

**A HUMAN RIGHTS ANALYSIS OF THE
LAW ON
ASSOCIATIONS AND NON-GOVERNMENTAL ORGANIZATIONS**

**(adopted by the National Assembly on 13 July 2015
and by the Senate on 24 July 2015)**

Prepared by the Office of the United Nations
High Commissioner for Human Rights in Cambodia

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Introduction

The present analysis was prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia as a contribution to the consideration of this law. OHCHR offers it in the belief that the law holds direct implications for the ability of civil society organizations (CSOs) to act in defense of human rights and to promote transparency and accountability, and thus is a reflection of the state of Cambodia's democratic development.

The United Nations Human Rights Council echoed this point in reaffirming that the right to freedom of association, together with the right to peaceful assembly, are essential components of democracy, as they empower men and women to “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable” (Council resolution 15/21, preamble).

The UN Human Rights Council has also “remind(ed) States of their obligation to respect and fully protect the rights of all individuals to ... associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to ... freedom of association are in accordance with their obligations under international human rights law.” (Council resolution 21/6, para. 1).

OHCHR has reviewed the compatibility of the draft with the applicable international human rights law. While freedom of association is provided for under a number of human rights instruments applicable in Cambodia (see Annex), the central point of reference is Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a party and which reads 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;
- (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 protection of*

public health or morals or the protection of the rights and freedoms of others.
(emphasis added).

Domestically, this fundamental right is protected under the Cambodian Constitution, articles 42 and 31 as follows:

Article 42

Citizens of Cambodia shall have the right to establish associations and political parties. These rights shall be determined by law.

All citizens of Cambodia may participate in mass organizations for their mutual benefit to protect national achievements and social order.

Article 31, para. 1

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights, women's and children's rights.¹

The right to freedom of association has been reaffirmed on numerous occasions by the UN General Assembly², the UN Human Rights Council³, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association (hereafter SRFAA)⁴, the UN Special Representative on the situation of Human Rights Defenders (hereafter SRHRD)⁵, and the UN Human Rights Committee⁶. The recommendations made to Cambodia during the Universal Periodic Review conducted by the Human Rights Council and accepted by the Royal Government⁷, and the latest Concluding Observations on Cambodia of the UN Human Rights Committee⁸ include several specifically on this basic right. The Human Rights Committee, in particular, concluded that “the State party should ensure that everyone can freely exercise his or her right to freedom of expression and association... In doing so, the State party should: ... (d) Review its current and pending legislation, including the draft laws ... on associations and NGOs, to avoid the use of vague terminology and overly broad restrictions, to ensure that any restrictions on the exercise of freedom of expression and association comply with the strict requirements of articles 19 (3) and 22 of the Covenant.”

¹ In its Decision No. 092/003/2007 of 10 July 2007 regarding the applicability of the international human rights treaties by the courts in Cambodia, the Constitutional Council clarified that “ ‘the law’ applicable in Cambodia ... refers to the national law including the Constitution which is the supreme law and other applicable laws as well as the international conventions that Cambodia has recognized.”

² General Assembly Resolutions 53/144 (A/RES/53/144, 1999) and 64/163 (A/RES/64/163, 2009).

³ Human Rights Council resolutions 15/21, 21/16/, 24/5 on the rights to freedom of peaceful assembly and association, A/HRC/RES/15/21, A/HRC/RES/21/16, A/HRC/RES/24/5.

⁴ Reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 para. 13, A/HRC/23/39, paras. 15 and 17, A/HRC/26/29, paras. 16 to 21, A/HRC/29/25 para. 21.

⁵ Reports of the Special Rapporteur on the situation of human rights defenders, A/59/401, A/64/226, A/67/292, and HRC/25/55.

⁶ Human Rights Committee, General Comments No. 15 (1986) on the position of aliens under the Covenant, No. 23 (1994) on minority rights, No. 25 (1996) on the rights of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service, and No. 34 (2011) on freedoms of opinion and expression; Concluding Observations on Cambodia (CCPR/C/KHM/CO/2) among many concluding observations of the Human Rights Committee; Communication No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012; No. 1383/2005, *Katsora et al. v. Belarus*, Views adopted on 25 October 2010; No. 1993/2010, *Mikhailovskaya and Volchek v. Belarus*, Views adopted on 24 July 2014, para. 7.3; No. 2165/2012, *Pinchuk v. Belarus*, Views adopted on 24 October 2014, among many decisions of the Human Rights Committee.

⁷ Report of the Working Group on the Universal Periodic Review of Cambodia, 2014 A/HRC/26/16 and Add.1 Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/26/16/Add.1, recommendations 118.19, 118.104, 118.106, 118.107, 118.110, 118.111, and Report of the Working Group on the Universal Periodic Review of Cambodia, 2009 A/HRC/13/4, recommendations 51 and 56.

⁸ Concluding observations of the Human Rights Committee on the second periodic report of Cambodia, CCPR/C/KHM/CO/2, March 2015.

Freedom of association belongs to every person, regardless his or her age, nationality, political orientation, or past experience. The ICCPR foresees that restrictions might need to be placed on the enjoyment of freedom of association under certain circumstances, which are set forth in para. 2 of its Article 22. According to the UN Human Rights Committee, the burden of proof is on the State party to explain why any restrictions it imposes are necessary.⁹

International human rights law requires certainty in the law. In its previous briefs, OHCHR raised the need for clarity for the benefit of those seeking registration, for Government officials tasked with responsibilities under the law, and for the courts entrusted with enforcing and interpreting the law. Many of the participants at the consultation on the fourth draft of the Law on 19 December 2011 underlined the wide range of interpretation possible under the draft law then in circulation, a point which largely remains valid with respect to the current draft and is a recurring theme in the comments presented herein.

A second major recurring theme are the problems associated with the registration system foreseen in the present draft. The international human rights mechanisms are of the view that the right to freedom of association and the right to privacy of civil society organizations are better protected through a voluntary notification system, which OHCHR encourages. A registration system subject to renewal would not only create a more restrictive environment for civil society, particularly for loosely formed grass-roots organizations, but would also create a significant new workload for the Ministries of Foreign Affairs and Interior to oversee. This is not to diminish the legitimate concern that crime needs to be fought, including when civil society groups might be involved. As reflected in the present law (Article 36), the existing criminal law is the proper vehicle by which to address this concern and already applies to any individual or organization guilty of criminal acts.

The complexity of the range of implications of the law for the human rights environment in Cambodia would have justified a considerably more profound consultation and discussion than has been held to date. The UN Human Rights Council in its resolution 22/6 stressed “the valuable contribution of national human rights institutions, civil society and other stakeholders in providing input to States on the potential implications of draft legislation when such legislation is being developed or reviewed to ensure that it is in compliance with international human rights law”¹⁰. Even at this advanced stage, *OHCHR recommends a thorough, substantive and consultative revision to the law to address the issues raised in the present analysis.*

This analysis was prepared on the basis of the official copy of the law received by OHCHR from the National Assembly on 23 June 2015, a revised version received on 10 July, as well as an unofficial English translation thereof produced by OHCHR.

CHAPTER 1

General Provisions

Article 1: This law aims at safeguarding the right to freedom of establishing associations and non-governmental organizations in the Kingdom of Cambodia in order to protect their legitimate interests and to protect the public interest, as well as to promote partnership cooperation between associations and non-governmental organizations (on the one hand) and the public authorities (on the other).

⁹ See Decisions in footnote 7.

¹⁰ Human Rights Council resolution 22/6 on the protection of human rights defenders, 2013, A/HRC/RES/22/6, para. 17.

