

Kingdom of Cambodia
Nation Religion King

Recommendation on Draft of Trade Union Law

CHAPTER 1
General Provisions

Article1. Aim

This law aims to provide for the rights of workers and employers to establish and join respective professional organizations as the basis of harmonious industrial relations.

Recommendation: It is inaccurate to refer to this proposed legislation as a “Trade Union Act”. It is better characterized as a law on Trade Unions and Professional Organizations.

Article2. Purposes

This law has the following purposes:

- Defending the rights and interests of workers and employers;
- Guaranteeing the right to [collective] bargaining between workers and employers;
- enhance industrial relations;
- ensuring employment, right to work and national development.

Recommendation: An additional purpose of this law should be to “promote, ensure and protect the right of workers to form and join trade unions and to maintain membership in such unions without discrimination or reprisal”.

Article3 Extent

This law covers enterprises/establishments as well as workers, employers and other persons, who fall within the provisions of the Labour Law.

Article4. Definitions

The key terminologies used in this law have the following definitions:

- A Professional Organization refers to a voluntary jointly constituted team/group aiming to cooperate with each other to carry out activities or developing their own procedural law toward achieving specific professional objectives or goals. For the purpose of this law, a professional organization of workers is called a "union", whereas a professional organization of employers is called "association" (hereafter called association).

- A local union refers to a professional organization that is established by workers

jointly and voluntarily at a [particular] enterprise/establishment. An enterprise/establishment level union is a local union.

- A Union Federation refers to a professional organization at the municipal/provincial level, which is established jointly and voluntarily by local unions with the same or similar professions.

- A higher level union namely a union confederation or a coalition of union federations is a professional organization of workers that is established jointly and voluntarily by union federations.

- An Employer Association refers to a professional organization, which is established jointly and voluntarily by employers.

- A Collective Work Agreement (called a Collective Agreement) refers to a written agreement between an employer, a group of employers or an association and a union, a group of unions, a higher-level union or a shop steward, to determine the working conditions and occupations of workers, and social insurance as well as determining relations between employers and workers.

CHAPTER 2

Fundamental Right to Establish and Join a union or an association

Article5. Right to Establish and Join a Union or an Association

Workers and employers have, without any distinction whatsoever or prior authorization, the right to form a union or an association of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes.

For the purposes of this law, unions or associations that include both employers and workers are forbidden.

Article6. No Discrimination in Membership

All workers, regardless of race, colour, sex, religion, political opinion, nationality, social origin, or health status are free to be a member of the union of their choice. No one, including any union, shall interfere with this right. An employee, who plays a substitute role of an employer in the administration, [and] management of the enterprise and has a decision making right over workers, can establish a separate union of their own. Practical implementation formalities shall be determined by a Prakas of the Minister in charge of Labour.

Recommendation: The proposed hybrid associations comprised of employees who hold management or supervisory responsibilities should NOT be characterized or classified as Trade Unions, and should NOT be able to obtain MRS status or to collectively bargain with the aim of negotiating a Collective Bargaining Agreement. Maintaining the current wording would potentially serve to undermine the authority and responsibilities of an independent trade union.

Ultimate decisions on determining whether a given position should be classified as one of manager, employee or a “hybrid” position combining both roles should be the responsibility of the Arbitration Council and/or Court of First Instance and not left to arbitrary Ministerial Prakas.

Article7. Freedom Not to Join

The freedom of individuals as set out in Article 5 of this law also implies the freedom to not join a union or an association and the freedom to withdraw at any time from the union that they join. A worker may withdraw from a union through a signed or thumb printed statement to be submitted to his or her union and employer. Following such notification, a worker concerned shall be deemed to have automatically and immediately relinquished his or her membership. If prior to this [notification] a worker concerned had voluntarily agreed to the employer to deduct his or her union dues, the employer must stop deducting his or her union dues. No one shall interfere with a worker’s right to join or to leave a union.

Article8. Freedom to Participate in Leadership and Management

Subject to conditions laid down in this law, all members of a union or an association can participate in the leadership, management and administration of the organization. The organization's statutes, however, can possibly reduce the conditions for the participation of retirees in these functions.

Article9. Rights of Unions and Associations

Unions and associations have the right:

- To draw up their own statutes and administrative regulations, as long as they are not contrary to the laws in effect and public order;
- To freely elect their representatives; and
- To formulate their work program.

Article10. Structure of Unions, Association and Unions’ or Associations’ Affiliation

The union has the following structures:

- Local unions;
- Union federations;
- Higher Level Unions.

Unions and associations can freely consult each other about the study, research, professional promotion and protection of their moral and material interests. Unions can jointly and voluntarily establish union federations, higher level unions, and can also affiliate with international unions. Associations also have the same rights. The number required for local unions to jointly establish a union federation, and for union federations to establish a higher level union shall be determined by Prakas of the Minister in charge of labour.

Recommendations: The reference here to “Higher Level Unions” should be replaced here and henceforth throughout the legislation with the term National Union.

Responsibility for the Registration of these proposed organizations should rest with the Ministry of Labour. However, the process as currently proposed is too arbitrary. A clearly

defined formula or better defined process should be in place

CHAPTER 3

Registration of Unions or Associations

Article 11. Rights of Registered Unions and Associations

In order for unions or associations to enjoy the rights and benefits set out in this law, the founders of a union or an association must register it with the Ministry in Charge of Labour. The Ministry in Charge of Labour shall maintain registration records and shall publish them on a regular basis.

Recommendation: Publication on a “regular basis” requires greater clarification. A publication rate of once every three months is recommended. Moreover, registration records should be treated as public documents and readily available for public access in between reporting periods.

Article 12. Requirements for Registration Request

A request for registration shall be approved if it includes, in conformity with other provisions of this law and the Prakas of the Ministry in Charge of Labour. The request shall have:

- a) An original copy of the union's or association's statutes, including a statement of its purpose;
- b) An original copy of its Administrative Regulations which govern management and administration;
- c) A list of names of leaders, managers, and those responsible for the administration of the organization;
- d) An address where financial books and records required by this law are kept;
- e)
- f) In the case of a union, a list of at least 20 (twenty) dues-paying members or 20 (twenty) members who have authorized deduction of dues;
- g) For a union federation, it shall have a list of its local affiliated union members;
- h) For a higher level union, it shall have a list of its affiliated union federation members.
- i) For an employer federation, it shall have a list of its affiliated association members.

If the Ministry in charge of Labour does not reply within 60 (sixty) working days after receipt of the registration form, the union or association is considered to be registered. A copy of the statutes and the list of names of those responsible for management and administration shall be sent to the Municipal/Provincial Departments of Labour and Vocational Training where the union or association was established, as well as to the Office of the Council of Ministers, the Ministry of Justice and the Ministry of Interior. The registrar may require additional information or clarification in support of the application.

The filing of the statute and the list of names of leaders, managers and any change made to the statutes or to the leaders, managers and those responsible for the administration.

Recommendations: As currently constituted a given workplace or a proposed trade union could be left in limbo for up to two months or 60 days while the Ministry of Labour deliberates over an application for registration. This time period should be reduced to 30 working days at which point if the Ministry has not issued a decision on a given registration, the association is deemed to be registered.

Protections afforded to prospective elected union officers or elected officers remain ill defined and workers in these positions remain vulnerable in the currently proposed legislation.

