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INTRODUCTION

The International Center for Not-for-Profit Law (ICNL) conducted a quick, initial review of the Kingdom of Cambodia's draft Trade Union Law (Draft TUL) of November 18, 2015.[1] Our analysis focused solely on the freedoms of association, assembly and expression. Our preliminary analysis concluded that there are a number of problems with the Draft TUL.

An analysis of the most concerning provisions that restrict the freedoms of association, assembly and expression are detailed below, which include:

- **Not all workers permitted to form unions** (Article 3): Only employees and enterprises from certain sectors and industries are permitted to form unions or employer organizations. This amounts to an unlawful restriction on the freedom of association.
- **Mandatory registration requirements** (Article 14): Unions and employer associations are required to register with the Ministry of Labor before conducting any activities. Registration involves submitting numerous documents, many of which likely amount to "activities, " such as creating a statute and holding elections.
- **Restrictions on Leaders** (Article 20): The Draft TUL places numerous restrictions on who can be the leaders, managers and those responsible for the administrative affairs of a union or employer association (Leader). These arbitrary restrictions prevent employees from choosing the Leaders they deem best able to lead.
- **Minimum number of members** (Article 13): Unions, Union Federations and Union Confederations must have a minimum number of members in order to seek and maintain registration. The threshold enumerated in the Draft TUL runs contrary to international best practices and will likely deter the formation of unions.
- **Burdensome Reporting Requirements** (Article 17): Unions and employer associations are required to submit copies of their activities and financial reports to the Ministry of Labor on an annual basis. The information that must be included in these reports is overly burdensome and invites invasive interference into the internal affairs of private associations by government authorities.
- **Restrictions of Activities** (Article 65): Unions are forbidden from undertaking certain activities, which directly violates their rights to freedom of expression and freedom of assembly.
- **Arbitrary Dissolution** (Article 29): The Draft TUL grants the Labor Court authority to dissolve unions and employer associations for a number of vague reasons, including "misconduct" by a Leader. Dissolution is the harshest penalty a union or

About ICNL
The International Center for Not-for-Profit Law (ICNL) is an international not-for-profit organization that facilitates and supports the development of an enabling environment for civil society and civic participation. ICNL provides technical assistance, research and education to support the development of appropriate laws and regulatory systems for civil society organizations around the world. For more information, please visit: http://www.icnl.org

[1] ICNL received what appear to be genuine, but leaked, copies of the Draft TUL in Khmer, which was subsequently translated into English. ICNL relies on this unofficial English Translation for its analysis.

employer association can receive, and therefore this power should only be exercised in the most serious circumstances and not arbitrarily as the Draft TUL permits.

Before moving to the Analysis, it is important to note that as of December 9, 2015 the full Draft TUL has not been made public.[2,] Without the Law being made public, unions, employers and other relevant stakeholders, including civil society, are unable to actively participate in the legislative process. A participatory process facilitates cross-sector dialogue and allows groups and individuals effected by the Draft TUL to advocate for their legitimate interests, while increasing the quality of the legislation, increasing the transparency of the public authorities' work, and increasing the confidence in public institutions. ICNL urges the Ministry of Labor and the Royal Government of Cambodia to publicly and officially release the Draft TUL so that all relevant stakeholders and the general public can conduct meaningful analyses, and participate in the legislative process.[3]

ANALYSIS

The freedom of association is enshrined in the Universal Declaration of Human Rights, the International Covenant for Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and a range of other human rights conventions, treaties and declarations.[4] The freedom of association includes the right to form and join trade unions,[5] "the right to form or join a trade union and to engage in trade unions' activities is an integral part of the freedom of association."[6]

Article 22 of the ICCPR guarantees the right to freedom of association as follows:

> 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
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> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the

[2] See, Mech Dara, "Latest Draft Of Union Law Leans in Unions' Favor," The Cambodia Daily, November 24, 2015, available at: https://www.cambodiadaily.com/news/latest-draft-of-union-law-leans-in-unions-favor-101199/

[3] Providing an opportunity for public consultation would also help the Royal Government of Cambodia (RGC) comply with its obligations under the Universal Periodic Review (UPR). In 2009 the United Kingdom made a recommendation, which was accepted by the RGC, which would have the RGC expand consultations generally to address human rights issues in draft legislation. The RGC accepted this recommendation. Officially releasing the Draft TUL and providing an opportunity for all stakeholders to comment on it would put the RGC in compliance with its UPR commitments.