Comment: OHCHR welcomes the explicit purpose set forth in Article 1 that “This law aims at safeguarding the right to freedom of establishing associations and non-governmental organizations in the Kingdom of Cambodia in order to protect their legitimate interests...” It also welcomes the spirit of “partnership cooperation” between associations and NGOs with the authorities that the law aims to promote. It would be helpful for the law to set out the specific ways in which this freedom is to be safeguarded and the ways in which partnership and cooperation would be promoted. In addition, it is noted that the law outlines not only the procedure for establishing associations and non-governmental organizations but also their continued operation.

OHCHR suggests the deletion of the word “establishing” and proposes the following alternative wording to make clear that, in accordance with the Constitution, protecting freedom of association is the primordial purpose of the law: “*The purpose of the law is to safeguard the right to exercise freedom of association in Cambodia through associations and non-governmental organizations, by protecting their legitimate interests as well as the public interest. It also aims at promoting partnership and cooperation between associations and non-governmental organizations (on the one hand) and the public authorities (on the other).*”

Article 2: The purposes of this law are to determine the formalities to legally recognize associations or non-governmental organizations as well as to establish the relationship between the associations and/or non-governmental organizations and the public authorities for the development of Cambodian society.

Comment: The wording contained in Article 1 that the law “aims at ...” and the clearer formulation “the purposes of this law are ...” in Article 2 appear to both refer to the objectives of the law. The reason for the different formulation is unclear. If the suggested reformulation of Article 1 is accepted (see OHCHR comment on Article 1), Article 2 could be amended to read: “*This law sets out the formalities by which associations and non-governmental organizations can obtain legal recognition and operate in Cambodia.*”

Article 3: This law applies to associations and non-governmental organizations that conduct activities within the Kingdom of Cambodia, except where regulated by provisions of a separate law.

Comments

Community based organisations: OHCHR understands Article 3 to exempt community-based organisations from the scope of application of the present law, which it welcomes. The general guiding principle, in the spirit of the Constitution and international human rights law (particularly ICCPR, Article 22), is that the registration of domestic non-governmental associations and organisations should be not compulsory but encouraged through appropriate incentives such as tax and other legal benefits. The SRHRD reaffirmed that view in her reports to the General Assembly.¹¹ OHCHR supports the view that *registration by associations and NGOs should not be compulsory.*

Relationship with the Civil Code: The 2007 Civil Code and the 2011 Law on the Implementation of the Civil Code both contain provisions regulating the establishment and operations of non-profit legal entities, including foundations¹², which are at the core of this

¹¹ A/59/401, para. 82 (a) and (b), A/64/226, para. 59, and A/67/292, paras. 42 and 43.

¹² Cf. Art. 46, 48, 49, 50, 51, 52, 53 and 54 of the Civil Code and Art. 18, 19, 20, 21, 22, 24 and 25 of the 2011 Law on the implementation of the civil code.

law. The overlapping coverage of these laws complicates the establishment of the scope of application and the scope of the exceptions provided for in this article.

Article 4: The terms used in this law are defined as follows:

- "Domestic association" refers to a membership organization established under the laws of Cambodia by natural persons or legal entities aiming at representing and protecting the interests of their members without generating or sharing profits.
- "Domestic non-governmental organization" refers to a non-membership organization, including foundations, established under the laws of Cambodia by natural persons and/or legal entities aiming at providing funds and services in one or several sectors for the public interest without generating or sharing profits.
- "Foreign association or non-governmental organization" refers to a legal organization established outside the country aimed at conducting activities to serve the public interest without generating profits.
- "Association" refers to both domestic and foreign associations.
- "Non-governmental organization" refers to both domestic and foreign non-governmental organizations.

Comments

Community-based organisations: OHCHR welcomes the omission of community-based organisations from the list. However, the vague definitions of "domestic association" and "domestic non-governmental organization" could be interpreted to include community-based organisations, which could result in the imposition of registration and reporting requirements that many of them would be incapable of fulfilling. *OHCHR recommends that the definitions include elements that distinguish associations and non-governmental organizations from community-based organisations.*

Distinction between "associations" and "non-governmental organizations": The law introduces a distinction between associations and NGO's, the reasons for which is not clear. From a legal perspective, both under international human rights law¹³ and under domestic constitutional law, there is no distinction: both are "associations". *OHCHR recommends the removal of the distinction between associations and NGO's and the retention of only the term "association," as set out in the Cambodian Constitution.*

"Public interest": The term "public interest" in the definition of international NGOs and associations is left without further details. Its vagueness gives rise to concerns about who would define what is and is not in the public interest, on what criteria, and how any abusive application of restrictions applied on the grounds of "public interest" would be prevented or addressed.

According to article 22, paragraph 2, of the ICCPR, any restriction meant to limit the right to freely associate, including on the ground of "public order/morals/security" must cumulatively meet the following conditions: (a) it must be prescribed by law; (b) it may only be imposed for one of the purposes set out in paragraph 2; and (c) it must be necessary in a democratic society for achieving one of those purposes. The jurisprudence of the UN Human Rights Committee clarifies the notion of "democratic society" in specifying that "the existence and

¹³ "An "association" refers to any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests." See A/HRC/20/27, para. 51.

operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society. The mere existence of objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical threat to national security or democratic order, that less intrusive measures would be insufficient to achieve the same purpose, and that the restriction is proportionate to the interest to be protected.”¹⁴

OHCHR suggests the inclusion of a non-exhaustive list of motivations covered by the term would be helpful, as would an explicit exemption of human rights-related activities from these restrictions.

In addition, the definitions contained in the law do not make clear whether an association or non-governmental organization established in Cambodia by an international entity would be considered as a domestic or foreign association or non-governmental organization. International associations or NGOs are often both established in a country abroad and then have national chapters or sections registered domestically as a national legal entity. *OHCHR recommends clarification of this point.*

CHAPTER 2

Registration of Domestic Associations or Non-Governmental Organizations

Article 5: A domestic association shall be established by at least three (3) founding members, whose age is at least eighteen (18).

A domestic non-governmental organization shall be established by at least three (3) founding members being natural persons of Khmer nationality, whose age is at least eighteen (18).

Comments

Minimum age of founding members: This requirement would restrict the ability of minors from establishing domestic associations and NGOs, which would contravene the UN Convention on the Rights of the Child (CRC), to which Cambodia is a party. Cambodia has accepted, under Article 15 of the CRC, to “recognize the rights of the child to freedom of association and freedom of peaceful assembly”, subject to restrictions under the same circumstances as those set out in Article 22, para. 2, of the ICCPR. Therefore, this requirement is not in line with articles 31 and 48 of the Constitution, read in conjunction with article 15 of the CRC. Articles 5 and 11 are mutually inconsistent insofar as Article 5 does not allow persons under 18 years of age to found domestic associations or NGOs, while Article 11 provides that the Ministry of Interior will determine by Prakas the procedures for establishing and registering an association or NGO by minors. *OHCHR recommends the removal of the minimum age requirement in Article 5, to guarantee that right under the law and not under a sub-legislation.*

Requirement of Khmer nationality to be a founding member of a domestic NGO: According to Article 22 of the ICCPR, all persons are entitled to exercise their right to freedom of

¹⁴ Communication No. 1993/2010, *Mikhailovskaya and Volchek v. Belarus*, Views adopted on 24 July 2014, para. 7.3. See inter alia Communications No. 1274/2004, *Korneenko v. Belarus*, Views adopted on 31 October 2006, paras. 7.2. and 7.3, No. 1119/2002, *Jeong-Eun Lee v. Republic of Korea*, Views adopted on 20 July 2005, para.7.2; No. 1296/2004, *Belyatsky et al. v. Belarus*, Views adopted 24 July 2007. See also the UN Human Rights Committee’s general comment No. 34 on freedoms of opinion and expression, CCPR/C/GC/34, para.34.

