Fact Sheet: Fundamental Freedoms Series: Dual Legal and Administrative Regime

Fundamental Freedom: Freedom of Assembly and Freedom of Association

Snapshot: Recent actions of the Royal Government of Cambodia (the “RGC”) reveal a dual regime – legal and administrative – in operation in the Kingdom of Cambodia (“Cambodia”) insofar as oversight of the activities of non-governmental organizations (“NGOs”) is concerned. Administrative requirements which have no basis in existing law are used to prevent NGOs from conducting activities that are perceived to be critical of the RGC, its policies, interests, actions or omissions, in violation of the fundamental freedoms of assembly and association.

Introduction

This fact sheet gives an overview of the dual regime of law and administrative approval that seems to operate with regards to civil society activity in Cambodia and of how this regime affects Cambodians’ fundamental rights to freedom of assembly and association. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a leading, non-aligned, independent NGO that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

Fundamental freedoms: assembly and association

Article 41 of the Constitution of Cambodia provides for the right to freedom of assembly, while Article 42 provides for the right to freedom of association. In addition, Article 35 provides for Khmer citizens’ right to be actively involved in the political life of the nation. Article 31 states that Cambodia shall “recognize and respect” the Universal Declaration of Human Rights (the “UDHR”) and other human rights covenants and conventions: Article 20 of the UDHR provides for the universal rights to freedom of assembly and association, while the same freedoms are provided for by Articles 21 and 22, respectively, of the International Covenant on Civil and Political Rights.

Kampong Thom: the dual regime in action

On 9 August 2011, a human rights training event – conducted by CCHR and the Natural Resource Protection Group (the “NRPG”) to provide local villagers with legal training on their human rights in relation to the destruction of Prey Lang forest and the loss of their homes and livelihoods – was disrupted by armed police in Dang Kambith commune, Sandan district, Kampong Thom province. According to The Cambodia Daily, the police chief of Kampong Thom province declared that he would seek the suspension of CCHR and NRPG if they continued to hold such events on the basis that the activities “included acts to incite citizens to oppose government [approved] land concessions.” Police also asserted that CCHR had no official permission to conduct training – even though CCHR did in fact notify authorities in writing (as a courtesy) – despite there being no existing legal requirement to do so (please see below).

Notwithstanding the threats of suspension, both CCHR and NRPG proceeded with a second training event in the same district on 7 September 2011. Although many potential participants were prevented from traveling to the event by local authorities, the training went ahead regardless. Once again, police arrived with AK-47s and broke up the training. Later that same day, the deputy governor of Kampong Thom province declared that NGOs without offices in Kampong Thom province could no longer conduct activities in that province without permission from the authorities. He also said that no members of communities outside Kampong Thom province would be able to
travel there to participate in NGO events – even if they live in provinces that are also affected by the destruction of Prey Lang forest. Since these events, the Ministry of Interior (the “MoI”) has indicated that permission is required for any training events conducted outside Phnom Penh.

Legal analysis
Such events reveal not only the weak state of governance in Cambodia, but that a dual system of law and administrative approval appears to exist as regards civil society activity: the RGC is demanding that any member of civil society wanting to conduct an activity must secure administrative clearance from local authorities and/or various government ministries, in direct contravention of the rights to freedom of assembly and association outlined above. NGOs are routinely asked for letters from various ministries or provincial authorities to grant permission to conduct training sessions outside Phnom Penh. If such administrative procedures are flouted, NGOs are at risk of suspension or closure.

The Law on Peaceful Demonstration (the “Demonstration Law”) expressly exempts organizers of activities for “education dissemination purposes” (Article 3(3)) – a term interpreted in the MoI guidance on the Demonstration Law to include trainings – from providing notification of such events. However, this exemption, if interpreted conservatively, could mean simply that such training events do not fall within the remit of the Demonstration Law but are not excluded from other legislative regimes. A 2004 MoI circular, which requires NGOs to provide authorities with five days’ notice if they want to hold such events, is presumably the RGC’s basis for these administrative requirements, but it does not constitute proper law: it was never publicized, consulted upon, or passed through the Cambodian parliament; rather, it represents further evidence of this dual legal and administrative regime that prevails over NGO activities in Cambodia. The pending Law on Associations and Non-Governmental Organizations (the “LANGO”) does include a provision requiring written notification to the authorities in such circumstances, at least when an organization conducts regular activities in a province (Article 43), but that law has not yet been passed; as yet, there is no legal basis for these requirements. Furthermore, the LANGO raises the possibility that NGOs or their employees might be deemed guilty of criminal acts that are claimed to contravene NGO by-laws – by administrative rather than judicial determination – further evidence of the dual regime.

Conclusion
Recent events point to a concerted agenda by the RGC to exert total control over the lives of Cambodian citizens and to silence any opinions that run contrary to the interests of the RGC. Central to this agenda is a tendency to use administrative rules and regulations to frustrate civil society efforts to conduct activities, both publicly and in private, and to silence those who speak out. These administrative regulations rarely have any basis in existing law and are abused by all levels of government – local, provincial, ministerial and national. One of the main fears regarding the LANGO is that, if passed, it will legitimize this hitherto-administrative regime, thereby further entrenching the repression of fundamental freedoms in Cambodia that is already well underway.

For more details please contact Ou Virak (tel: +855 (0) 1240 4051 or e-mail: ouvirak@cchrcambodia.org) or Robert Finch (tel: +855 (0) 7880 9960 or e-mail: robert.finch@cchrcambodia.org).