



សម្ព័ន្ធនៃខ្លួនជំរឿន និងការការពារសិទ្ធិមនុស្ស លីកាដូ

LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS

#16, Street 99, PO Box 499, Phnom Penh, Cambodia

Tel: (855) 23 727 102/216 602 • Fax: (855) 23 727 102/217 626 • Email: contact@licadho-cambodia.org

LICADHO MEMO

New Draft Law Reaffirms Culture of Control

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The draft Law on Associations and Non-Governmental Organizations (LANGO) obtained in June 2015 will establish mandatory registration for all domestic and international associations and non-governmental organizations (NGOs), criminalizing all activities by unregistered membership organizations. The requirement to register appears all encompassing and could be interpreted to apply to all organizations from grassroots groups and community based organisations up to major international organizations. Mandatory registration could have a particularly severe impact on the freedom of association of grassroots groups and community based organizations.

The Ministry of the Interior (MOI) will have total discretion over registration approval and the terms of the law could permit politically motivated dismissal of a registration application.

Once registered, all domestic and international NGOs and international associations will be under a vaguely defined obligation to maintain political neutrality. The government will be able to de-register any organization for legitimate reporting or criticism on these grounds. The government has dramatically increased its capacity to take punitive action against associations and NGOs and will have broad discretionary powers to delete groups from the registry, levy disproportionate fines and bring criminal cases against individuals. The law will also allow the government to blacklist individual leaders of de-registered NGOs and associations from ever establishing new organizations. The law grants powers for the government to summarily terminate MOUs with foreign organizations and to deport foreign association and organization staff conducting any type of activities in Cambodia without a valid registration or an MOU.

Finally, there are strict new activity and financial reporting provisions, invasive powers for government audits and onerous requirements to submit all information on leadership changes, financial and donor arrangements.

The government has claimed that the recently approved draft law is identical to the last publicly disclosed draft dated December, 2011. However, an analysis of the recently leaked draft law reveals heavily modified and harmful legislation is about to reach the National Assembly.

This law violates both the Cambodian constitution and obligations under international law. It is unnecessary and must be withdrawn.

Below is a specific breakdown of the key provisions within the approved draft law that have worsened since the December 2011 draft, and the potential impacts on groups operating in Cambodia.

Chapter 1 – Definitions of NGOs and associations

- Article 4 removes explicit reference to community based organizations and now seems likely to catch such organizations within the all-encompassing definition of an association, requiring registration. The potential burden of mandatory registration requirements on grassroots groups and community based organisations could have a severe impact on the freedom of association of such groups. Additionally, the vague framing of definitions could place registration restrictions on a broad range of groups conducting legitimate activities, for example, land activism.

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Provincial Offices: Battambang: (053) 952 828 • Banteay Meanchey: (054) 958 861 • Koh Kong (035) 936 116 • Kampong Cham (042) 941 464 • Kampong Chhnang (026) 988 637
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Chapter 2 – Creation of NGOs and associations and registration of domestic NGOs and associations

- Article 5 establishes stricter criteria for the establishment of a domestic NGO or association; requiring at least 5 founding members, increasing from 3 in the 4th Draft.
- Article 5 also prohibits individuals from founding NGOs or associations if they were previously in a leadership position at a domestic NGO or association deleted from the register by the government, suggesting this legislation will be used to target individuals. The term “leadership position” is unclear, expanding the scope for executive action against domestic NGO and association workers.
- Article 8 has been expanded, using broad discretionary language to permit MOI to deny an application on the grounds that activities, “jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society.” This language is open to wide and politically motivated interpretation and permits the government to effectively prohibit any activity by blocking registration. There is no administrative remedy, only appeal to the court.
- Article 9 has been expanded to ban any kind of activity by all unregistered domestic NGOs and associations as defined by Article 4. This baseline threshold is disproportionately restrictive and could treat the activities of grassroots groups and community based organizations in the same manner as national domestic NGOs and associations. All such activity is now subject to sanction under Article 32 and opens the door to criminal offences under the Penal Code. Previously, unregistered domestic NGOs and associations were denied legal capacity but were still permitted to conduct activities.
- Article 11 inserts powers for the Minister of the Interior to determine conditions and procedures for the establishment and registration of both domestic and foreign NGOs and associations. This means the practical burden of registration remains unknown.

Chapter 3 – Registration of foreign NGOs and associations

- Article 12 establishes a new requirement for short term international NGO or association projects to request approval from the Ministry of Foreign Affairs and International Cooperation through a local partner. Previously, international NGOs and associations were required only to notify the Ministry. There is no specified duration of a short term project.
- Article 13 requires international NGOs and associations to include a letter pledging to disclose all accounts held in Cambodian banks. Articles 12-17 establish the new regime for agreeing an MOU. International NGOs with existing MOUs will now be required to provide bank account details under Article 17.