association. Article 2, para. 1, of the ICCPR establishes that the Covenant applies to all individuals “within its territory” (of a State party) and “subject to its jurisdiction”. The UN Human Rights Committee has made clear that “in general, the rights set forth in the Covenant apply to everyone, [...] irrespective of his or her nationality or statelessness”¹⁵. The exclusion of non-Cambodian nationals would deny this right to, *inter alia*, refugees, stateless persons, migrants, including legal foreign residents and workers, who are within the territory of Cambodia and subject to its jurisdiction. The nationality requirement would contravene Article 22, para. 1, and Article 2, para. 1, of the ICCPR, as well as Article 15 of the Convention relating to the Status of Refugees. *OHCHR recommends the removal of the nationality requirement.*

Article 6: Domestic associations or non-governmental organizations shall be required to register with the Ministry of Interior by completing the following documents:

1. Application forms for registration, 02 (two) copies
2. A letter stating the address of the central office of the domestic association or non-governmental organization issued by the commune or Sangkat chief, 01 (one) copy.
3. Profiles of each founding member with a recent 4x6 size photograph, 02 (two) copies
4. Statutes signed by the president of the domestic association or non-governmental organization, 02 (two) copies

Comments:

Compulsory registration: Article 6, read together with Article 9 according to which associations and NGOs must register in order to be allowed to “conduct any activity within the Kingdom of Cambodia,” makes registration compulsory. This conflicts with the view of the SRHRD, according to whom: “Although the registration requirement does not necessarily, in itself, violate the right to freedom of association, ... registration should not be compulsory and ... NGOs should be allowed to exist and carry out collective activities without having to register if they so wish. On the other hand, NGOs have the right to register as legal entities and to be entitled to the relevant benefits.”¹⁶ This view was echoed by the SRFAA, who suggests that associations should be automatically granted legal personality as soon as the authorities are notified by the founders that an organization was created.¹⁷ (See OHCHR comments on Article 9, “Promoting a regime of notification, not registration.”) *OHCHR notes the suggestion made and broadly supported at the first consultation on the law that this provision should be amended in such a way that NGOs and associations that do not register would be allowed to operate in Cambodia but would not obtain legal status or the benefits that accompany such status.*

Contradiction with the Civil Code: Articles 18 and 19 of the 2011 Law on the Implementation of the Civil Code¹⁸ subjects legal entities (including non-profit legal entities) to registration as determined by the Ministry of Justice, while Article 6 of the law establishes that the Ministry of Interior ‘is responsible for registering domestic associations and non-governmental organizations’. The requirements set forth in Article 50 of the Civil Code are also different from the requirement set out in this article of the LANGO. (See OHCHR Comments on Articles 2 and 39).

¹⁵ UN Human Rights Committee’s general comment No. 15, para. 1.

¹⁶ A/64/226, para. 59.

¹⁷ A/HRC/20/27, para. 68.

¹⁸ 2011 Law on Implementation of Civil Code. Chapter III - Registration of Juristic Person:

Article 18: Jurisdiction over Registration of Juristic Person: (1) Tasks concerning registration of a juristic person shall be under jurisdiction of Ministry of Justice. (2) The Minister of Justice shall appoint officers in charge of registration of juristic person. The Registry of registered juristic person shall be maintained at the Ministry of Justice.

Article 19: Formalities and Forms of Registration of Juristic Person: Formalities and forms of registration of juristic person shall be defined by Prakas of the Minister of Justice.

Article 8: The Ministry of Interior shall examine the application documents of a domestic association or non-governmental organization, and shall decide whether or not to accept the registration within 45 working days at the latest.

In case the applicant fails to fulfil the criteria for registration, the Ministry of Interior shall notify the applicant in writing to make corrections within 45 working days at the latest. The Ministry of Interior shall decide about the registration within 15 working days at the latest from the date on which it receives the corrected documents.

In case the Ministry of Interior fails to decide about the registration within the period provided for in paragraphs 1 and 2 above, the domestic association or non-governmental organization shall be deemed registered under this law. In such a case, the Ministry of Interior shall prepare documents to legalize the registration for the concerned domestic association or non-governmental organization.

The Ministry of Interior may deny the request for registration of a domestic association or non-governmental organization whose purpose and goals are found would endanger the security, stability and public order or jeopardize national security, national unity, culture, traditions, and customs of Cambodian national society.

A domestic association or non-governmental organization whose request for registration is denied by the Ministry of Interior shall have the right to appeal to the courts.

Comments:

Registering body: The SRHRD has advised that registering bodies should be independent from the Government and include representatives of civil society. In particular, members of such bodies should not be directly appointed by Government, nor be subject to its discretion (A/59/401, paragraph 82 (h))¹⁹. The Ministry of Interior evidently cannot be considered to be an independent registering body, given that it is formally situated within the executive. Conferring registration responsibilities to the Ministry opens the door to the possibility of executive interference in the operations of civil society, whose ability to call for justice and accountability from the Government is an essential contribution to the protection of human rights in Cambodia.

The SRFAA has noted with satisfaction that some countries ensure regular supervision of the work of their administrative units tasked with registration and check the legality of how the registration procedures are conducted. This allows the officials in charge of the procedures to be offered expert help and interpretation of the law. The Special Rapporteur accordingly recommended States “to ensure that administrative and law enforcement officials are adequately trained in relation to the respect of the rights to freedom... of association.”²⁰

Decision-making authority: OHCHR welcomes the specific timelines by which MOI must respond to all applications for registration by domestic associations and NGOs, failing which they would be considered as registered. However, 45 working days to decide on the legality of the statute of an association or NGO is a lengthy period during which NGOs and associations are denied the ability to carry out activities and otherwise benefit from the Law. Despite the provision that failure to respond to an application for registration would result in the

¹⁹ A/59/401, para. 82 (h).

²⁰ A/HRC/26/29 para. 74 (e) and A/HRC/26/29/Add.2, para. 86 (g).

organization being considered as registered, it remains for the MOI to prepare documentation to legalize the registration for the concerned domestic association or non-governmental organization. This may create delays, during which time it is unclear whether the concerned organization would be permitted to operate. If it is not, then the lack of a decision would have the opposite of the intended effect – in reality, it will have been denied registration. The SRHRD has recommended that where a registration system is in place, “it should allow for quick registration. The law must set short maximum time limits for State authorities to respond to registration applications; failure to provide a response should result in the NGO being considered as legally operative.”²¹ *OHCHR recommends that the time limits on decisions on registration be shortened and that the following phrase be added to the end of para. 3 of Article 8: “Pending the preparation of such documents by the Ministry of Interior (or an independent registration body), the concerned domestic association or non-governmental organization may carry out activities in accordance with its statutes.”*

Presentation of reasoning for denials of registration: Article 8 allows for untransparent decision-making in that it does not require the MOI to communicate in writing the precise reasons for any denial of registration by an applicant. The SRFAA has recommended that “registration bodies should provide a detailed and timely written explanation when denying the registration of an association.”²² *OHCHR recommends that the registering body be obliged to communicate in writing the precise reasons for all decisions not to register an applicant association or NGO.*

Appeals: OHCHR welcomes the explicit allowance for appeal to the courts in case of an unsatisfactory decision by the Ministry. Given the long delays for cases to be decided by the courts and in keeping with the premise that registration should not be compulsory (see comment on Article 3), OHCHR recommends the addition to the final para.: “*Should an applicant for registration as a domestic association or NGO file an appeal with a court, the concerned organization should be considered as registered pending the decision of the court.*”

Grounds for denial: OHCHR notes that the grounds that could justify the denial of registration under this Article are wider than the permissible grounds for restrictions on the right to freedom of association contained in para. 2 of Article 22 of the ICCPR, according to which only those restrictions may be placed “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” (see OHCHR comments on Article 4). *OHCHR recommends that the formulation of Article 8 be aligned with Article 22, para. 2, of the ICCPR.*

“Stability”, “national unity”: If any suggestion by a domestic association or NGO to pursue better ways to implement human rights, thus calling for changes in the status quo, could potentially be interpreted to challenge “stability” or “national unity,” advocacy for improvements could be stifled and thus Cambodia’s progress toward the realization of human rights could be seriously impeded. The very concept of democracy is based on the premise of the diverse components of society arriving at solutions to social issues through dialogue based on freedom of expression, which is expressly protected under human rights law²³. *OHCHR recommends that the formulation of Article 8 be aligned with Article 22, para. 2, of the ICCPR.*

²¹ A/59/401, para. 82 (c).