The Article should emphasize that any prospective elected union officer or actually elected officer should be protected from discipline for union activity during the organizing, registration and post registration phases.

Article 12(f) should be eliminated on the basis of being contradictory. Unions cannot collect dues if they are not registered. However, under current Recommendations the period where a proposed union would be entitled to begin collecting dues 30 days after a registration has been submitted provided that the registration has not been rejected by the Ministry during this time period. Finally while the Ministry should be entitled to make “additional requests” on any given application; as long as the requirements from 12(a)-(i) have been met, additional requests for information shall in no way extend the timeline of 60 days (or as recommended 30 days) listed in the article. To allow otherwise leaves any registration application potentially vulnerable to endless and arbitrary delays.

Article 13. Requirements for Statutes

The statutes of any union or association seeking registration shall include:

- The name, logo and stamp of the union or association;
- A description of the geographical or professional scope of the union or association;
- Requirement that ordinary financial records be maintained and that an annual report of the financial situation of the union or association be periodically published;
- Requirement that a secret ballot be taken for a strike in the case of unions, including specifications as to quorum requirements relative to workers affected by the proposed strike;
- A procedure for electing leadership through secret ballot;
- Limitation of the holding of leadership office to 2 (two) years, with the possibility of re-election;
- Qualifications of management and administrative officers at least in conformity with Article 21 and Article 22 of this law.

The statutes shall define whether this particular union is intended to represent all workers in an enterprise/establishment or to represent only one or more than one category of workers as defined by the statutes. In this case, only the workers in that category or those categories are eligible to join that particular union.

Recommendation: The fourth listed requirement should be eliminated. A similar provision outlining ballot requirements for unions prior to a strike being called is already contained and satisfactorily outlined in the existing Cambodian Labour Law.

Article14. Effect of Registration

Registered unions or associations have legal personality. They have the right to sue in court and to acquire personal property or real estate without authorization, for free or for payment and, more generally, they have the right to enter into a contract.

A union cannot run a trading business.

Recommendation: The reference to a ban on unions operating trading businesses should be eliminated. There is no clear definition of what would constitute a “trading business”; elsewhere in the law unions are explicitly permitted to operate revenue generating operations such as cooperatives. Moreover, an element of developing an independent and autonomous trade union movement is the union’s ability to generate revenue as long as there is a clear separation between revenue generated for public union use and benefit and not the private use or benefit of union officials and that revenue is not generated through illegal means.

Article15. Action on Application

Practical details of the application process for registration of unions or associations will be determined by a Prakas of the Minister in Charge of Labour.

Recommendation: This Article should be eliminated. The reference to Ministerial Prakas is too arbitrary and unpredictable and in any case the process involved in registering unions is already caught in earlier sections.

Article16. Refusal of Registration

Registration may only be refused for one of the following reasons:

- (a) The stated aims of the unions or association are not to defend and further the rights and interests of persons that the statute of the union and association has defined;
- (b) The union is not independent;
- (c) The union or association does not fulfil the conditions stipulated in Article 12 of this law;
- (d) The union's or association's statute does not contain the detailed provisions required by this law or it’s implementing regulations;
- (e) The leaders, managers of the union or association do not fulfil the conditions stipulated in Article 22 of this law;
- (f) The name of the union or association is the same as that of a registered union or association or so closely resembles that of a registered union or association or so inaccurately describes its coverage or objectives that the public is likely to be deceived or misled.

The Ministry in Charge of Labour must communicate its reasons for refusing the registration of a union or an association within 60 (sixty) days of application. A union or an association whose registration has been refused has 15 (fifteen days) days to appeal the decision of refusal to the Court of First Instance, which will provide a ruling within 15 days.

A trade union is independent if:

- It is not under the control of any employer or association; and

- It is free of any interference or influence of any kind from any employer or association.

Recommendation: The Article should contain an additional clause outlining that a trade union is independent if it is free from any influence and/or formal affiliation with a political party.

Article17. Maintenance of Registration

In order to maintain the list of registration approved by the Ministry in Charge of Labour, all unions or associations must submit an annual report of accounts based on the financial books and records they keep, showing

- a) Total income during the covered period, shown by amounts in categories of sources;
- b) Expenditure of the union or association shall update information as required by article...of this law whenever changes are made thereto, including any change of address, as well as the number of members of the union or association.

Article18. Suspension of Registration

The registration of a union or association is automatically suspended if it is not maintained as required in Article 17 and where the union does not supply the required information within a specified period of time. Notice of suspension shall be sent to the last known offices of the union or association involved. After the required conditions are fulfilled, the registration of the union or association concerned will be reactivated.

The procedure for the suspension of the union's or association's registration as stipulated in the first paragraph shall also be applied when the term of the leaders and managers of the union or association expires and that their leaders, managers and those responsible for the administration for a new term are not being re-elected within 3 (three) months without proper reasons.

Unions or associations that conduct a strike or lock-out without going through the required procedure as outlined in the labour law and which is officially confirmed by the labour inspector as such , that particular union or association shall be suspended for 3 (three) months. If this unfair practice is being repeated for the second time, the registration shall be suspended for 12 (twelve) months. If such unfair practice is repeated for the third time onward, the registration shall be suspended for at least 36 (thirty six) months.

Recommendation: See Below

Article19. Cancellation or Revocation of Registration

The Ministry in Charge of Labour may cancel the registration of a union or an association under the same conditions that warrant the refusal of registration provided in Article 16.

Recommendation: Both Articles 18 and 19 as currently constituted afford the Ministry of Labour too much arbitrary authority to suspend or eliminate trade unions in an indiscriminate fashion. Suspension and/or Revocation of a given union's registration should only be allowed through outlined internal union procedures OR through a Court of First instance.

Article20. Appeal from Suspension, Cancellation or Revocation of Registration

Unions or associations can lodge an appeal against suspension, or cancellation of registration with a higher court.

Recommendation: This Article should be eliminated. The Appeal processes on these issues are better contained in Article 29.

Article21. Requirements for Leaders, Managers, and those Responsible for the Administration of Unions

Cambodian nationals, who are leaders, managers and those responsible for the administration of a union, shall meet the following requirements:

- a) have a clear residential address
- b) have at least 9th grade level of education
- c) have never been convicted of any criminal offense
- d) have engaged in the profession or the job for at least one year.

Foreign nationals, who are leaders, managers and those responsible for the administration of unions, shall meet the following requirements:

- a) have at least 25 years of age
- b) be able to read and write khmer
- c) have the right to residence in accordance with the Immigration Law of the Kingdom of Cambodia

Recommendation: With regard to restrictions placed on Cambodian nationals both 21(a) and (b) should be eliminated on the basis of being in the first case widely discriminatory and in the second case far too arbitrary. By some estimates requiring a Grade 9 level of education in order to hold an office in a trade union would eliminate over 90% of the workforce. Education requirements to hold elected union office in the workplace should be eliminated. Additionally, preventing anyone who has ever been convicted of a crime under the Cambodian justice system from holding elected office opens the door for abuse as a way for employers and other authorities to levy charges on any active or prospective union leader for crimes of any nature, including those of a “political” nature as a means of preventing them from holding or seeking union office.

With regard to the provision related to Foreign Nationals the age restrictions in Art 21.2(a) should be eliminated. There is a sizeable community of non Cambodian citizens earning a living in Cambodian industries where trade unionism and independent trade unionism are developing. The age demographics of this community are the same as those who are of Cambodian nationality working in the same industry, many of who are under 25. Those non nationals, working legally in Cambodia should not be discriminated against on the basis of age and should be entitled to hold positions of leadership in their unions or prospective unions. To prevent anyone under the age of 25 from doing so would be eliminating a sizable portion of this group of legally employed non-nationals.

