive and genuine consultative process of relevant stakeholders.

Numerous provisions in the TUL need significant revision. The latest round of TUL amendments further curtail workers' labor and human rights by severely limiting their freedom of association, and rights to organize and collective bargaining. While we note the proposed minor amendments to the TUL introduced improvements to the previous text, they do not go far enough and have failed to address other problematic issues. The International Labor Organization's Committees of Experts on the Application of Conventions and Recommendations and on Freedom of Association have made a number of calls for amendments to the TUL that are not reflected in the proposed amendments, for example, with regards to articles 3, 10, 12, 13, 20, 21, 28, 38, 59, and fines under Chapter 15.

Our concerns regarding the TUL and the proposed amendments include:

1. Article 3 (amended): The current article still does not extend application of the TUL to "*all persons,*" as previously recommended by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Article 3 of the TUL states the law applies to "*all persons who fall within the provisions of the labour law.*" This undermines article 36 of Cambodia's Constitution which guarantees that "*Khmer citizens of either sex shall have the right to form and to be members of trade unions.*" The proposed amendments to the TUL thereby fail to widen the coverage of the law to workers in the informal sector, teachers,

and other public servants. Related to this, domestic workers and small businesses with fewer than 10 employees will always fail to meet the minimum requirement of 10 workers in order to create a local union, as enshrined in article 10 of the TUL, resulting in a de facto denial of their right to unionize.

2. Article 5 (unchanged): The article states that all workers and employers have the right to form a union of their choice *“for the exclusive purpose”* of study, research, training, promotion of interests, and protection of the rights of persons covered by the union. The OHCHR has recommended removing the phrase *“for the exclusive purpose of”* as it could unduly restrict the right of the organization to freely decide on their activities and programs.
3. Article 12 (unchanged): The article details that an application for registration of a union shall be approved *“if it adequately meets all requirements”* including copies of union statutes, regulations that govern leadership, names of leaders, copies of financial books, bank accounts, and official minutes of elections. Article 12 grants a high degree of discretion to the government and sets out considerably burdensome registration requirements for unions.
4. Article 17 (amended): The article infringes on unions’ rights to determine their internal affairs. The amendment added an additional independent auditing mechanism if 10 percent of union members or 5 percent of union donors call for it. The auditing mechanism requires the institution be legally registered in Cambodia, which may eliminate the use of reputable independent auditors who are licensed overseas. The amendment has not reduced or simplified the required documentation that unions must annually submit to the Ministry of Labor and Vocational Training (MoLVT). When article 17 is read in conjunction with the unchanged article 18, the law effectively empowers the MoLVT to revoke union registration if the union has not fulfilled obligations stipulated by regulators in two warning notifications.
5. Article 18 (unchanged): This article empowers the MoLVT to file a lawsuit in the labor court to revoke the registration of a union if it has not fulfilled its obligations outlined under the current TUL. Considering the cumbersome administrative and documentary demands imposed by the law, and regulator’s arbitrary powers to determine whether those requirements have been met, workers’ unions risk dissolution based on arbitrary grounds and unreasonable requests.
6. Articles 20, 21 and 38 continue to infringe on the right of unions to elect their representatives in full freedom.
7. Article 54 (amended): The amendments fail to bring the law into conformity with international standards because they do not grant the right to collective bargaining and collective dispute resolution to all unions, regardless of their *“most representative status.”* Under TUL, unions that do not have most representative status are currently prevented from

defending the interests of their members, including being blocked from making representations on their behalf and representing them in grievances before the Arbitration Council.

8. Union registration procedures and union statute requirements: The TUL's registration requirements conflict with international standards by requiring previous authorization by the authorities (violating article 2 of ILO Convention No. 87) and infringing on unions' rights in drawing up their own constitutions and rules (violating article 3 of ILO Convention No. 87). In addition, determination of the union with most representative status is subject to approval and recognition by the authorities when this discretion should lie with an independent body. The amendments therefore fail to ensure a transparent, effective and simple registration process that will guarantee freedom of association for all workers as well as address the backlog of pending union registration applications.
9. The current law does not include any provisions to increase protection for workers employed on fixed duration contracts to exercise their right to freedom of association. To date, the widespread use of short-term employment contracts causes fears among workers that if they join a union, management will not renew their contract.