²² A/HRC/20/27, para. 95.

²³ Article 19, ICCPR.

“Culture, traditions, and customs of Cambodian national society”: Restrictions of freedom of association due to threats to “national unity, culture, traditions, and customs of Cambodian national society” are not among the permissible grounds for restrictions, as set out in Article 22, para. 2, of the ICCPR. The ambiguity of each of the concepts of “culture, traditions, and customs” gives rise to concerns about the possibility of their arbitrary application, in particular in view of the lack of definition in the draft of what constitutes the national culture and the lack of balanced attention paid to the preservation of minority cultures. The SRFAA has emphasised the importance of freedom of association be protected also for minority groups who may otherwise face difficulties in forming associations that aim to protect and preserve their culture.²⁴

The obligation to protect cultural rights cannot be separated from the obligation to protect cultural diversity, based on (a) the recognition of the diversity of cultural identities and expressions, (b) equal treatment and respect for the equal dignity of all persons and communities, without discrimination based on their cultural identities and (c) openness to others, discussion and intercultural exchanges. According to the UN Independent expert in the field of cultural rights, culture is a living and dynamic process: “the challenge is not so much to preserve cultural goods and practices as they are ... but (to) preserve the conditions which have enabled these goods and practices to be created and developed.”²⁵ The current formulation of Article 8 exceeds the permissible restrictions on freedom of association and moreover takes the approach discouraged by the expert UN human rights mechanisms on the subject, namely by attempting to preserve the “national culture” as it is, without defining what it is, rather than recognizing its diverse components and preserving the conditions that enabled it to take shape. *OHCHR recommends that the formulation of Article 8 be aligned with Article 22, para. 2, of the ICCPR.*

Article 9: A domestic association or non-governmental organization shall become a legal entity from the date it is registered by the Ministry of Interior. The Ministry of Interior shall copy the registration documents of the domestic association or non-governmental organization to the relevant Ministries/institutions as necessary.

Any domestic association or non-governmental organization that is not registered shall not be allowed to conduct any activity within the Kingdom of Cambodia.

Comments

Promoting a regime of notification, not registration: The SRHRD recognizes that States can regulate freedom of association but encourages them to adopt expeditious regimes of “declaration” or “notification” whereby an organization is considered a legal entity as soon as it has notified its existence to the relevant administration by providing basic information, such as the names and addresses of the founder(s) and the name, address, statutes and purpose of the organization (see OHCHR comments on Article 6).²⁶ According to the SRFAA, “a ‘notification procedure’, rather than a ‘prior authorization procedure,’ complies better with international human rights law by automatically granting legal personality to associations (and organizations) as soon as the authorities are notified of their establishment by the founders. In most countries, such notification is made through a written statement containing a number of elements clearly defined in the law. The notification is not a precondition for the

²⁴ A/HRC/26/29, para. 53.

²⁵ Report of the independent expert in the field of cultural rights, A/HRC/14/36, para. 30.

²⁶ A/59/401, para. 82 (b).

existence of an association, but is rather a submission through which the administration records the establishment of the said association.”²⁷

Presumption of legality: While the international human rights mechanisms have stressed that civil society organizations should be presumed to be operating legally until it is proven otherwise during the entire registration process, Article 9 of the law requires associations and NGOs to register in order to be allowed to “conduct any activity within the Kingdom of Cambodia”, which effectively makes registration compulsory. By contrast, the 2007 Civil Code of Cambodia does not require any entity to register; Article 49 of the Civil Code reads: “A legal entity shall come into existence upon its registration in the registry held at the location of its principal office.” Various provisions of the Civil Code collectively provide for legal protection to members against third parties on liability issues, which is the main advantage of registration. It is for each association or NGO to decide whether to accept liability and the associated risks. NGOs and associations that are not registered should not be penalized if their activities are not violating other laws.

The SRFAA has emphasized that the right to freedom of association applies equally to informal associations that are not registered²⁸ and has recommended that “any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment.”²⁹ He further called “upon States ... to ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments...”³⁰

OHCHR recommends that Article 9 be amended to establish a regime of notification as follows: “A domestic association (or non-governmental organization) shall become a legal entity from the date it submits a notification to the Ministry of Interior containing the following information: the name(s) and address(es) of the founder(s) and the name, address, statutes and purpose of the organization. The Ministry of Interior shall forward a copy the documents of the domestic association or non-governmental organization to the concerned Ministries as necessary.”

Article 11: The conditions, formalities and procedures for establishing and registering a domestic association or a non-governmental organization by a foreign legal entity or a foreign person shall be determined by an order (*Prakas*) of the Minister of Interior.

The conditions, formalities and procedures for establishing and registering an association by minors shall be determined by an order (*Prakas*) of the Minister of Interior.

Comments

Registration: While maintaining the view that a notification system complies better with human rights law than a prior authorization system, OHCHR understands that the *Prakas* to be issued by the Interior Minister will respect the conditions for the establishment and registration of domestic associations and NGOs set out in Articles 6 and 7, without adding new conditions or imposing fees.

²⁷ A/HRC/20/27, paras. 58 and 68.

²⁸ A/HRC/20/27, paras. 56 and 96, A/HRC/23/39, para. 82, A/HRC/26/29, para. 55, and A/HRC/29/25, para. 59.

²⁹ A/HRC/20/27, para. 96.

³⁰ A/HRC/23/39, para. 82(b).

Modalities for minors: It is inconsistent for the Law on Association and NGOs to prohibit minors from establishing and registering an association and at the same time authorise the Minister of Interior to issue a Prakas to regulate the process to do so. See OHCHR comments on Article 5, “Minimum age of founding members”.

CHAPTER 3

Registration of Foreign Associations or Non-Governmental Organizations

Article 12: Any foreign association or non-governmental organization wishing to conduct activities in the Kingdom of Cambodia shall register with the Ministry of Foreign Affairs and International Cooperation by signing a Memorandum of Understanding.

Any foreign association or non-governmental organization wishing to implement short-term projects shall seek the approval of the Ministry of Foreign Affairs and International Cooperation, directly or through a local partner.

Comments

Registering body: The SRHRD has advised that registering bodies should be independent from the Government and include representatives of civil society. In particular, members of such bodies should not be directly appointed by the Government, nor be at its discretion³¹. The MOFAIC, being part of the executive branch, is evidently not such an independent body. (See OHCHR Comments on Article 8, “Registering body” and on Article 30.)