Article22. Requirements for Leaders, Managers and those Responsible for the Administration of Associations

Cambodian leaders, managers and those responsible for the administration of associations must meet the following requirements:

- a) Have a clear residential address.
- b) Have never been convicted of any criminal offense.

Foreign employers, who are eligible stand for election to be leaders, managers and those responsible for the administration of associations, must meet the following requirements:

- a) Be at least 25 years of age
- b) Be able to read and write Khmer,
- c) Have the right to permanent residence in accordance with the Immigration Law of the Kingdom of Cambodia.

CHAPTER 4

Finances of Professional Organizations

Article23. Sources of Finance

Union finances are derived from:

- d) Membership fees, the amount of which shall be determined in the organization's statute;
- e) Profits earned from the organization's legitimate money-making activities;
- f) Unconditional financial assistance from members or other parties.

If the union or association has established for more than 3 (three) years, then there shall be an annual financial report as required by this law.

Recommendation: For clarification, Art 23 (c) employers and/or registered political parties should not constitute "other parties"

Article24. Separation of Finances and Assets

Finances and assets of unions, union federations, and high level unions must be separated from the private finances and assets of their elected leaders, managers and those responsible for the administration, and their members.

Article25. Use of Finances in Accordance With the Statute

The deposit and transfer of union or association finances and assets to other parties, investment of funds and other legitimate business transactions by the union or association can only be made in accordance with the provisions as stipulated in this law or a statute of the union or association.

Article26. Responsibility for Use of Finances

Leaders, managers, and those responsible for the administration shall be responsible for the use and management of finances and assets of the union and association.

Article27. Authorization to Deduct Dues and Agency Fees

Employers may deduct union dues from the wages of the workers and transfer them to the union involved, provided a written request for the deduction has been made by members of the respective unions.

A most representative status (MRS) workers' union may negotiate to include in a collective bargaining agreement the assessment of a reasonable fee equivalent to the dues and other fees paid by members of the most representative status. The fee shall be paid by workers who are not members of the MRS union but share the benefits provided in the collective agreement with workers whom the union legally represent.

Recommendation: The second paragraph should be substantially re worded. As currently constituted a union with MRS status would be able to levy fees on employees in a given workplace who are members of other unions. A union with MRS status has exclusive collective bargaining rights and when a collective bargaining agreement is reached all employees benefit from whatever gains have been negotiated whether they are members of the MRS union or not. However, if an MRS union is also entitled to levy fees on unionized employees who are not members of the MRS union one of two scenarios will unfold.

In one scenario many workers would in effect be asked to pay "double fees". One payment would go to support their own union and then an additional fee to the existing MRS union. This would likely not be sustainable and in any case is inequitable. In this situation workers required to pay two sets of fees would likely seek to join the MRS union and simply pay a fee to them. This would hamper development of a widespread independent trade union movement and could see widespread departure of members from non MRS unions in a given operation.

The recommendation would be that all union members pay fees to their respective unions whether that union has MRS status or not. Individual financial membership support is a crucial mechanism through which unions survive and develop.

However, for those workers who enjoy the benefits of a negotiated CBA, but are not members of any given trade union, it is proposed that these groups of workers be required to pay a "CBA" fee to the union with MRS status, in other words the union which has principally negotiated the collective bargaining agreement.

Article 28. Keeping of Financial Records and Complaint

All unions or associations, irrespective of having registration or most representative status, shall maintain ordinary business records showing income and expenditure, including the sources of income and recipients of income and expenditure, and shall present annual financial reports to members of unions or associations in accordance with the statute of those unions or associations.

An independent audit institution or entity which is legally registered shall inquire into the financial activities of any union or association upon the filing of a complaint under oath and duly supported by the written support of at least 20% (twenty percent) of the total membership of the union or association concerned, and examine their books of accounts and other records to determine compliance with the law. Such inquiry or examination shall not be conducted within 30 (thirty) days prior to the date of election for the leaders of the union or association. The costs associated with this audit shall be borne by the parties concerned or a third party.

CHAPTER 5

Dissolution of Professional Organizations

Article 29. Dissolution of Unions or Associations

The dissolution of a professional organization shall be as follows:

1. A trade union or association is voluntarily dissolved by the decision of the general assembly by the majority vote of 2/3 (two-thirds) of members attending a meeting. The general assembly shall also adopt a resolution on the procedure for liquidation pursuant to its statute.

2. A court may order the dissolution of a trade union or association as follows:

2.1 A trade union or association will be dissolved by a court judgment when there is a complaint from a concerned third person or the Ministry in Charge of Labour if:

- a) The foundations or activities of the trade union or association are contrary to law or the objectives of the trade union or association specified in the statute.
- b) A trade union is no longer independent and is manifestly unable to recover its independence;
- c) The trade union's members falls below the number as provided for in point (f) under Article 12 of this Law and the leaders, managers and those responsible for the administration does not initiate voluntary dissolution within 6 (six) months;
- d) At least 3 (three) members of the leaders, managers and those responsible for the administration, or agents or members performing their duties on behalf of the trade union have been in prison at least 3 (three) years, or have been convicted of a crime, in the capacity of the trade union, that causes substantial harm to the security of the State, or are found to be systematically inducing members of the trade union to commit unlawful activities extraneous to the objectives of the trade union, and offences against the physical integrity of persons and destruction of property.

2.2. A court may set a deadline for elimination of deficiencies specified in clauses (a) and (b) of paragraph 2 of this Article.

3. A professional organization shall be automatically dissolved in case an enterprise/establishment has been definitely closed.

Recommendation: Article 29.1 should be reworded. As currently constituted it is far too wide open and arbitrarily allows for the dissolution of a given union, in theory, by a handful of union members due to the absence of any definition as to what constitutes a "General Assembly". Dissolution of a union should be in the hands of the membership of that union, however there should be a clearly defined quorum present to do so, in other words a minimum of 50% plus one of existing members taking part in the decision with a two thirds majority of the quorum voting in favour of dissolution in order for it to take effect.

The Recommendation for Article 29.2 is that it be totally dissolved. References to unknown and undefined “third parties” or the Ministry of Labour initiating the dissolution of trade unions as currently constituted leaves open the opportunity for widespread abuse of this article to the potential detriment of independent trade unions

Article30. Grounds for Dissolution by Court

A competent court may dissolve a trade union or association where leaders, managers, and those responsible for the administration, or agents or members performing works on behalf of the trade union or association have committed a wrongdoing as stated in Article 19 of this law or in case of serious violation of laws and regulations, or have been proved to be guilty of committing an offense, in the capacity of the trade union or association, that causes substantial harm to the security of the State.

Recommendation: This Article should be eliminated. The reference to Article 19 contravenes ILO Convention 89 where governments (or administrative bodies) should not initiate the dissolution of trade unions. Moreover, reference to “substantial harm to the security of the State” is too broad, undefined and leaves open the possibility of persecuting and eliminating trade union activists or trade unions in their entirety whose actions do not conform with the State or Government ‘s stated policies.

Article31. Effect of Dissolution

Though a trade union or an association has been dissolved, the leaders, managers and those responsible for the administration of the trade union or the association may not be absolved from their responsibilities and obligations to members or other parties.