We therefore urge you to revisit these provisions of the TUL, and seriously consider the recommendations made in submissions by civil society stakeholders, the Office of the UN High Commissioner for Human Rights, and the International Labor Organization. By doing so, the Cambodian government could ensure that legal revisions to the TUL conform to its obligations under international human rights treaties and international labor conventions.

We would be remiss if we did not also raise concerns about the consultation procedures to date on the TUL. In July 2019, the MoLVT issued invitations for a second tripartite meeting to discuss the TUL. At that meeting, there was an overrepresentation of pro-government unions, government officials, and employers' representatives. Many independent unions did not receive an invitation or were told they needed to collect a physical invitation from MoLVT.

Both before and after the 2018 elections, labor advocates, union leaders and activist workers have been increasingly targeted by the Cambodian government. While we note the Cambodian government has taken steps to resolve some of the fabricated criminal charges against federation level union leaders – with some notable exceptions such as the recent conviction of Kong Athit connected to the Capitol bus drivers protest in 2016 – we are concerned there has been little progress in lifting cases against local union leaders. The result of this repression has been to silence independent and critical opinions, and to broaden fears among rank-and-file workers to assert their rights.

The current environment for labor rights advocates, trade union leaders, and civil society activists is not conducive to ensure a genuine improvement of the human rights and labor rights situation in Cambodia. We therefore urge the Cambodian government to take the following steps:

1. Initiate a fresh round of inclusive, genuine and transparent consultations around proposed TUL amendments in January 2020 to ensure that the law is amended to fully comply with international labor and human rights standards. These consultations should include the OHCHR, ILO, and local and international civil society organizations – in particular independent trade unions -- and submissions from the participants should be invited in advance. A full report and a draft of final amendments based on these consultations should be published and formally shared with the National Assembly and the Senate to inform revisions in the TUL amendments.
2. Drop all baseless criminal cases against union leaders, workers and labor right advocates.
3. Stop all forms of harassment of union leaders, workers and labor right advocates.

We thank you for your consideration.

Sincerely,

Amnesty International

Asia Floor Wage Alliance (AFWA)

Asian Forum for Human Rights and Development (FORUM-ASIA)

Asian Network for Free Elections (ANFREL)

Building and Wood Worker's International (BWI)

Building and Wood Workers Trade Union Federation of Cambodia (BWTUC)

Cambodia's Independent Civil Servants Association (CICA)

Cambodian Alliance of Trade Unions (CATU)

Cambodian Center for Human Rights (CCHR)

Cambodian Food And Service Workers Federation (CFSWF)

Cambodian Human Rights Action Committee (CHRAC)

Cambodian Human Rights and Development Association (ADHOC)

Cambodian League for the Promotion and Defense of Human Rights (LICADHO)

Cambodia Tourism Workers Union Federation (CTWUF)

Cambodian Youth Network (CYN)

Center for Alliance of Labor and Human Rights (CENTRAL)

Civil Rights Defenders

CIVICUS: World Alliance for Citizen Participation

Clean Clothes Campaign International Office

Coalition of Cambodian Apparel Workers Democratic Unions (C.CAWDU)

Coalition of Cambodian Farmer Community (CCFC)

Committee for Free and Fair Elections in Cambodia (COMFREL)
Global Labor Justice
Human Rights Watch
Independent Free Union Federation (FUFI)
Independent Trade Union Federation (INTUFE)
Informal Democratic Economy Association (IDEA)
International Federation for Human Rights (FIDH)
International Labor Rights Forum (ILRF)
Labor Rights Supported Union of Khmer Employees of Nagaworld
Local Initiative for OHS Network (LION) Indonesia
Maquila Solidarity Network (MSN)
Sedane Labour Resource Centre (LIPS)
Solidar Suisse
Union Coalition for Labor (UCL)
United Students Against Sweatshops (USAS)

Cc:

Minister of Labor and Vocational Training
Minister of Commerce
Ministry of Justice