“Short-term projects”: Article 12 establishes a new requirement for short-term projects of foreign NGO’s or associations to be approved by the MFAIC. It is ambiguous about what constitutes a short-term project or whether any number of common activities might fall under this category. In general, international co-operation should be encouraged for the purpose of sharing expertise, resources and experiences, rather than be subjected to restrictions. The International Covenant on Economic, Social and Cultural Rights, to which Cambodia is a party, requires State parties to “take steps, individually and through international assistance and co-operation, especially economic and technical” to progressively achieve economic, social and cultural rights (Article 2, para. 1) and to “recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields” (Article 15, para. 4). *OHCHR recommends the removal of para. 2. If it is retained, OHCHR recommends that it be amended to include a definition of “short-term projects” and to replace the required approval with a notification requirement.*

Requirement to conclude a MOU: The requirement contained in this Article to apply for a Memorandum of Understanding with the MOFAIC creates an occasion where the MOFAIC may deny authorization to international associations and NGOs to conduct lawful activities. According to Article 14, the MOFAIC is not required to explain its acceptance or rejection of applications (see OHCHR comments on Article 14). Since acts of a criminal nature are already prohibited and punishable under Cambodian criminal law, this provision provides no additional protection against unlawful activities.

³¹ A/59/401, para. 82 (h).

Article 13: Any foreign association or non-governmental organization wishing to implement projects in the Kingdom of Cambodia shall submit an application for a memorandum of understanding with the Ministry of Foreign Affairs and International Cooperation by attaching the following documents:

1. A letter from the president of the foreign association or non-governmental organization, the permanent office of which is in a foreign country, requesting to appoint its representative with 1 (one) attached copy of a brief biography of the person requested to be appointed, and 1 (one) copy of the request to open a representative office.
2. A letter stating the address of the representative office in the Kingdom of Cambodia issued by the Commune or Sangkat Chief, 1 (one) copy;
3. A letter issued by a competent authority of the country of origin, authorising the foreign association or non-governmental organization to operate, 1 (one) copy;
4. A supporting letter of the projects of the foreign association or non-governmental organization issued by the public authorities of the Kingdom of Cambodia, 1 (one) copy;
5. A letter certifying the budget for implementing the projects of the foreign association or non-governmental organization for at least 6 (six) months, issued by its permanent office in the foreign country, 1 (one) copy;
6. A pledging letter to provide all accounts of the foreign association or non-governmental organization in the banks in the Kingdom of Cambodia, 1 (one) copy.

Comments: The list of documents required to apply for a MOU with the MFAIC appears onerous due to both legal and practical considerations. Article 13, para. 1, requires foreign NGOs to provide the “biography” of the person they wish to appoint as representative, which has to be submitted together with the “request to open the representative office”. In practice, it is unlikely that international recruitment would start *before* the foreign NGO is assured of the possibility to open the new office abroad. Providing the profile of the *post* of representative should be possible but not necessarily the profile of the *person* requested to be appointed. Requiring a written pledge to provide the name and contact information of the representative once appointed would be more practical, as called for in Article 13, para. 6.

Article 13, para. 2, presents a similar contradiction in the timeline: it requires a “letter stating the address of the representative office issued by the Commune and Sangkat Chief.” If the law is promulgated in its current form, it might be difficult, if not legally impossible, to sign a lease to establish a representative office *before* being recognized as a legal entity by concluding a MOU with the MOFAIC. Requiring a written pledge to provide the local address once the foreign NGO has signed the MOU would appear more practical.

OHCHR recommends a review of the requirements contained in Article 13 to ensure they do not contain impractical requirements that could unnecessarily restrict the ability of foreign associations to operate in Cambodia, in violation of Article 22, para. 2, of the ICCPR.

Article 14: The Ministry of Foreign Affairs and International Cooperation shall examine the contents of the application and decide whether or not to sign a memorandum with a foreign association or non-governmental organization within 45 (forty-five) working days at the latest.

Comments

Absence of an obligation to explain rejections of applications: In the event that a Memorandum of understanding is denied by the MOFAIC, the absence of an explicit requirement for MOFAIC to explain its decision leaves applicants in a state of uncertainty and vulnerability. According to both the SRHRD and the SRFAA, decisions to deny registration must be fully explained and cannot be politically motivated, and a failure to provide detailed grounds for the decision should result in the NGO being considered to be operating legally.³² It is a core principle of administrative law that reasons should be provided for governmental decisions. While maintaining that a notification regime is preferable to an application system, which would preclude the need for the following recommendation, if an application system is retained, OHCHR would recommend that the following text be added to Article 14: “*All decisions to reject an application shall include a detailed explanation of the reasons for the decision. In the event that a decision on an application is not issued within the deadline established under the present Article, the Memorandum of Understanding shall be considered valid.*”

Timeframe for decisions: Should the deadline pass without a decision being issued, the failure by the Government to meet the deadline should not prejudice applicants. Recalling the recommendation of the SRFAA that any registration process established be as expeditious as possible, *OHCHR recommends a reduction of the time limit of 45 days by which a decision must be issued.*

Right of appeal: According to the SRFAA and the SRHRD, a decision regarding the denial of registration or the imposition of restrictions should be subject to an impartial, independent and prompt judicial review³³, which is foreseen in the case of domestic associations and NGOs in Articles 8 and 31 of the law. *OHCHR recommends that foreign associations and NGOs be enabled to appeal in court any decisions that deny them registration.*

Conflict with the Civil Code: OHCHR further notes that Article 14 provides that the Ministry of Foreign Affairs will approve applications for foreign entities, whereas Article 19 of the Law on Implementation to the Civil Code states that their registration is subject to an order by the Ministry of Justice. (See OHCHR Comment on Article 39.)

Article 16: A Memorandum of Understanding shall be of a maximum of 03 (three) years’ validity, depending on the projects of the foreign association or non-governmental organization. The validity of the Memorandum thereof shall automatically terminate on its expiry date.

If a foreign association or non-governmental organization wishes to extend the validity of its Memorandum of Understanding, it shall submit a request for extension of its Memorandum of Understanding within 90 (ninety) days prior to its expiry date.

Comment: The timeframe for the submission of requests to extend the validity of Memoranda of Understanding of 90 days is double the 45 days required for new applications under Article 14. Why the consideration of a known organization should take double the time necessary to consider a new one is not evident. The views of multiple human rights mechanisms are that the regulation of associations and NGOs should be a notification regime based on the presumption of legality (see OHCHR comments on Articles 8 and 9). By requiring periodic re-registration, defining a maximum period of validity, and stipulating automatic expiry when no decision to the contrary is issued, the current wording of Article 16

³² A/HRC/20/27 para. 95 and A/59/401, para. 82(d).

³³ A/HRC/20/27 para. 95, A/HRC/23/39 para. 81(c) and A/59/401 para. 82 (j).

would have the opposite effect. This becomes more problematic given the absence of a requirement for the MOFAIC to issue a decision before the expiry of a current Memorandum of Understanding, even when a request for extension is filed on time. *OHCHR recommends that Article 16 be amended to allow MOU's to be valid for an indefinite duration unless specifically provided otherwise in an MOU, while allowing the MOFAIC to initiate a review of its MOU with a foreign association or NGO at any time should it have concrete reasons to believe the foreign association or NGO is engaging in illegal activities. In such a case, the MOFAIC should initiate a judicial proceeding with a view to terminating the Memorandum.*

CHAPTER 4

Resources and Assets of Associations or Non-Governmental Organizations

Article 18: The resources and assets of a domestic association shall consist of the following:

- Donation or contributions or subscription fees of members;
- Own resources and assets of the domestic association;
- Lawful gifts from natural persons or legal entities;
- Other income generated from lawful sources.