Article32. Assets of a Trade Union or an Association on Dissolution

In case of dissolution of a trade union or an association, the assets of the organization are allotted as prescribed in the statute or, if there is no such statutory provisions; they are allotted according to the rules determined by the General Assembly. If there is no such statutory provisions and no decision from the General Assembly, the unions or the association's current assets can only be transferred in the form of donation to another similar, legally constituted union or association or to relief associations or to social providence.

CHAPTER 6

Representation of Workers in the Enterprise

Article 33.Election of Shop Stewards

In every enterprise or establishment where at least 8 (eight) workers are normally employed, the workers shall elect a shop steward to be the sole representative of all workers who are eligible to vote in the enterprise or establishment.

The fact of acknowledging that there are several distinct establishments within any enterprise having the above-required number of workers does not have the effect of excluding a number of workers from abiding by this provision.

If there is no agreement between the employer and the most representative union organization in the enterprise on the number of distinct establishments required for the election of shop stewards, such dispute shall be submitted to a Court of First Instance, which has jurisdiction to determine the nature of those distinct establishments.

Article34. Mission of the Shop Steward

The missions of the shop steward are as follows:

- To present to the employer any individual or collective grievances relating to wages and the enforcement of procedural law and general labour regulations as well as collective agreements applicable to the enterprise/establishment;
- To inform the Labour Inspector all complaints and criticism relating to the enforcement of the legal provisions and labour regulations that the Labour Inspector is responsible for monitoring;
- To ensure the enforcement of the provisions relating to the occupational health and safety;
- To suggest measures that would be beneficial to contributing towards protecting the health, and improving safety and working conditions of workers in the establishment, particularly in case of work-related accidents or illnesses.
- The shop steward must be consulted and put forward a written opinion on the draft of internal regulations provided for in the Labour Law or on a draft of modification to these internal regulations.
- The shop steward must also be consulted and put forward a written opinion on the measures for redundancy due to a reduction in activities or an internal reorganization of the enterprise/establishment.

Article35. Number of Shop Stewards

The number of shop stewards is set in proportion to the number of workers in the establishment as follows:

- From 8 (eight) to 50 (fifty) workers: 1 (one) official shop steward and 1(one) assistant shop steward;
- From 51 (fifty-one) to 100 (one hundred) workers: 2 (two) official shop stewards and 2 (two) assistant shop stewards;
- For more than 100 (one hundred) workers: 1 (one) extra official shop steward and 1 (one) extra assistant shop steward for each group of 100 (one hundred) workers.

Article36. Eligibility to Vote and to Stand for a Candidate

Workers of either sex, who are at least 18 (eighteen) years old and who have worked for the enterprise/establishment for at least 3 (three) months and have not forfeited their right to vote, as set forth in the Electoral Law, are eligible to vote.

Workers, who are eligible to vote with at least 21 (twenty one) years old, and who have seniority of at least 3 (three) months in the enterprise/establishment, and with a minimum level in general education of the 9th (ninth) grades, shall be eligible to stand for candidates. In addition to these conditions, for a foreigner to be eligible to stand for a candidate they must have the right to reside in the Kingdom of Cambodia in accordance with the provisions of the Immigration Law until the end of the term solicited.

Article37. Timing and Place of Election

Elections shall take place during working hours. The ballot is secret. The election of official shop stewards and assistant shop stewards shall be organized with separate but

concurrent ballots. If there is a pre-electoral agreement or a collective agreement or a regulatory provision applicable to the discrete professional categories that entail distinct polls, then the election shall be organized separately in different places.

Article38. Nomination of Shop Steward Candidates

The shop stewards are elected from the candidates nominated by the trade union within the framework of each enterprise/establishment.

A trade union cannot nominate more candidates than the number of seats available for the prospective shop stewards to fill, and if necessary, this must apply to each electoral body.

In an enterprise/establishment where there is no trade union(s), workers can voluntarily stand as a shop steward candidate(s). If there is no any worker, who is volunteers to stand as candidate or if there are no workers, who meet the required conditions to stand as a shop steward candidate as stipulated in Article 36 of this Law, the election of shop steward(s) shall be determined by Prakas of the Minister in charge of labour.

Article39. Elected [Candidates]

Candidates who obtain the largest numbers of votes are declared elected up to the number of seats to fill. In the case that only one seat remains to be filled, and several candidates received the same number of votes, this seat is allocated to the oldest candidate. The ballot is considered valid only if the number of voters is at least equal to half the number of those registered.

Article40. Second Election

In the case that the number of voters is less than half the number of those registered or that the trade union did not nominate any candidates within the allotted time, the employer shall re-organize the election within 15 (fifteen) days, in which the voters can vote for any candidate whether or not the candidate was nominated by the trade union. No quorum is required for this second ballot to be valid.

Article41. Term of Official Shop Stewards and Assistant Shop Stewards

The official shop stewards and the assistant shop stewards are elected for a 2 (two)-year term and can be re-elected. Their functions shall be terminated by death, resignation and termination of the employment contract. When an official shop steward leaves office or is temporarily absent, she or he shall be replaced by an assistant shop steward from the same electoral body, and the priority for replacement is given to the assistant shop steward who has been nominated by the same trade union and who received the largest number of votes.

Article42. Employer's Duties to Organize Elections

It is the duty of the employer to organize elections. Should there be no shop stewards, the employer shall determine an election date and publicize it within 15 (fifteen) days upon receipt of the request of a worker, a trade union or the Labour Inspector. The elections shall be organized within 45 (forty-five) days upon receipt of the request.

In case of re-election of a shop steward, the election shall take place within 15 (fifteen) days prior to the end of the shop steward's term.

Article43. Protection of Shop Stewards

The employer or his or her representatives shall not in any way victimize the shop steward for carrying out the missions bestowed by the present law.

The dismissal of a shop steward or of a candidate of shop steward can only be made after authorization from the Labour Inspector. The same protective measures apply to former shop stewards within 3 (three) months following the end of their terms and to unelected candidates within 3 (three) months following the proclamation of the results of the ballot. Any reassignment or transfer of a shop steward, which would result in the loss of position during [the shop stewards'] term, is subject to the same procedure.

The Labour Inspector, who has been referred a request to authorize the dismissal of a worker covered by the present article, shall give his decision to the employer and to the worker in question, as well as to the trade union to which the worker belongs within 1 (one) month at the latest upon receipt of the case.

Upon receipt of the decision, the employer, the worker in question, or the trade union to which the worker belongs, has a period of 2 (two) months to appeal to the Minister in charge of labour. The Minister in charge of labour can cancel or reverse the decision of the Labour Inspector.

If there is no notification of the Labour Inspector's decision within the allotted time, or if there is no notification of the decision of the Minister in charge of labour within 2 (two) months upon receipt of the appeal, the case and the appeal are considered to be rejected.

Article 44. Effect of Revocation of an Administrative Decision

If the Minister in charge of labour or a competent court revokes an administrative decision authorizing the dismissal of a shop steward, the latter is entitled to resume his previous position or an equivalent position if he has made an appeal within 2 (two) months after receipt of notification of the administrative decision. The shop steward shall be reinstated to his term if it has not expired.

