



CCHR's Analysis and Key Recommendations on LANGO

22 July 2015

On 5 June 2015, the Council of Ministers approved the fifth draft of the Law on Association and Non-Governmental Organizations (“LANGO”). After minor changes were made to the text, including the creditable elimination of the 25% budget cap on administrative costs, the draft was sent to the National Assembly in mid-June. Following pro forma consultations on 8 July 2015, few of the concerns raised by Cambodian civil society organizations and the international community at large were given consideration. On 13 July 2015, the National Assembly discussed and adopted the draft LANGO with minor amendments, despite the boycott of the session by the opposition and the widespread call to stop the legislative process and hold meaningful consultations with all relevant actors, or reject the law.

The draft law, yet to be publicly and officially circulated, is now to be submitted to the Senate for approval and remains a very concerning piece of legislation. Despite important changes to Article 5 - the clause that banned leaders of dissolved associations or NGOs from starting new associations was deleted, and the welcome reduction of the minimum number of founding members from five to three - those changes do not address numerous serious problems concerning the draft. This LANGO still confers broad and intrusive powers to the government that would severely undermine the capacity of civil society to operate in Cambodia. If approved and then promulgated, this LANGO will lead to serious restrictions of the rights to the freedoms of association, expression and assembly and to the right to participate in public life, in clear contravention of the Cambodian Constitution, the International Covenant on Civil and Political Rights and other relevant international instruments.

The aim of this document is not to conduct an article-by-article analysis of the draft law, but to point out some key pending concerns and suggest some recommendations.

Community-based organizations must be expressly excluded from the scope of this law (Article 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. Despite informal reassurances that the law will not be used to restrict grass-roots movements,¹ the draft law does not explicitly exclude CBOs, leaving it to the interpretation of the authorities whether to include them under the spectrum of associations. It is an actual risk that authorities and security forces could misuse this provision to unlawfully limit not only the right to freedom of association, but 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.

¹ As stated by H.E Sak Setha, Secretary of State for the Ministry of Interior, on 8 July 2015 during the “National Workshop on Understanding the LANGO” initiated by the National Assembly Commission on Foreign Affairs, International Cooperation, Information, and Media in collaboration with the Commission on Interior, National Defense, and Civil Service Administration and the Commission on Legislation and Justice.

CCHR recommends:

- *To amend article 4 to include a provision expressly excluding CBOs from the scope of this law.*

Mandatory registration must be deleted (Articles 6 and 9(2)). Mandatory registration is now required for both domestic associations and NGOs to conduct any activity. Denying not only legal capacity, but prohibiting unregistered entities from conducting any activity is inconsistent with the right to freedom of association as stated in international human rights law. Registration should be voluntary and aimed at obtaining legal capacity.

CCHR recommends:

- *To eliminate the mandatory registration by deleting article 9(2) and amending article 6 (from “must register” to “may register”).*

Registration requirements need to be simplified (Article 6). The current draft LANGO states onerous registration requirements for all associations and NGOs regardless their size or scope. Requirements include producing a letter from local authorities specifying the address of the central office location of the domestic association or NGO. This would be significantly burdensome for small entities.

CCHR recommends:

- *To amend article 6 to only require that applicants have an address, but not necessarily a central office.*

Registration of foreign associations and NGOs (Articles 12, 13 and 15). The draft LANGO poses some serious issues with regard to foreign associations and NGOs that wish to conduct activities in Cambodia. Art. 12 imposes mandatory registration under the form of a memorandum of understanding with the Ministry of Foreign Affairs and International Cooperation (“MOFAIC”). An authorization via a local partner is required 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 of 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 public authorities before submitting a request for entering into a memorandum of understanding, so leaving room for the authorities to exercise very invasive powers on their activities.

CCHR recommends:

- *To specify the meaning of “short” in article 12;*
- *To simplify the application requirements by removing numbers 3 and 4 from article 13 requiring a letter issued by the competent foreign authorities of the country of origin authorizing the operation of the foreign association or non-governmental organization; and a letter of support for all the projects of the foreign association or non-governmental organization issued by a ministry or institution of the Royal Government of the Kingdom of Cambodia;*

Rejection of registration applications must always be stated in writing (Articles 8 and 14). The new draft fails to set out clearly the grounds on which registration applications can be rejected. Art. 8 confers to the Ministry of Interior (“MoI”) 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. Despite

obligating the Mol to notify the applicant in writing of necessary corrections to the application, the draft law does not require the Mol to motivate and communicate in writing its final decision. Applications are therefore opened up to the possibility of being rejected for opaque reasons. Art. 8(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. Deeply concerning is the vaguely worded provision contained in Art. 8(4) stating that the Mol may reject the request for registration of any domestic association or NGO the purpose and objective of which it is deemed to adversely affect public security, stability and order, or generate a threat to national security, national unity, or the culture, traditions and good customs of Cambodian national society. The draft law is worse for foreign entities as Art. 14 neither sets out the grounds for rejecting a request to enter into a memorandum of understanding nor puts the MOFAIC under the obligation to provide an explanation for such a decision.

CCHR recommends:

- *To amend article 8(2) to include an obligation for the Mol to motivate and communicate in written a final decision to reject a registration application, so also facilitating the right to appeal the decision;*
- *To ensure the practical applicability of article 8(3) by including an obligation for the Mol to issue an attestation of reception of the application upon submission of all requested documents. The attestation will be valid title for operating in case of automatic registration.*
- *To delete the vague provisions contained in article 8(4) or to specify them in order to meet the criteria of necessity and proportionality.*
- *To amend article 14 and include an obligation for the MOFAIC to motivate in writing the rejection of the request.*

Remove disproportionate, vague and invasive obligations under threat of de-registration (Article 24). 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 authorities in order to silence dissent and criticism. Furthermore Art. 25 imposes an obligation onto domestic NGOs to submit a copy of donor reports made from the original sent to the donor, thus 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.

CCHR recommends:

- *To delete article 24 as contrary to the right to freedom of expression including by expressing political criticism;*
- *To amend article 25 by removing the obligation to submit a copy of original documents.*

Delete vaguely worded grounds for deregistration and sanctions (Articles 30, 34 and 35). 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 abuse. The suspension or deletion for actions contrary to the statute is an invasive provision that makes no differentiation 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. The same requirement 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.

CCHR recommends:

- To remove article 24 from the grounds for de-registration;
- *To delete the vague provisions contained in article 30(3) or to specify them in order to meet the criteria of necessity and proportionality;*
- *To amend article 35 to ensure a right to appeal against a decision to terminate the validity of a memorandum of understanding.*