[4] The Kingdom of Cambodia became a party to the ICCPR on 26 August 1992 and to the ICESCR on 26 May 1992.

[5] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 53, U.N. Doc. A/HRC/20/27 (21 May 2012); see also, Human Rights Council, Resolution 15/21: The rights to freedom of peaceful assembly and of association, preamble, U.N. Doc., A/HRC/RES/15/21 (6 October 2010).

[6] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum: Mission to the United Kingdom of Great Britain and Northern Ireland, para. 86, U.N. Doc. A/HRC/23/39/Add.1 (17 June 2013).

> protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

Similarly, Article 8 of the ICESCR recognizes the right of everyone "to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests", and "the right of trade unions to function freely."

International law creates a presumption against any state regulation that would amount to a restriction of recognized rights.[7] Laws regulating trade unions must comply with the parameters of Article 22 of the ICCPR.[8]

1. **Not All Workers Allowed to form Unions**

Issue: Article 3, which defines the scope of the Draft TUL, only covers enterprises, establishments and employees in the following sectors: industry, mining, commerce, crafts, agriculture, services, land or water transportation, and air and maritime transportation.[9]

Discussion: Pursuant to Article 22 of the ICCPR and Article 8 of the ICESCR, all workers, except members of the armed forces and of the police, are entitled to form trade unions. Forbidding numerous industries from forming trade unions constitutes an unlawful restriction on the freedom of association for hundreds of thousands individuals, such as civil servants, members of the judiciary, domestic and household workers, constructions workers, public sector workers and those employed in the "informal sector."

Recommendation: Revise the Draft TUL to explicitly permit workers from all sectors, excluding only the armed forces and police, to form trade unions.

2. **Mandatory Registration**

Issue: Article 14 states that, "Any unions or employer associations that not registered, have been suspended registration or their registered certificates have been revoked, such unions or employer associations will be considered illegal if they conduct any activity."

Discussion: Article 14 is a mandatory registration regime, which constitutes an impermissible restriction on the freedom of association. Under Article 22, as well as other major international conventions, "freedom of association is a right, and not something that must first be granted by the government to citizens."[10] As the UN Special Rapporteur has stated, "the right to freedom of association equally protects associations that are not

[7] ICNL and the World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A Report of the World Movement for Democracy* (2008), p. 30.
[8] See, Human Rights Council, Resolution 15/21: The rights to freedom of peaceful assembly and of association, para. 1, U.N. Doc., A/HRC/RES/15/21 (6 October 2010).
[9] Draft TUL, Article 3 and Labor Law (1997), Article 1.
[10] Public Interest Law Initiative, Enabling Civil Society: Practical Aspects of Freedom of Association Source Book (Budapest 2003), p. 14.

registered…Individuals involved in unregistered associations should indeed be free to carry out any activities, including the right to hold and participate in peaceful assemblies."[11]

The International Labor Organization (ILO) has similarly noted that "registration systems that enable the authorities to exercise undue discretion in authorizing the establishment and functioning of employers' and workers' organizations" constitute restrictive measures.[12] As shown in Sections 3 and 4 below, the Draft TUL does not establish a free, unobstructed registration system for unions and employer associations.