Article 45. Serious Misconduct

In case of serious misconduct as stipulated in the labour law, the manager of an enterprise can render the decision to instantly suspend an individual in question pending the Labour Inspector's decision. If the Labour Inspector turns down the dismissal, the suspension is considered null and void, and its effects are cancelled lawfully. The employer shall immediately reinstate the suspended worker back to work after receiving the decision of the Labour Inspector.

Article 46. Employer's Duties to Prepare the Minutes

The employer shall, within 8 (eight) days following the elections, prepare the official minutes of the result of elections of the shop stewards to the Ministry in charge of labour. Furthermore, the employer must post another copy of the official minutes in the enterprise/establishment for information.

Article 47. Workers' Rights to File Their Own Grievance

The presence of the shop stewards in the enterprise/establishment is not an obstacle to the workers' rights to file their grievances directly with the employer or his representative.

Article 48. Complaint Against the Results of the Shop Steward Election

Complaints relating to the election, eligibility and fairness of the elections of shop stewards shall be referred to a competent Court of First Instance.

Article 49. Issuance of Prakas by the Minister in Charge of Labour

The Ministry in charge of labour shall issue a Prakas to determine the formality of enforcement of the CHAPTER 6, particularly regarding:

1. The development of voting procedures and the division of the workers into electoral body;
2. The conditions under which the shop stewards are recognized by the employer or his representative,
3. The means for the shop stewards, including the number of working hours, to carry out their functions.
4. The conditions under which an electoral body can remove a shop steward from office.

Recommendation: Articles 33-49 deal with the issue of “shop stewards”. In the annual ITUC global review of Trade Union Rights Violations issues surrounding the position of shop steward are routinely highlighted as problematic. The recommendation here is that the position of shop steward should only be allowed to exist in a workplace where there is no union with MRS status. Where there is no union with MRS status shop stewards could play a significant role in representing workers concerns and/or presenting a unified voice from among a disparate group of trade unions in a given workplace .In this regard where there is a Shop Steward in place, the portion of Article 36 requiring a Grade Nine level of education in order to be eligible to seek the position should be eliminated for the same reasons as outlined in earlier recommendation regarding eligibility for trade union officer positions.

However, where there is a union with MRS status the position of shop steward should not exist. Moreover in cases where there is a shop steward (ie where there is no trade union with MRS status) shop stewards should only be permitted to negotiate MOUs (or Memorandums of Understanding) with employers as opposed to collective bargaining agreements. In the development of a strong and independent trade union movement, it is paramount that the negotiation of a collective bargaining agreement be the sole purview of a trade union.

Article 50. Union Delegate

Where an enterprise/establishment has a most representative union, that union can appoint one of its members, who meet all the conditions as stipulated in paragraph 2 of Article 36 of this law, to be a union delegate. The union delegate is entitled to make decisions and sign a collective agreement with the employer on behalf of a union which has appointed him. The union delegate is appointed for a 2 (two)-year term and can be re- appointed.

Recommendation: The composition of a recommended collective bargaining committee is covered under later articles. However, it should be clear that no one individual employee should negotiate a collective bargaining agreement, which is distinct from assigning the ability to sign such a negotiated agreement.

Article 51. Mission of a Union Delegate

Union delegates have the same mission as the shop stewards

CHAPTER 7

Rights and Obligations of Workers' Unions

Article 52. Rights and Duties of Unions

Leaders, managers and those responsible for the administration of a union shall be directly elected by members for a 2 (two)-year-term and can stand for re-election.

Unions shall determine through a secret ballot any question of policy which may affect the entire membership of the professional organization. No arbitrary or excessive fees shall be required by members, and no officer or agent of the union shall collect fees unless he or she is duly authorized pursuant to the statute of the union.

Each worker may be a member in only one union in the same enterprise/establishment at any one period of time. If a worker, who has already been a member of a particular union, joins another union within the same enterprise/establishment, s/he must relinquish [his or her membership] from the previous union in one month. Otherwise (s)he will be denied by these unions.

Article 53. Representation of Members

Each worker has the rights to be represented in relations with his or her employer by the union of his or her own choosing. Where a workers' union has been certified as the most representative union, any other union with members in the enterprise or establishment may represent its members only with respect to the rights provided under the collective agreement negotiated by the most representative union. It may not renegotiate or attempt to alter the terms and conditions applicable to its members while the agreement is in force or the MRS status is valid.

Article 54. Principles of Integrity and Good Faith

The most representative status union has a duty to engage with employers in good faith for the purpose of representing the interests of their members in determining the terms and conditions of employment and of ensuring the compliance with the agreed terms and conditions and lawful rights. This duty of good faith includes a duty to meet and convene promptly and expeditiously for the purpose of discussion to resolve problems or collective negotiation to sign a collective agreement with respect to terms and conditions of employment in accordance with the provisions of this law, as well as to consider proposals for adjusting any grievances or questions arising under such agreement. The duty includes the duty to make concessions and protest with reasonable consideration, if requested by either party. The duty¹ also includes cooperation with current most representative union to give full effect to rights secured through collective bargaining with the employer concerned.

CHAPTER 8

Duties of Employers, And Associations

Article 55. Workers' List for Requesting the Most Representative Status

Employers shall maintain and update on a monthly basis a list of current employees indicating their name, employment status, and job classification for immediate inspection in

¹ This duty is for minority unions but they have been removed from this article.

the case that a workers' union requests the most representative status. The practical implementation formalities shall be determined by Prakas of the Minister in charge of labour.

Article56. Obligation of Good Faith

All employers and associations have a duty to engage with unions and their lawful representatives in good faith for the purpose of representing the interests of its members and accepting the compliance with agreed terms and conditions, and lawful rights.

This duty of good faith includes the duty in respect of the certified most representative status union or a higher level most representative status union to meet and convene promptly and expeditiously for the purpose of negotiating a collective bargaining agreement over the terms and conditions of employment in accordance with the provisions of this law, as well as to consider proposals for adjusting any grievances or questions arising under such agreement. The duty goes beyond merely formal "meeting and consultation" and includes providing the most representative status union or a higher level most representative status union with facilities for carrying out negotiations, providing all information relevant to negotiations as requested by the union, implementing a contract or other written memorandum incorporating such agreements if requested by either party but does not oblige an employer or an employers' organization to agree to any specific proposal put forward by the union.

Both negotiating parties shall respect the principles of integrity and good faith.

CHAPTER 9

Representation By Most Representative Status Union

Article57. Most Representative Status at the level of the enterprise or establishment

The most representative status of a union is recognized in the framework of the enterprise or establishment. For the purpose of collective bargaining, the most representative status union has the exclusive right to negotiate. For an enterprise or establishment where there are many unions, union(s) must seek the most representative status. Any union will receive MRS status if it meets the following criteria:

- a) Having legally registered;
- b) Having the most members, in possession of an official membership identification card, for which it seeks to have the most representative status;
- c) Receiving dues from at least 33% (thirty three) percent of its members;
- d) Having programs and activities indicating that the union is capable of providing professional, social and educational services to its members, as provided for in this law.

Article58. Most Representative Status in One Profession or One Economic Activity

In one profession or an economic activity, where there are many unions or many higher level unions, those unions shall seek for an MRS recognition by fulfilling the criteria as stipulated in points (a) and (c) and (d) of Article 57 above, plus another criteria of having the most members having an official membership card in the profession or the economic activity for which it seeks to be certified as the most representative status. As stated in the formalities and procedures of the Ministry in charge of labour, the employer can also request

for the recognition of MRS for these unions in case that those unions have sought for MRS recognition by themselves. The most representative status union has the exclusive right to represent all workers in negotiating a collective bargaining or to resolve collective disputes with the employer or an association of that particular profession or that economic activity.