The resources and assets of a domestic non-governmental organization shall consist of the following:

- Own resources and assets of the organization
- Lawful gifts from natural persons or legal entities
- Other income generated from lawful sources

Article 19: Resources and assets of a foreign association or non-governmental organization shall be obtained from lawful sources.

Comment: The need for the emphasis in Articles 18 and 19 that the resources and assets of foreign associations and NGO's must come from lawful sources is questionable, since by definition there is no law that allows any person or organization to obtain and use funds from unlawful sources. The SRFAA has called on States to ensure that "associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities" and that "undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association and of other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights."³⁴ *OHCHR welcomes the removal of imposed percentage limits on the use of funds by NGO's contained in previous drafts and recommends full adherence to the above recommendations of the SRFAA.*

CHAPTER 5

Rights, Benefits and Obligations of Associations or Non-Governmental Organizations

³⁴ A/HRC/23/39, para. 82(b) and (c).

Article 20: An association or non-governmental organization, which has registered or signed a Memorandum of Understanding, shall be subjected to the existing taxation regime law, and receive incentives and enjoy exemptions in accordance with the existing laws and provisions.

Article 21: An association or non-governmental organization, which has registered or signed a Memorandum of Understanding, shall be entitled to enter into contracts to cooperate with its partners for implementing its activities according to the existing laws of the Kingdom of Cambodia.

Article 22: An association or non-governmental organization, which has registered or signed a Memorandum of Understanding, shall be entitled to recruit staff or workers. The recruitment shall comply with the Law on Immigration, the Labour Law and other legal provisions of the Kingdom of Cambodia.

Comments: Chapter 5 subjects associations and NGOs to a regime of mandatory registration instead of a regime of notification, as favoured under international human rights law, while failing to introduce any specific benefits for those organisations that have registered or signed an MoU not pre-existing in other laws. Articles 20-22 simply reiterate a basic principle of civil law that any legal entity is legally able to enter into a contract with natural and legal persons, whether for recruitment or any other lawful purpose. This raises questions as to the need for this law in view of the wider existing legal framework, in particular, the Civil Code, the Criminal Code, the Anti-Corruption Law, and their implementing laws.

On the contrary, Article 21 restricts the right to freedom of association to registered organisations by limiting the possibilities to enter into funding contracts or to cooperate to implement activities funded by such agreements (or through any lawful resources not subject to a contract) only to organizations that are registered or have signed a MOU. Such a general restriction is incompatible with international human rights law and is strongly discouraged by the human rights mechanisms. (See OHCHR comments and recommendations on Articles 6 and 9)

Article 24: Domestic non-governmental organizations, foreign non-governmental organizations, or foreign associations shall maintain their neutrality towards political parties in the Kingdom of Cambodia.

Comment: The freedoms of association, of opinion and expression, of thought, conscience and religion, and of peaceful assembly are fundamental human rights that form an important part of the foundation of democracy. They are interrelated and interdependent and are established under the Cambodian Constitution³⁵, as well as in multiple international human rights treaties to which Cambodia is a party.

The ICCPR establishes these rights with respect to all persons. Its Article 19, para. 2, establishes that everyone has “the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers ...” According to the UN Human Rights Committee, “this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others... It includes political discourse, commentary on one’s own and on public affairs, ...

³⁵ Articles 31, 35, 41-43 of the Constitution. By Article 41, the only restrictions allowed under the Constitution on the exercise of freedom of expression are expressions intended to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security.

(and) discussion of human rights... The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive”.³⁶ The only permissible restrictions on the exercise of these rights are those set out in article 19, paragraph 3, and article 20.³⁷ The Human Rights Committee is further of the view that “in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.”³⁸ The Human Rights Committee also observes that citizens take part in the conduct of public affairs, which is a right established under Article 25 of the ICCPR, by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25.³⁹ It follows that the restriction set out in Article 24 of the law infringes on freedom of expression and other human rights and is therefore not permissible under international human rights law.

OHCHR recommends the removal of Article 24.

Article 25: A domestic non-governmental organization shall submit a copy of its activity report and of its annual financial report by not later than the end of February of the following year. Domestic non-governmental organizations that receive financial support from donors shall submit the report by copying the original documents sent to the donors within 30 (thirty) days from the date on which they are sent to the donors, as well as 1 (one) copy of project documents and financial agreement with donors by copying from the original documents within 30 (thirty) days from the date of the agreement. This report shall be kept at its office for at least 5 (five) years.

The Ministry of Interior may, if necessary, request the activity report and annual financial report of an association.

A foreign non-governmental organization shall submit a copy of its annual activity reports and financial status of the original documents sent to the donors to the Ministry of Foreign Affairs and International Cooperation and Ministry of Economy and Finance within 30 (thirty) days from the date on which they were sent to the donors, as well as 1 (one) copy of the project documents and financial agreement with donors by copying from original documents within 30 (thirty) days from the date of the agreement.

The Ministry of Economy and Finance or the National Audit Authority may, if necessary, check and audit an association and a non-governmental organization.

Comments

Reporting burden: Article 25 introduces numerous reporting requirements that contrast with the light requirements stipulated under the Civil Code, Article 55 of which states that a legal entity shall make and maintain updated an inventory of properties and a list of members and keep both lists available in its central office.⁴⁰ Article 25 of the law by contrast requires NGOs

³⁶ Human Rights Committee General Comment No. 34, CCPR/C/GC/34, para. 11.

³⁷ See Comment on Article 8 (Grounds for denial). The permissible limitations to Article 19 of the ICCPR as set out in its para. 3, and to Article 20 are identical to those set out in the Comment with respect to Article 22.

³⁸ CCPR/C/GC/34, para. 38.

³⁹ Human Rights Committee General Comment of the UN No 25, CCPR/C/21/Rev.1/Add.7, paras. 8 and 26.

⁴⁰ Article 55 of the Civil Code “Inventory and list of members: (1) Upon incorporation and not later than the third month of each financial year, a juristic person shall prepare an inventory of assets and keep same in its office at all times. (2) An

to report annually to MoI or MOFAIC, and for those that receive donor funding it *additionally* requires them to report to specific Ministries on *all* funding agreements with donors and share *all* narrative and financial reports submitted to donors within 30 days after agreement with or submission to donors. In the case of organisations that are already required to submit their annual reports to the Government, the justification for demanding copies of all donor-related documents is unclear.

In its resolution 22/6 on ‘Protecting human rights defenders’, the UN Human Rights Council has called upon States to ensure that reporting requirements “do not inhibit functional autonomy [of associations]” and “do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders ... other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability.”⁴¹ Combined with Article 30 of the law, the provisions of Article 25 place limitations on the right to freedom of association beyond that which is permissible under Article 22(2) of the ICPPR.

OHCHR recommends that Article 25 be revisited with a view to lightening the reporting requirements and ensuring that they pursue a legitimate interest and are strictly necessary in a democratic society. A graduated reporting requirement that would exempt smaller organizations from reporting or, alternatively, simplify their reporting obligations should be considered. Additional reporting might be required of large organizations receiving substantial tax benefits or public funding.

Broad discretion: in addition to the extensive reporting requirements for NGOs listed above, Article 25 further allows, “if necessary”, for associations to be compelled to provide copies of their activities and financial reports to the Ministry of Interior and subjected to checks and audits by the Government. Article 25 thus gives the Government broad discretion to determine the grounds upon which associations should be required to release their annual reports and which associations and NGOs would be subjected to a governmental audit. The SRFAA has recognized the right of independent bodies to examine the records of associations as a mechanism to ensure transparency and accountability, all the while stressing that it must be independent bodies undertaking such work, that such a procedure should not be arbitrary and that it must respect the principle of non-discrimination and the right to privacy; otherwise, it could put the independence of associations and the safety of their members at risk.⁴²

OHCHR recommends the replacement of the phrase “if necessary” with specific language that limits cases where associations could be required to release their annual reports or where associations and NGOs could be audited by the Government to those cases where there is reason to suspect that a crime has been committed.