While it is of course understood that legal entities, i.e. those unions and employer associations that have already registered, will reasonably enjoy different legal rights from those that do not have legal personality, prohibiting unions and employer associations from conducting any activities until they are registered constitutes an impermissible restriction to the freedom of association. This restriction is confounded by the fact that unions and employer associations cannot conduct activities during the registration process, which technically prohibits unions and employer associations from creating their Statute, a prerequisite for registration.[13]

The Draft TUL provides no right of appeal for unions and employer associations that have either had their registration applications denied or their registration removed. States employing a registration system must ensure that it is truly accessible, with clear, speedy, apolitical, and inexpensive procedures in place.[14] Although the Draft TUL commendably provides for automatic registration upon the expiration of time limits to respond to registration requests, it does not provide an avenue to appeal adverse decisions.

Recommendation: Revise Article 14 to allow unions and employer associations to conduct activities even if they are not registered, and specifically to allow unions and employer associations to conduct activities during the registration process. The Draft TUL should also be amended to allow unions and employer associations to appeal any adverse decision on registration.

3. **Restrictions on Leaders**

Issue: Articles 20 and 21 outline the requirements for "leaders, managers, and those responsible for the administrative affairs" of unions and employer associations (Leaders), respectively. No one is permitted to be a Leader of a union unless he/she is "at least eighteen (18) years of age, "has never been convicted of any misdemeanor or criminal offense," and is able to "read and write Khmer," and amongst others. Leaders of an employer association must also be "at least eighteen (18) years of age" and "never have been convicted of any misdemeanor or criminal offense," amongst others. Notably, however, literacy in Khmer is not a requirement for Leaders of employer associations. While, the Draft TUL laudably

[11] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 56, U.N. Doc. A/HRC/20/27 (21 May 2012); *see also*, Report submitted by the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 58/178, p. 21 (1 October 2004).

[12] ILO, Freedom of association in practice: Lessons learned: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, para. 38 (2008).

[13] See Draft TUL, Article 13.

[14] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 56, U.N. Doc. A/HRC/20/27 (21 May 2012).

allows foreign nationals to be Leaders of unions or employer associations, foreign nationals must have "permanent residence in the Kingdom of Cambodia appropriately in accordance with the Immigration Law of the Kingdom of Cambodia," in addition to the requirements for Cambodian citizens outlined above. Finally, the Draft TUL also permits the Ministry of Labor to request further information, "if necessary."

Discussion: These requirements violate Article 22 of the ICCPR. Articles 20 and 21 prohibit minors – those under 18 years of age – from being a Leader of a union or employer association. Restrictions on the ability of minors to form and participate in associations are clear violations of international law. Article 15 of the UN Convention on the Rights of a Child (CRC) requires State Parties to "recognize the rights of the child to freedom of association and to freedom of peaceful assembly" and limits restrictions to "those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."[15] Similarly, according to the UN Special Rapporteur, "International human rights law stipulates that everyone has the rights to freedom of association. As a result, legislation that does not set any specific limitation on individuals, including children…complies with international standards."[16] A blanket prohibition applicable to all minors will be difficult to justify under the CRC and international human rights law, especially since many employees are not yet 18 years of age.[17]

Preventing anyone who has ever been convicted of a misdemeanor or crime under the Cambodian justice system from being a Leader of a union or employer association is problematic under international standards. Currently, numerous union leaders are under investigation for alleged criminal activity, which many observers claim are politically influenced. This restriction provides employers and authorities with an incentive to levy charges on active or prospective Leaders in order to prevent them from holding or seeking leadership positions. Conviction of a criminal offense or misdemeanor should not result in a loss of a fundamental freedom like freedom of association. Such an infringement on the right to freedom of association is almost certainly a disproportionate restriction and amounts to a violation of the freedom of association.