If many local unions of many different enterprises do not fulfil the required criteria as stipulated in Article 57 above, and could not seek recognition as the most representative status, negotiation of collective bargaining agreement shall be implemented in accordance with Article 75 of this law.

*******Recommendation: This is a proposed article of enormous importance and potentially very damaging to the independent trade union movement. Currently, MRS status is afforded to a union with an outright majority of employees in a given workplace. While imperfect, this system does allow for a union that is most representative of the workforce as a whole, to enjoy the right to collectively bargain for that workforce. The current proposal calls for MRS status to be afforded to the single largest union in a given workforce, then for that largest union to have the exclusive right to negotiate on behalf of the entire workforce and then also to levy fees on all other employees. In this situation, by way of example, a given garment factory could have 10 different unions. The single largest union might only represent 11% of the workforce, but as the single largest union would have bargaining rights and levying options on the remaining 89 % of the workforce and members of 9 different unions.**

The Trade Union support group in Cambodia and importantly the independent trade union movement feel strongly that while imperfect the current MRS design should remain in place (ie a union possessing 50% plus 1 of a given workforce is entitled to MRS status).

Another Recommendation for this provision is that while an MRS union retains the exclusive right to negotiate a collective agreement for the entire workforce, there should be more involvement from all other given unions (minority unions) in the workplace when it comes to settling collective disputes and while collective bargaining should be led by the MRS union, for both bargaining and dispute settlement a committee should be struck comprised of one member from each registered union in a given workplace to assist in both bargaining and dispute settlement.

The final recommendation in this article is that the provision that the “employer” can request MRS status for a given union should be struck. The employer should always be entitled to know and be able to determine who the MRS designated union, if any is; however, it is not the role of the employer to initiate the application or selection itself.

Article59. Request for Most Representative Status Certification

Union(s) shall refer a request for the most representative status certification to the Ministry in charge of labour in accordance with the formalities and procedures described in a Prakas issued by Minister in charge of labour.

Article60. Determination by the Minister in Charge of Labour

Within 60 (sixty) working days at the latest after receipt of the form, the Ministry in charge of labour shall give an official decision on recognition of the most representative status of the unions, which have fulfilled the criteria stated in this law. If it is necessary to re-

determine the most representative status of any union, the Minister in charge of labour can conduct an investigation.

The Ministry in charge of labour can suspend or revoke the most representative status of a union in case of a breach in or lack of criteria as set out in this law.

Article 61. Rights and Duties of the Most Representative Status Unions

In addition to others found in this law, the most representative status unions or the higher level unions have the following duties:

-To negotiate in good faith with the employer with a view to agreeing on a collective agreement covering terms and conditions of employment, health and safety of work, and other related issues with the employer;

-To represent in good faith non-members in grievances arising from collective agreement;

-Not to discriminate in taking new members;

-To allocate a number of seats in some mechanisms as determined in the Labour Law.

Article 62. Rights and Roles of Minority Unions in Enterprises with a Most Representative Status Union

Minority unions in enterprises/establishments where a most representative status union has been certified, and where that status remains valid, are prohibited from demanding collective bargaining rights, and from demanding rights or benefits above those provided for in law, Prakas, regulations, collective bargaining agreements in force, or internal work rules. The roles of the minority unions may include the following:

- a) Providing legal literacy training;
- b) Provide legal and practical advice to its members
- c) Representing their own members in individual labour disputes;
- d) Participating in workplace cooperation mechanisms that operate on a continuous basis;
- e) Participating in labour market institution boards;
- f) Providing information regarding their union membership;
- g) Organizing cooperatives, which can be shops, restaurants, or concern matters such as credit or health care etc. to help improve the living standard of their members;
- h) Having an administrative role in handing out unemployment benefits.

The MRS unions can also carry out the roles as defined from points (a) through (h).

Recommendation: First, it is important to note that in this article the roles of the minority union are outlined by a permissive not a mandatory clause and so the list is not definitive and does not capture ALL of the various roles which a given minority union can play in a workforce

Secondly, a recommendation would be that an additional right and role of a minority

union include participation on committees resolving collective disputes and limited participation in the collective bargaining process.

Article63. Duration and Loss of Most Representative Status

Subject to the following provisions, a most representative status union may lose this status indefinitely. The certification of a workers' union as most representative cannot be challenged for two years from the date of its certification, except that the certification will no longer be valid:

- a) Where the workers' unions has, on the factual evidence, been found to have consistently failed to meet its obligations as set out in Article 61 of this law;
- b) Where the registration of the workers' union has been suspended or revoked;
- c) Where the workers' union has been dissolved.
- d) d. After having a most representative status certification for two years, any workers' union present within the same enterprise can challenge the majority of the most representative status workers' union by seeking voluntary recognition, or through the procedures set by the Prakas of the Minister in charge of labour. The employer may also challenge most representative status. In this case the procedure for determining the most representative status will be used to resolve the matter. The Minister in Charge of Labour shall make a determination in respect of paragraph (a) of this article, which can be appealed to the Court of First Instance for a final ruling.

The Ministry in charge of labour shall maintain records of unions with Most Representative Status and every 12 (twelve) months publish the list of most representative status unions.

Recommendation: With regard to Article 63.d neither the employer nor even the Ministry of Labour should be directly involved in the process of cancelling MRS status. The decision should rest with the Court of First Instance.

However, if the Ministry of Labour's powers are maintained in this area, reasons should be given for any decision revoking MRS status and such a decision should have Right of Appeal attached to it including, but not limited to the Court of First Instance.

Article64. Safeguards in Connection with Deduction of Dues and Agency Fees

An employer shall keep records wherever dues and/or agency fees are being deducted. The records must include the date the authorization for deduction was made by the workers involved, the date and the amount of deduction made in relation to each worker, and the dates and the amounts of funds transferred to the relevant workers' union.

CHAPTER 10

Unfair Labour Practices By Employers

Article65. No Discrimination on Account of Workers' Union Activities

Employers cannot discriminate against workers by taking into consideration union affiliation, or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion of rank and position, remuneration and

granting of benefits, disciplinary measures and dismissal.

Article66. Unfair Labour Practices Defined and Prohibited

It shall be unlawful for an employer to commit any of the following unfair labour practices.

- a) To interfere in any way with workers in the exercise of their right to self-organization;
- b) To require as a condition of employment or continuing employment that a person shall not join a professional organization or shall withdraw from one to which he belongs;
- c) To contract out services or functions being performed by union members when doing so undermines workers' right to organize;
- d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any workers' union, or union of unions, including the giving of financial or other support to it or its organizers or supporters in any other manner than that provided for in this law;
- e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any workers' union;
- f) To dismiss, discharge or otherwise prejudice or discriminate against workers for having given or being about to give testimony or otherwise provide evidence or information relevant to the application this law.
- g) To violate the duty to bargain collectively as prescribed by this Law;
- h) To lock out illegally.

Recommendation: Additional wording to this Article should read that the unfair labour practices include, but are not limited to the following outlined in a) through h). As labour/trade union laws as well as industries develop so too will types of potential unfair labour practices evolve. They (ULPs) should not be limited only to what is currently outlined in this provision.