CHAPTER 6

Suspension of Activities, Dissolution, Termination of Validity of Memorandum of Understanding, and Disposal of Resources and Assets of Associations or Non-Governmental Organizations

Article 26: A domestic association or non-governmental organization may suspend its activities by providing a written notification to the Ministry of Interior. Prior to the

incorporated association shall prepare a list of members, keep same at its office and revise it whenever there is a change of membership.”

⁴¹ A/HRC/RES/22/6, para. 9 para (a) and (b).

⁴² A/HRC/20/27, para. 65.

suspension of its activities, the domestic association or non-governmental organization shall submit its activity report and financial report as provided for in paragraph 1 of Article 25 of this law.

A domestic association or non-governmental organization shall, prior to its dissolution, clear its obligations in accordance with the procedures and provisions in force.

Comment: Article 26 contrasts with paragraph 1 of Article 25, which only refers to domestic NGO's, not to domestic associations. *OHCHR recommends that the reasons for this difference in treatment of domestic associations and NGO's be clarified.*

Article 29: Should a domestic association or non-governmental organization be dissolved by a court decision or be removed from the register by a decision of the Ministry of Interior, the clearance of its obligations as well as the disposal of its remaining resources and assets shall comply with the court's decision in conformity with the provisions in force.

Should a foreign association or non-governmental organization have its Memorandum of Understanding prematurely terminated by the Ministry of Foreign Affairs and International Cooperation, the disposal of its resources and assets shall comply with the decisions of the foreign association or non-governmental organization which requested the opening of the representative office in the Kingdom of Cambodia.

Comment: Para. 1 of Article 29 is unclear about how the resources and assets shall be disposed of when an association or NGO is removed from the MOI's registry in the absence of a court decision (notwithstanding OHCHR's comment on Article 30 that any determination leading to de-registration should be a matter for the courts).

CHAPTER 7

Administrative Measures and Penalties

Comments: The provisions of Chapter 7 contravene the principle that registration should not be compulsory but voluntary. By conferring on the MOI and MOFIAC the authority to sanction associations and NGOs through de-registration (Articles 30 and 33), fines (Article 32), and the expulsion of foreigners (Article 34), these provisions also contravene the view of the SRHRD that only an independent judiciary should have the authority to sanction associations or NGOs, which should be possible only with respect to the committal of a crime, while administrative infractions, such as the failure to submit an activities report, should be dealt with through an administrative procedure. "Administrative irregularities... should never be considered as sufficient grounds for closing down an organization."⁴³

The SRHRD has specifically stressed that "Government authorities should not be granted the power to arbitrarily suspend the activities of human rights groups. The courts alone should be entitled to order a suspension, and only in situations of clear and imminent danger that could result directly from such activities, and that is objectively ascertained"⁴⁴. It is recalled that all persons resident in Cambodia – nationals and foreigners alike – are already subject to Cambodian criminal law, the violation of which could legitimately constitute grounds for the

⁴³ A/59/401, para. 82(f).

⁴⁴ A/59/401, para. 82 (r).

suspension or delisting of an association or NGO, whether foreign or domestic. Criminal acts should be determined and punished by independent courts of law, as foreseen under Article 36.

Article 30: To any domestic association or non-governmental organization that fails to comply with Article 10, or Article 24, or para. 1 or para. 2 of Article 25 of this law, the Ministry of Interior shall issue a warning in writing by giving 30 (thirty) working days at the latest. In case of non-compliance, the Ministry of Interior shall issue a warning in writing to temporarily suspend its activities for a period of 90 (ninety) days at the latest. In the case of repeated non-compliance, the Ministry of Interior shall issue a written decision to remove it from the register.

To any domestic association or non-governmental organization that fails to properly comply with its statutes, the Ministry of Interior shall notify in writing or temporarily suspend activities for a maximum period of 30 days. In the case of non-compliance, the Ministry of Interior shall issue a written decision to remove it from the register.

The Ministry of Interior shall decide to remove from the register any domestic association or non-government organization that conducts activities that endanger the security, stability and public order, or jeopardize the national security, culture, tradition, and custom of Cambodian national society, regardless of other criminal punishments.

Comments

According to the SRFAA, the right to freedom of association applies for the entire life of associations; their suspension and the involuntary dissolution are the severest types of restrictions on freedom of association. “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.”⁴⁵ The SRHRD has stated that any restriction on the grounds of “public order/morals/ethics” and any criteria meant to limit the right to freely associate must be clearly defined and that human rights-related activities must be excluded from these restrictions⁴⁶. Some of the grounds for de-registering an association or a NGO do not clear the threshold of ‘clear and imminent danger’.

OHCHR reiterates its concerns on Articles 24 and 25 of the present law (see its comments on those Articles), and expresses concern that they should constitute grounds under Article 30 to suspend or delist domestic associations and NGOs. In addition, the current wording of Article 30 would authorize the Ministry to suspend or delist a domestic association or NGO for failure to abide by its own statutes, even when such failure does not constitute a crime under Cambodian laws.

OHCHR recommends that Chapter 7 be reformulated to empower only the judiciary with the authority to sanction associations or NGOs for the committal of a crime and to establish administrative procedures to address administrative infractions.

OHCHR recommends the following combined reformulation of Articles 30 and 36: “*Domestic associations or non-governmental organizations that are suspected of violating*

⁴⁵ A/HRC/20/27, para. 75.

⁴⁶ A/59/401, para. 82 (o).

Cambodian criminal law shall be subject to investigation by the court, which may result in a court order to temporarily suspend its activities for a period of up to 30 (thirty) days, pending a court judgment. The court may, in its judgment, order the de-registration of the organization.”

Article 31: A domestic association and non-governmental organization shall have the right to appeal against the decision of the Ministry of Interior regarding the denial of registration, suspension of the activity, deletion from the register, and fine to the court within thirty (30) working days at the latest from the date on which a notification of the decision is received.

Comment: Existing national law provides that all parties to litigation have the right to appeal to the Court of Appeal. If Articles 24, 25, 30, 32, 33 and 36 are amended to conform to international human rights standards, this provision would be redundant and *OHCHR would recommend the deletion of Article 31 or, alternatively, include in it reference to the right to appeal against decisions of the Ministry of Interior through the Court of Appeals.*

Article 32: The competent authorities shall take measures to immediately stop any domestic association or non-governmental organization for conducting activities without registration with the Ministry of Interior according to the provisions of this law. In case of resistance, the concerned association or non-governmental organization shall be subjected to a fine from Riel 5,000,000 to Riel 10,000,000 by the Ministry of Interior. In case of repetition, the competent authorities shall file a complaint to the courts for legal action, regardless of other criminal punishments.

Paragraph 1 above shall also be applied against any domestic association or non-governmental organization that is delisted or whose activity is suspended by the Ministry of Interior but continues to carry on activities in the Kingdom of Cambodia.