Similarly, the requirement that Leaders be able to read and write Khmer amounts to an unlawful restriction on the freedom of association. This literacy requirement will likely have a disproportionate impact on employees, especially those in rural areas, who will be unable to meet this requirement. The fact that this restriction is only applicable to Leaders of unions reinforces the belief that this restriction is arbitrary and the motivation behind it is to limit the

[15] Cambodia acceded to the UN Convention on the Rights of a Child (CRC) in 1992.
[16] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 54, U.N. Doc. A/HRC/20/27 (21 May 2012).
[17] As of 2012, "youths" constituted approximately 63% of the labor force; see, Thai Seangmean, Seng Sokheng, Panha Somonich, "Youth Employment in Cambodia: *Trends, Challenges and Policy Responses*," Mekong Economic Research Network, Ministry of Labour and Vocational Training, p.9 (2015) ("The labour participation rate of youth (15–24 years) is more than 2 million in 2012, representing 63.1 per cent of the total labour force…"), available at: http://mernetwork.org/wp-content/uploads/2015/08/SG-4-Cambodia-Seangmean-final.pdf.

ability of employees from choosing a Leader of their choosing. This restriction amounts to an unlawful restriction to the freedom of association.

The fact that foreign nationals must be permanent residents of the Kingdom of Cambodia amounts to an unlawful restriction to the freedom of association. The ICCPR, in Article 2(1), explicitly states that the rights of the ICCPR extend "to all individuals within its [the State's] territory and subject to its jurisdiction." Foreign workers in Cambodia should enjoy the same rights as Cambodia citizens.[18]

The ability of the Ministry of Labor to request "additional information" before accepting a Leader is broad and overly vague. This could result in registration applications being denied on an arbitrary basis. This provision does not comply with the "provided by law" standard of Article 22.[19]

Recommendation: Revise the Draft TUL to conform establishment criteria to international norms relating to freedom of association. More specifically, eliminate the requirements that Leaders be at least eighteen (18) years of age, have never been convicted of a criminal or misdemeanor offense, and be able to read and write Khmer. The provision allowing the Ministry of Labor to request "additional information" should be deleted.

4. **Minimum Number of members for Unions, Federations and Confederations**

Issue: Article 10 of the Draft TUL provides the following minimum membership requirements to form a union: a minimum of ten (10) individuals are required to form a union in any establishment or enterprise, a minimum of nine (9) unions are required to form a Union Federation, and a minimum of six (6) Union Federations are required to form a Union Confederation.

Discussion: These thresholds do not reflect international best practices and will likely prevent individuals, unions and federations from being able to fully exercise their freedom of association. While ten members needed to form a union is not an overly burdensome requirement in large enterprises, it may easily impede the formation of unions in smaller enterprises and it does not constitute a "best practice."[20] Similarly, there is no reason to include specific minimum membership provisions for umbrella groups like Federation and Confederations. Rather, these umbrella groups should be treated like any other association.

The formation requirements for unions, Union Federations and Union Confederations should comply with international best practices – that is, having at least two founders. The government interest in placing higher minimum founder requirements on umbrella organizations is unclear. High minimum founder requirements for Union Federations and Union Confederations will likely prevent many unions from forming federations and

[18] ICCPR Human Rights Committee, General Comment No. 15, The position of aliens under the Covenant (1986).

[19] See, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 16, U.N. Doc. A/HRC/20/27 (21 May 2012) (The "prescribed by law" standard implies that "the law must be accessible and its provisions must be formulated with sufficient precision.").

[20] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 54, U.N. Doc. A/HRC/20/27 (21 May 2012) ("The Special Rapporteur…considers as a best practice the Armenian and Estonian legislation that require no more than two persons to establish an association. A higher number may be required to establish a union or a political party, but this number should not be set at a level that would discourage people from engaging in associations.").

federations from forming confederations even though these groups support similar causes. This is particularly important when unions and federations support causes that do not have widespread constituencies, such as minority rights, or when they operate in remote areas of the country where there may not be enough unions or federations to form the requisite minimum members.

Recommendation: Article 10 should be revised to require a minimum number of founding members of unions, Union Federations and Union Confederations that complies with international best practices.

