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Cambodian Center for Human Rights

CCHR LANGO 5TH DRAFT ANALYSIS

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On 5 June 2015, the Council of Ministers discussed and adopted the fifth draft of the Law on Association and Non-Governmental Organizations (“LANGO”). The fifth draft has not been publicly circulated and was leaked to civil society organizations (“CSOs”) after the adoption of the text.

Despite the creditable elimination of the 25% budget cap on administrative costs, the LANGO remains a very concerning piece of legislation. It confers broad and intrusive powers to the government that would severely undermine the capacity of civil society in Cambodia. The 5th leaked draft has aggravated the existing concerns, and if adopted would lead to serious violations of the rights to freedom of association and to participation in public life, which are guaranteed under domestic law and international instruments that Cambodia has ratified.

The aim of this analysis is not to conduct an article-by-article analysis of the new draft, but to highlight some key areas of concern.

No reference to community-based organizations (Art 4). Since the circulation of the first draft, CCHR has been concerned about the application of the LANGO to community-based organizations (“CBOs”) and other informal popular movements. The new draft law does not include any explicit reference to CBOs, leaving it to the interpretation of the authorities whether to include them under the spectrum of association. It is not beyond the realms of possibility, and it is in fact an actual risk, that the authorities would interpret this provision as comprising CBOs, and misuse/manipulate it to limit grass-roots movements. This tacit inclusion would affect not only the right to freedom of association but it is likely to affect also the right to assembly and other associated rights, such as the right to freedom of expression and the right to participate in the political, social and economic life of the nation.

Domestic Associations and NGOs - Mandatory registration and onerous requirements. Mandatory registration (art. 9 para. 2) is now required for both domestic association and NGOs to conduct any activity. Denying not only legal capacity to unregistered entities but prohibiting any activity is inconsistent with the right to freedom of association as stated in international human rights law. In addition, art. 5, art. 6 and art. 10 state onerous registration requirements for all associations and NGOs regardless their size or scope. The provision contained in art. 5 para. 2 requiring that the five founders have never held a leading position in an association or NGO that has been deleted from registration is a disproportionate restriction to the exercise of the right to freedom of association. The deletion of an

association or an NGO cannot justify a boundless ban on his leaders' capacity to form a new organization.

Registration of foreign associations and NGOs. The draft LANGO poses some serious issues also with regard to foreign associations and NGOs that want to conduct activities in Cambodia. Art. 12 imposes a mandatory registration under the form of a memorandum of understanding with the Ministry of Foreign Affairs and International Cooperation ("MOFAIC"). An approval through a local partner is requested in case of short projects, with no explanation given regarding the meaning of "short". Art. 13 sets out intricate application requirements, including a letter issued by the competent foreign authorities authorizing the operation of the foreign association or NGO, regardless the regulations operating in the country of origin, and a supporting letter issued by a partner ministry or an institution of the government. According to art. 15, a foreign association or NGO must in fact discuss and agree on all projects with an unspecified partner ministry or institution of the government before submitting a request for registration, so leaving room for the authorities to exercise very invasive powers on their activities.

Risk of arbitrary rejection. The new draft fails to set out clearly the grounds on which registration application can be rejected. Art. 8 confers to the Ministry of Interior ("Mol") the power to examine the documents submitted by the requesting association or NGO and the legality of the statute, and to decide on the request. The draft law does not request the Mol to motivate and communicate in written its final decision. Applications are therefore opened up to the possibility of being rejected for opaque reasons. Art. 8 para. 3 states that in case of late decision (beyond 45 working days) the association or NGO shall be automatically considered as legally registered, and the Mol must process the registration documents. Despite being a positive development, concerns remain as to the practical implementation of this provision. In particular, an attestation of reception should be issued upon submission of the application and be a valid title for operating in case of automatic registration. The draft law is worse for foreign NGOs and associations as art. 14 neither sets out the grounds for rejecting a request to enter into a memorandum of understanding nor put the MOFAIC under the obligation to provide an explanation for such a decision.

Disproportionate, vague and invasive obligations. Art. 24 requires, under threat of de-registration, neutrality vis-à-vis political parties for all foreign associations and NGOs as well as for domestic NGOs. This vague provision, which does not apply to domestic associations, leaves space for serious violations of freedom of expression and abuses by the authority in order to silence dissent and criticism. Furthermore art. 25 imposes to domestic NGOs the obligation to submit a copy of donor reports, so creating the conditions for unnecessary governmental access to confidential info. Also the provision stating that domestic association may be requested to submit annual reports in "case of necessity" is too vague and subject to abuses.

Deregistration and Sanctions. The draft LANGO confers broad powers to the Mol with regard to deregistration. Particularly worrying are the provisions set out in art. 30. Temporary suspension and

deletion from the register due to non-compliance with neutrality and other reporting requirements as set out in art. 10, 24 and 25 para. 2 and 3 carry serious risks of abuses. The suspension or deletion for actions contrary to the statute is an invasive provision that makes no difference between provisions in the statute and results unnecessary interference in internal issues. Finally, in a vaguely worded provision, art. 30 states that the MoI must delete from the list of registered organizations domestic associations and NGOs conducting activities adversely affecting public security, peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society, leaving room for arbitrary restrictions to the right to association. Equal regime applies to foreign associations and NGOs according to the provisions contained in art. 34 and art. 35. High administrative sanctions are also imposed for associations and NGOs that conduct activities without registration or continue their activities despite suspension/deletion.

In conclusion, the fifth draft of the LANGO contains several areas of huge concern as shown by the considerations above. The LANGO is still open to abuse, especially as regards to grass-root organizations, arbitrary rejection of registration and invasive control powers over the activities of domestic and foreign associations and NGOs. Despite the asserted purpose, as expressed in art. 1 of this law, to ensure protection to the right to freedom of association and to promote cooperation between CSOs and the authorities, CCHR remains deeply concerned that this draft LANGO will be used to further shrink the space for civil society to operate in Cambodia and to silence criticism. As this threat has become even more serious in this fifth draft, Cambodian civil society has repeatedly expressed its commitment to engage into significant dialogue with the government with a view to agreeing a law that can be used constructively to further the development of civil society in Cambodia. CCHR urges the RGC to enter into meaningful consultation with civil society to enable those improvements that are needed for the LANGO to be in line with the Cambodian Constitution and with international instruments guaranteeing freedom of association.