Comment: Further to its comments and recommendation on Chapter 7 as a whole, *OHCHR recommends that the heavy financial penalties that can be exacted from non-compliant domestic associations and NGOs be reduced and placed under the authority of independent courts, not the executive, in the event that a crime is proven to have been committed.*

Article 33: In case a foreign association or non-governmental organization fails to comply with Article 24, or paragraph 3 of Article 25 of this law, the Ministry of Foreign Affairs and International Cooperation shall issue a warning in writing by giving at the latest thirty (30) days. In case of non-compliance, the Ministry of Foreign Affairs and International Cooperation shall issue a warning in writing by giving at the latest thirty (30) days. In case of repeated non-compliance, the Ministry of Foreign Affairs and International Cooperation shall issue a written decision to terminate the validity of its memorandum.

Comment: That the law should allow for two warnings granting time to comply of a maximum of 30 days each time (with no minimum) and then allow steps to be taken to close the organization and deport foreign workers – in the absence of proof of any crime – would in theory allow the MOFAIC to annul the Memorandum of Understanding. The Memorandum being the legal basis for the operation of a foreign organization and the legal residence in Cambodia of its employees, a reading of Article 33 together with Article 34 would effectively

allow the closure of foreign organizations without due process or independent scrutiny. As such, Article 33 would confer excessive powers to the executive to interfere in the operations of foreign associations and NGOs. (See OHCHR comments and recommendations on Chapter 7 as a whole.)

Article 34: The competent authorities shall take measures to immediately stop any foreign association or non-governmental organization that conducts activities without registration or which Memorandum of Understanding is terminated by the Ministry of Foreign Affairs and International Cooperation. Additional measures involving expulsion under the Law on immigration may be undertaken against any foreigner working for a foreign association or non-governmental organization for committing the above offence regardless of other criminal punishments.

Comment: See OHCHR comments and recommendations on Chapter 7 as a whole.

Article 35: The Ministry of Foreign Affairs and International Cooperation may terminate the validity of a Memorandum of Understanding where a foreign association or non-governmental organization fails to properly comply with the Memorandum of Understanding it has signed with the Ministry of Foreign Affairs and International Cooperation, or where a foreign association or non-governmental organization conducts activities which harm security, stability, and public order, or endanger the national security, national unity, culture, good traditions and customs of Cambodian national society.

Comments

Grounds for termination of a Memorandum of Understanding: The list of offenses under this article that could justify the termination of the validity of the Memoranda of Understanding is wider than, and thus inconsistent with, the permissible grounds for restrictions on the right to freedom of association contained in the ICCPR (see OHCHR comments on Articles 4, 8, 30). *OHCHR recommends that the formulation of Article 35 be aligned with Article 22, para. 2, of the ICCPR.*

Failure to properly comply with a Memorandum of Understanding: As the present law does not set out the contents of Memoranda of Understanding that foreign associations and NGOs are required to conclude with MOFAIC, it is not possible at this time to determine the elements of a Memorandum that could lead to its annulment. Nevertheless, reiterating that administrative infringements should be subject to an administrative procedure aimed at remedial action rather than the closure of an association or NGO (see OHCHR comments and recommendations on Chapter 7 as a whole), *OHCHR recommends that Article 35 be amended to specify that “in the case that MOFAIC finds administrative irregularities in the implementation of a Memorandum of Understanding concluded with a foreign association or NGO, the Ministry shall initiate a discussion with the concerned foreign association or NGO toward the rectification of those irregularities.”*

Procedural safeguards: Article 35 omits the procedural safeguards by which a foreign association or NGO could appeal a decision by MOFAIC that it considers to be unjustified. *OHCHR recommends the inclusion of specific procedural safeguards, including a procedure to appeal decisions by the MOFAIC.*

“Stability,” “national unity”: See OHCHR comments on Article 8. *OHCHR recommends that the formulation of Article 35 be aligned with Article 22, para. 2, of the ICCPR.*

“Culture, traditions, and customs of Cambodian national society”: See OHCHR comments on Article 8. *OHCHR recommends that the formulation of Article 35 be aligned with Article 22, para. 2, of the ICCPR.*

Article 36: Any association or non-governmental organization conducting activities which endanger the national security or involves money laundering, terrorist financing or terrorist crimes, or other criminal offenses, shall be punished according to the existing criminal law of the Kingdom of Cambodia.

Comment: Article 36 would appear to be redundant. It does not enhance the protection of national security, since all activities defined and punishable as crimes under the existing criminal law are already punishable under that law, while those that are not will not be punishable under Article 36. The SRFAA acknowledges that “States have a responsibility to address money-laundering and terrorism”, but stressed that “this should never be used as a justification to undermine the credibility of the concerned association, nor to unduly impede its legitimate work. In order to ensure that associations are not abused by terrorist organizations, States should use alternative mechanisms to mitigate the risk, such as through banking laws and criminal laws that prohibit acts of terrorism.”⁴⁷ *OHCHR recommends a combined reformulation of Articles 30 and 36* (see OHCHR comments on Article 30 and recommendation for a proposed reformulation).

CHAPTER 8

Transitional Provisions

Article 37: Following the entry into force of this law, any domestic association or non-governmental organization whose documentation has been filed with the Ministry of Interior shall be deemed registered and will automatically receive the status of a legal entity under this law.

Article 38: Following the entry into force of this law, any foreign association or non-governmental organization which has entered into a Memorandum of Understanding with the Ministry of Foreign Affairs and International Cooperation shall be deemed registered under this law and may conduct its activities until the expiry date of the Memorandum.

Comment: OHCHR welcomes the absence of a re-registration requirement.

CHAPTER

Final Provisions

Article 39: Any provisions contrary to this law shall be abrogated.

Comments

Contradiction with international law: Article 39 challenges the status of human rights law, which is enshrined in the treaties ratified by Cambodia, the Constitution, and the laws adopted by Parliament. In respect of the treaties ratified by Cambodia, Article 27 of the Vienna Convention on the Law of Treaties stipulates that “a party may not invoke the provisions of

⁴⁷ A/HRC/20/27, para. 70.

its internal law as justification for its failure to perform a treaty.” Several Articles of the present law conflict with international standards on the rights to freedom of association and expression that are binding upon Cambodia, as explained in the comments thereon. Thus, strict implementation of Article 39 of the law would lead to violations of international law.

Contradiction with national law: This Article also raises questions regarding the status of the present law in relation to other laws, particularly organic laws such as the Constitution in which fundamental human rights are set out. The violations of international law permitted in the draft would also constitute violations of the Cambodian Constitution, particularly Article 31 (see the Introduction of the present analysis). Several procedural matters covered under the present law also contradict the Civil Code and the 2011 Law on the Implementation to the Civil Code. (See OHCHR comments on Articles 6 and 14).

OHCHR recommends a thorough, substantive and consultative revision to the law to address the issues raised in the present analysis and thus prevent the contradictions summarised in this last comment.

ANNEX. APPLICABLE INTERNATIONAL HUMAN RIGHTS LAW BINDING ON
CAMBODIA THAT PROVIDE FOR FREEDOM OF ASSOCIATION

The Universal Declaration of Human Rights (Articles 20 and 23);

The following international treaties to which Cambodia is a party:

- the International Covenant on Civil and Political Rights (Articles 21 and 22),
- the International Covenant on Economic, Social and Cultural Rights (Article 8),
- the Convention on the Rights of the Child (Article 15),
- the Convention for the Protection of All Persons from Enforced Disappearance (Article 24(7)),
- the Convention on the Rights of Persons with Disabilities (Article 29),
- the Convention on the Elimination of All Forms of Discrimination against Women (Article 7(c))
- the Convention and Protocol Relating to the Status of Refugees (article 15),
- ILO Convention on Freedom of Association and Protection of the Right to Organize (Convention No. 87, Article 2);

The United Nations Declaration on Human Rights Defenders (General Assembly Resolutions 53/144 (1999) and 64/163 (2009)).