Chapter 5 – Obligations, political neutrality and government financial audit

- Article 22 removes the obligation to employ Cambodian workers to the maximum extent previously included in the 4th Draft.
- Article 24 vaguely states that political neutrality is required for domestic and international NGOs and international associations, under threat of de-registration. Significantly, this provision does not apply to domestic associations. This provision could be misapplied to suppress legitimate reporting and dissent, with the government responding to criticism by permanently de-registering organizations under the LANGO sanctions regime.
- Article 25 has increased powers to interfere in the internal operations of associations and NGOs that may extend to physical intrusion on premises and seizure of records. It creates additional broad powers for the Ministry of Economy and Finance or the National Audit Authority to conduct audits of associations and non-government organizations. Any references to specific criteria triggering an audit have been removed, allowing for politically motivated use of this provision. The MOI is also empowered



to demand the financial and activity records of domestic associations without justification or accountability. There is no right to appeal and refusal to comply will incur sanctions under Chapter 7. LANGO seeks to place further administrative burdens on domestic NGOs through requirements to deposit copies of all submissions, proposals and financial agreements concluded with donors within 30 days from the date of submission or agreement. This could place board decisions under the supervision of the government. Such provisions indicate the politically motivated intention to inhibit the operational capacity of civil groups, and could have a disproportionate impact on the ability of grassroots groups and community based organizations to satisfy registration criteria.

Chapter 6 – Court ordered disposal of resources after suspension, deletion, or termination of MOU

- Article 29 places the assets and resources of domestic NGOs, and associations at risk of seizure; any domestic NGO or association dissolved or deleted on appeal by a court decision must comply with all court decisions regarding the management of their resources and property. This risk to assets also acts as an inbuilt deterrent against appealing MOI decisions.

Chapter 7 – Punitive sanctions

- Chapter 7 administrative measures have been extended from two articles to seven, indicative of the government's intent to use the law to muzzle civil society. This replaces the regime of ministerial warnings culminating in termination of registration and MOUs with a much stricter regime
- Article 30 provides that domestic NGOs can now be deleted from registry for being found to have breached political neutrality, as well as for violating the now expanding financial reporting obligations. Article 30 also adds broad and vaguely-worded discretionary powers for the Minister to delete domestic NGOs and Associations for activities and objectives which jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society. The government may also suspend or delete domestic associations and NGOs for violation of their own bylaws.
- Article 32 inserts a stringent new fines regime for activities by unregistered domestic NGOs and associations. The article stresses that relevant authorities *must act* immediately in the event of activity conducted by unregistered groups of citizens. In the case of continued activity the MOI may fine unregistered domestic NGOs or associations between 5 million riel up to a maximum of 10 million riel and forward the case for prosecution by the courts. This level of fine could be prohibitively large for grassroots groups and community based organisations. The sanctions regime also applies to domestic NGOs and associations that continue their activities after deletion from the register.
- Article 33 amends sanctions for foreign NGOs and associations, with an initial Ministerial notification with 30 days' notice now being followed directly by termination of MOU. Grounds for termination include continued non-compliance with the financial reporting provisions of Article 17 and 25, and the political neutrality conditions of Article 24.
- Article 34 emphasizes that relevant authorities *must act* on foreign NGOs or associations operating without registration or continuing to operate following the termination of an MOU. Foreign individuals working for unregistered foreign NGOs or associations may be deported, and or subject to further criminal sanction. This poses a particular risk to foreign NGO staff conducting investigations who will be placed under continuous threat of immediate deportation if their organization is summarily de-registered.
- Article 35 establishes additional broad grounds for the termination of an MOU with international NGOs and associations including, "activities which jeopardize peace, stability and public order or harm the national security, national unity, culture and traditions of the Cambodian national society." The article also leaves possible recourse to further criminal punishment. There is no requirement of notification or provision of appeal or remedy against a termination.



- Article 36 adds the unnecessary mention of the potential for criminal punishment of associations or domestic NGOs whose activities jeopardize peace, involve money laundering, finance terrorism or other unlawful activity.

Chapter 8 – Re-registration for existing organisations

- Article 37 removes the obligation to notify the MOI of continued activities with 365 days of the entry into force of LANGO, with any domestic NGO or association that has deposited application dossiers considered as having been registered.
- Article 38 allows for the automatic registration of international NGOs and associations with existing MOUs with the government for the duration of the existing MOU.