5. **Restrictions of Activities**

Issue: The Draft TUL limits permissible activities by prohibiting unions from "agitat[ing] for purely political purposes"[21] and from blocking the entrance or exit to an enterprise or a public road.[22]

Discussion: These provisions are direct violations of the freedoms of expression and assembly. Under the ICESCR, unions must be permitted to function freely - the prohibition on agitating for political purposes is essentially a neutrality requirement constituting a severe restriction on the freedom of expression, and the prohibition on blocking a enterprises' entrance and exit and from blocking a public road constitutes a restriction on the freedom of assembly.

The freedom of association and the freedom of expression are inextricably linked: "Associations should enjoy, *inter alia*, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies…."[23] Unions should not be denied registration or have their legal status threatened because they carry out what the authorities consider to be "political" activities.[24]

The freedom of expression is enshrined in Article 19 of the ICCPR and restrictions to this right are lawful only when such restrictions pass a three-part, cumulative test derived from Article 19.[25] A blanket requirement forbidding unions from engaging in "purely political" activities fails to meet requirements of Article 19. First, the requirement is so vague that it fails the principle of predictability or transparency. Second, the restriction does not pursue any of the aims stated in Article 19(3). Finally, there is no indication that this restriction is necessary or the least restrictive means required to meet its purported aim. Unions should be able to take a stand on issues of public importance. Trade unions have the right to make political choices for candidates and parties that can further their interests without running the

[21] Draft TUL, Article 65(f).
[22] Draft TUL, Article 65(g).
[23] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 64, U.N. Doc. A/HRC/20/27 (21 May 2012).
[24] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 43, U.N. Doc. A/68/299 (7 August 2013).
[25] The test is: (1) the restriction must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); (2) the restriction must pursue one of the purposes set out in article 19(3) of the ICCPR, namely: (i) to protect the rights or reputations of others; (ii) to protect national security or public order, or public health or morals (principle of legitimacy); and (3) the restriction must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, para. 69, UN Doc. # A/HRC/17/27 (May 2011).

risk of violating the Draft TUL.[26] Exercising this right could be interpreted as "agitating for purely political purposes;" thus this prohibition is an impermissible restriction to the freedom of expression.

The right to freedom of peaceful assembly is guaranteed in Article 21 of the ICCPR. Although this right is not absolute,[27] freedom to assembly is to be considered the rule and its restriction the exception.[28] "States also have a negative obligation not to unduly interfere with the right to peaceful assembly."[29] The prohibitions prescribed in the Draft TUL amount to unlawful restrictions on the freedom of assembly.

Arguments that these restrictions are necessary to protect public order are unpersuasive under the ICCPR. Access to public space is not only integral to exercising the right to peaceful assembly, but also "means concretely that organizers and participants should be able to use public streets, roads and squares to conduct (static or moving) peaceful assemblies."[30] The Special Rapporteur has stated that "the free flow of traffic should not automatically take precedence over freedom of peaceful assembly"[31] Accordingly, the restrictions constitute a violation of the freedom of assembly.

Recommendation: The highlighted clauses of Article 65(f) and 65(g) should be deleted.

6. **Dissolution**

Issue: Article 29 gives the Labor Court[32] authority to dissolve a union or employer association for the following reasons: "(a) The creation or any activity of the union or employer association which is contrary to the law or objectives of the union or employer association as stated in the statutes; (b) Union which is no longer independent from employer and clearly cannot restore its independence; and (c) Leaders, managers and those responsible for administrative affairs have been found of serious misconduct [sic] of offenses as the union or employer association." Article 29 also permits "relevant parties" and "50% (fifty percent) of total members of a union or employer association" to file a complaint with the Court seeking dissolution.