CHAPTER 11

Unfair Labour Practices By Worker's Unions

Article67. No Discrimination in Membership

It shall be an unfair labour practice for a workers' union, its officers, or representatives to deny membership as stated in Article 6 of this law.

Article68. Unfair Practices Defined and Prohibited

The unfair labour practices by a workers' union, its officers, or representatives shall be defined as below:

- a) To restrain or coerce workers in the exercise of their rights to self-organization; however, a workers' union shall have the rights to prescribe its own rules with respect to the acquisition or retention of membership;

- b) To cause or attempt to cause an employer to discriminate against a worker, including discrimination against workers with respect to whom membership in such workers' union has been denied, or to terminate a worker on any ground other than a legitimate reason, and the usual terms and conditions under which membership or continuation of membership is made available to other members;
- c) To violate the duty of good faith in collective bargaining, or refuse to bargain collectively with the employer, provided it is a MRS union or a high level MRS union;
- d) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the illicit nature, for services which are not performed or not to be performed, including the demand for a fee to conduct union negotiations;
- e) To violate or cause to violate a collective bargaining agreement;
- f) To agitate for purely political purposes or commit acts of violence at the workplace;
- g) To strike illegally.

Recommendation: The consensus on this Article is that 68(f) should be eliminated, in part. The term “agitating for political purpose” is too open ended and lacks a clear definition. In theory it could simply refer to any unions engaging in a legal demonstration or strike in opposition to Government policies.

Importantly, 68 (g), does not appear in the English language version of this draft law, only in the Khmer version. It is unclear whether this is deliberate or not. It contains two provisions. First there is a ban on blocking factory gates during a strike. However in translation this can also be read as “striking” outside of factory gates. This needs greater clarity because if otherwise legal strikes cannot take place outside a given enterprise then it is unclear where they would take place.

The second part of 68(g) imposes a ban on intimidating non striking workers who wish to return to the workplace. There is no contention over this provision.

CHAPTER 12

Special Protections For Workers And Their Representatives

Article69. Access to Enterprise/Establishment

Access to an enterprise/establishment by union representatives to interact with their members shall only be given with the permission of the employer who shall not unreasonably withhold such permission. Such interactions shall not affect the normal functioning of the enterprise/establishment.

Recommendation: Here, the Article should be changed to require only that an employer be notified of union representatives accessing the enterprise/establishment. The only reason for such access not to be granted would be that the interaction affects the normal functioning of the business. This provision is already included and is the only legitimate reason to deny access rendering the additional requirement of employer “permission” redundant and if it is maintained, opens the door to employer abuse in denying union

leadership access to its members in a variety of random circumstances.

Article70. Protection from Dismissal

All workers who stand for candidates for elected leadership positions shall enjoy the same protection from victimization and dismissal as shop stewards. This protection begins 45 (forty-five) days prior to the election and continues for 45 (forty-five) days after the election if he/she is not elected. The union shall notify the employer of the candidacy by any reliable means. However, the employer shall only be required to comply with this once for each election of union leaders.

From the time that the application for registration is submitted, all workers who are founding members of a union as well as those workers who voluntarily join the union during the application period shall enjoy the same protection as shop stewards. This protection shall last for a period of up to 30 (thirty) days following the date of registration of the union.

Beyond the date specified in the preceding paragraph, this protection shall cover the 3 (three) union leaders. In order to enjoy such protection, the union shall notify the employer by any reliable means, of the names of the individual candidates to be protected. A copy of this notification shall also be sent to the Ministry in charge of labour.

Recommendation: Here, the time period for which union leaders should be afforded protection should be extended and be granted up to 3 months prior to registration and for 3 months after the registration. The more protection afforded potential and actual union leaders during this sensitive time in a union's formation the greater security prospective trade union members and workers will feel on the whole in seeking to establish unions in their workplace.

Finally, notifications referred to prior to the election should be sent to both the employer and the Ministry of Labour which in turn should confirm that the employer is aware of the relevant employees being afforded protection. It has too often been the case that employers discipline prospective leaders claiming that they had received no prior notification. Such practices obviously have a "chilling" affect on individual union registration drives and on potential and actual trade union leaders.

Article71. Rights and Obligations of Dismissed Leadership

Any union leader who has been laid off either temporarily or permanently for economic or other reasons shall retain the right of access to the enterprise/establishment for the purpose of fulfilling the responsibilities of her/his office. Any leader of a professional organization who committed wrongdoings and was dismissed with legal cause shall resign from her/his post from that professional organization, and he/she has no further responsibility to access to the enterprise/establishment.

CHAPTER 13

Collective Agreements and Collective Bargaining

Article72. Purpose of Collective Agreements

The purpose of the collective agreement is to determine the working and employment conditions of workers and to regulate relations between employers and workers as well as

their respective organizations. Collective agreements should specify the scope of their application, which may be in:

a) Geographical framework:

- o At a workshop or site level
- o At enterprise/establishment level
- o At provincial/municipal level
- o At national level;

b) Professional framework:

- o A particular profession
- o A number of combined professions or similar professions
- o An economic activity or a particular sector of economic activity
- o Many economic activities or a large proportion of the economic activities.

The provisions of a collective agreement can be more favourable towards workers than those of laws and regulations already in effect. However, they may not be contrary to the provisions on the public order already in effect. All demands by both employers and workers for rights, benefits, and terms and conditions of the enterprises/establishments shall be settled through an orderly collective bargaining process.

Article73. Duration of Collective Agreements

A collective agreement is concluded for a definite term or for an indefinite term. When it is for a definite term, this term may not exceed three years. Upon its expiration, it shall remain in effect as the definite term unless it has been cancelled or revised by either party, on the condition of retaining a three-month notice. When the collective agreement is entered into for an indefinite term, it can be cancelled; however, it continues to be in effect for a period of 1 (one) year to the party that forwarded a complaint to cancel it. The notice of cancellation does not prevent the agreement from being implemented by other signatories.

Recommendation: Collective agreements should always and only be for definite terms. A recommendation would be that the term be for two years. This encourages collective bargaining at regular intervals and demands the requirement to address new workplace/industrial relations issues and changes.

Article74. Parties to Bargaining

Parties to collective bargaining must be duly mandated by their members through a written authorized letter or by delegating the rights prescribed in this law to conduct and conclude negotiations.

Where there is union(s) in existence in the enterprise/establishment, collective bargaining is the union's exclusive right to sign a collective agreement with the employer. In an enterprise/establishment where there is no union in existence, then collective bargaining to

conclude a collective agreement is the right of shop stewards.

Recommendation: For the same reasons listed in earlier provisions the negotiation of a collective bargaining agreement should remain the sole purview of trade unions. In contexts where a shop steward exists that person should be permitted only to negotiate Memorandums of Agreement with management. Anything contrary to that undermines both the authority and the role of independent trade unions.

Article75. Collective Bargaining to Conclude a Agreement Between More than One Employer and More than One Union

- a) For a profession that has no union federation, bargaining with more than one employer and more than one local union with a view to concluding a collective agreement shall be conducted as follows:
 - Employers shall jointly establish a [bargaining] Council, which is comprised of representatives from each of the employers. The Council then shall select a Chairperson, who has the decision making right [power] on behalf of all employers, to negotiate with unions. This Council shall inform the unions, who are the negotiation partner, of the name, position, address of its Chairperson, with a copy sent to the Ministry in charge of Labour informing about the establishment and election of the Chairperson of the Council.
 - The unions shall jointly establish a [bargaining] Council, which is comprised of representatives from each of the unions. The Council then shall select a Chairperson, who has the decision making right [power] on behalf of the unions, to negotiate with the employers. The Council shall inform the employers, who are the negotiation partner, of the name, position, address of its Chairperson with a copy sent to the Ministry in charge of Labour informing about the establishment and election of the Council's Chairperson.
 - During negotiation, members of the Council of both the employer and the union parties all together or without all together, or just only the Chairperson alone can participate.
 - Collective agreement(s) that comes out from the decision agreed between the Chairpersons of the two parties has a [binding] implementation effect on all employers and unions concerned after it has been registered.
- b) For a profession that has only one union federation, bargaining with more than one employer and more than one local union with a view to concluding a collective agreement shall be conducted as follows:
 - employer(s) shall follow the dash [point] 1 of paragraph (a) above,
 - bargaining with the union federation representative(s) shall be conducted by the Chairperson of the employers. Members of the Council of Employers may participate in this negotiation.
 - Collective agreement(s) that comes out from the decision agreed between the Chairperson of the Council of Employers and the union federation representative has a [binding] implementation effect on all parties concerned after it has been registered.
- c) For a profession that has more than one union federation, bargaining between more

than one employer and more than one local union with a view to concluding a collective agreement shall be conducted as follows:

- employer(s) shall follow the dash [point] 1 of paragraph (a) of this article,
 - union federation(s) shall seek a MRS status, [and] must meet the criteria stated in article 57 of this law, and shall request for a MRS certification from the Ministry in charge of labour in order to secure the right to be a representative union for the purpose of negotiating [collective agreement] with the employers,
 - bargaining with a MRS union federation shall be conducted by the Chairperson of the Council of Employers. Members of the Council of Employers may participate in this negotiation.
 - Collective agreement(s) that comes out from the decision agreed between the Chairperson of the Council of Employers and the MRS union federation representative(s) has a [binding] implementation effect on all parties concerned after it has been registered.
- d) For a profession that has the Employer Association established already, this Association shall act to replace the [bargaining] Council of Employers as referred to in paragraphs (a), (b) and (c) above,
- e) Collective bargaining between the employer association and a national union confederation, or a coalition of national union confederations as such shall be conducted through representative(s) of the employer association with representative(s) of a union confederation, or with representative(s) of a coalition of their union confederations. The decision agreed between the two parties has a [binding] implementation effect on all parties concerned after it has been registered.

Recommendation: During any collective bargaining, a union must be represented by a committee with decision making power and not solely by a Chairperson as reflected in this current draft.

Article76. Registration

Once concluded, a collective agreement shall be registered at the Ministry in charge of labour. The collective agreement shall become effective one day after it has been registered.

The provision of the collective agreement shall be applicable to the employer and all workers who fall within the scope of that agreement. The Ministry in charge of labour can publish on an annual basis the list of collective agreements that have been registered.

Recommendation: The last sentence in the Article should contain a mandatory clause. The Minister of Labour MUST publish an annual list of collective agreements that have been registered. This requirement promotes an awareness of the independent trade union movement's development and is very much in the public interest.

Article77. Collective Agreement shall Contain Dispute Resolution Procedures

All collective agreements must contain a clear dispute resolution process in order to be registered.

CHAPTER 14

Resolution of Professional Organizations' Disputes

Article78. Resolution of Professional Originations' Disputes

Disputes that arise between one professional organization of workers and another professional organization of workers shall be resolved through in-depth discussions and with the efforts of all parties concerned.

Disputes that arise between one professional organization of employers and another professional organization of employers, as well as disputes that arise between one professional organization of workers and another professional organization of employers shall be resolved in accordance with the provision prescribed in paragraph 1 of this Article.

If the discussions referred to in paragraphs 1 and 2 above do not lead to agreement, disputes shall be settled in accordance with the existing laws and provisions in force.

CHAPTER 15

Sanctions and Penalties

Article79. Finances of Professional Organizations

Leaders, including managerial or administrative officers of a professional organization, found to have breached the requirements stated in articles of this law with respect to finances of professional organizations, shall be guilty of

Any professional organization that fails to keep financial records for a period of 5 (five) years as required by Article 28 of this law shall be subject to suspension of its registration, if registered, and if not registered, shall be subject to

Article80. Unfair Labour Practices Committed by Employers

Any employer found to have committed any of the unfair labour practices set out in CHAPTER 10 of this law shall be guilty of

Article81. Unfair Labour Practices Committed by Workers

Any person found to have committed any of the unfair labour practices set out in CHAPTER 11 of this law, shall be guilty of

Article82. Unfair Labour Practices by Leaders of Minority Unions

Leaders of minority unions, who cause trouble to or disturb a most representative status union for the purpose of both collective bargaining with the employer and for resolution of collective disputes on behalf of all workers, shall be guilty of

Article83. Unfair Labour Practices by Leaders of Professional Organizations

Leaders of professional organizations who induce these organizations to engage in activities extraneous to their goals and purposes as defined in this law shall be guilty of

Article84. Persons Impeding the Exercise of Freedom to [Organize] a Professional Organization

Any person who intentionally impedes the exercise of freedom to organize and join a professional organization as set out in this law, shall be guilty of...

Article85. Persons who Ban on intimidate to Professional Organizations, employee or employers.

Any person who openly or secretly bans or intimidates professional organizations, employee or employers which affects the normal function of an enterprise or establishment shall be punished with a.....fine

Article86. Persons who Undermine or Attempt to Undermine an Election of Shop Stewards

Any person who does not comply with the provisions of Article 33, Article 36, Article 37, Article 41 and Article 42 of this law, and who undermines or attempts to undermine the free election of shop stewards or the regular performance of their functions, shall be punished with.....

Article87. Employers who Refuse to Prepare the Minutes of an Election of Shop Stewards

Any person who violates the provisions of Article 46 shall be punished with.....

Recommendation: All penalties referred to here should be of a civil nature not a criminal one, particularly with regards to Unfair Labour Practices. Moreover, monetary penalties potentially being imposed on individual workers or unions should be set realistically if they are to have any application at all. At present it would be virtually impossible for individual workers and in reality most of their unions to have the financial means to meet fines which are onerous. Excessively punitive articles open the way for employers, industry and government to destroy or severely damage the independent union movement and its individual members through financial means linked to violations of this proposed Act.

CHAPTER 16

Transitional Provisions

Article88. Registration

Professional organizations already registered prior to this law comes into effect shall seek to re-register within a period of 6 (six) months at the latest from the effective date of this law.

Article89. Existing [Collective] Agreements

Existing collective agreements shall remain valid as prescribed in CHAPTER 13 of this law. However, in the meantime, the union concerned should seek a MRS status with a view to agreeing to the continuation of the agreement or the negotiation of a new agreement.

Article90. Labour Court

When the labour court is created, the relevant jurisdiction of the Court of First Instance shall be transferred to the Labour Court.

CHAPTER 17

Final Provisions

Article91. Abrogation

Article 378 and all articles of CHAPTER 11 of the Labour Law and all provisions that are contrary to this law shall be abrogated.

Article92. Entry into force of the Law

This law shall be declared as matter of urgency.

This law was adopted on
by the National Assembly of the Kingdom of Cambodia
during its session of its fourth legislature.

Signature

Samdech Akka Moha Ponhea Chakrei HENG SAMRIN