Discussion: Involuntary termination is a clear example of interference with freedom of association, and like any other government intrusion, must meet the standards outlined in the ICCPR:

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[26] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum: Mission to the Republic of Georgia, para. 60, U.N. Doc. A/HRC/20/27/Add.2 (8 June 2012).
[27] ICCPR, Article 21, "no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."
[28] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 16, U.N. Doc. A/HRC/20/27 (21 May 2012).
[29] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 39, U.N. Doc. A/HRC/20/27 (21 May 2012).
[30] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, paras. 65 & 66, U.N. Doc. A/HRC/23/39 (24 April 2013).
[31] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 41, U.N. Doc. A/HRC/20/27 (21 May 2012).
[32] Pursuant to Article 98, until such time as a Labor Court is established, all disputes arising under the Draft TUL shall be referred to "a competent court."

> The right to freedom of association applies for the entire life of the association. The suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.[33]

According to ILO jurisprudence, decisions to dissolve labor organizations "should only occur in extremely serious cases; such dissolutions should only happen following a judicial decision so that the rights of defense are fully guaranteed."[34] While the Draft TUL seemingly upholds the latter requirement from ILO jurisprudence, the former requirement is not met. As noted in Section 5, there are multiple provisions of the Draft TUL that prohibit allowable conduct and contain provisions that are so broad and vague that their application can be determined arbitrarily.

The Draft TUL punishes the union or employer association for the misdeeds, not necessarily criminal conduct, of its Leaders under Article 29(c). Rather than dissolve the union or employer association – a harsh and permanent penalty – when a Leader "commits serious misconduct," he or she should be held accountable, individually, for those actions, but the union or employer association should not be dissolved. Dissolution in this instance would violate the freedom of association.

Permitting any "relevant party" – a term which is not defined and vague enough to include a myriad of individuals and groups – to petition the Court for dissolution of a union or employer association is misguided. This provision could result in courts being inundated with such requests, which will increase the workload of courts that already operate at or above capacity. At the very least, individuals or groups should have to show a legitimate injury from the activities of the union or employer association before submitting a complaint to the Court, and ideally these harmed individuals should be required to make a complaint to the competent prosecutor as is the process for other offenses.

Finally, there is no explicit right of appeal for unions or employer associations.

Recommendation: Revise Article 29 to explicitly state that dissolution is only a last resort and that dissolution will not occur based on the misdeeds of Leaders. Article 29 should provide unions and employer associations with the right of appeal.

7. **Other Issues**

Article 22 regulates the sources of financing for unions and employer associations, which provides an exhaustive list of allowable financing. In order to comply with Article 22 of the

[33] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 75, U.N. Doc. A/HRC/20/27 (21 May 2012).
[34] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 76, U.N. Doc. A/HRC/20/27 (21 May 2012), (citing the ILO's Digest of decisions and principles, para. 699).

ICCPR,[35] this Article should be revised to explicitly allow for funds to come from all lawful sources, pursuant to the union's or employer association's bylaws. Similarly, the list of permitted sources of funding should be an indicative, not exhaustive list.

Under Article 24, "relevant parties" may request an audit of a union or employer association. The term "relevant party" is unclear and could be interpreted to allow nearly any individual or group to request such an audit. Unions and employer associations are thus subject to pay for numerous audits without a legal basis. This could severely impact the finances of unions and employer associations, and could be used a tool of harassment by unscrupulous individuals or groups. This Article should be revised so that only those who suffered a tangible injury based on alleged mismanagement or misuse of union or employer association funds are able to request an audit. If no mismanagement or misuse of funds is found, the individual or group requesting the audit should be obligated to pay for the audit.

ICNL remains available to provide technical assistance, as appropriate.
Respectfully submitted
December 10, 2015

[35] See, Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, para. 16, U.N. Doc. A/HRC/23/39 (24 April 2013) (In communication No. 1274/2004, the Human Rights Committee observed that "the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association [...]." Accordingly, fundraising activities are protected under article 22 of the Covenant, and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22.).