Protecting Fundamental Freedoms: A Desk Review of Domestic Legislation and its Compliance with International Law
Cambodian Center for Human Rights (CCHR)

This Legal Review is a publication of the Cambodian Center for Human Rights (“CCHR”). CCHR is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – in particular civil and political rights – in the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia, in which people enjoy their fundamental human rights, are treated equally, are empowered to participate in democracy and share the benefits of Cambodia’s development. CCHR desires rule of law rather than impunity; strong institutions rather than strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished. CCHR’s logo shows a white bird flying out of a circle of blue sky – this symbolizes Cambodia’s claim for freedom.

Acknowledgements

This publication was prepared by the Cambodian Center for Human Rights. It was made possible by the generous support of the United Nations Office of the High Commissioner of Human Rights (“OHCHR”). The contents are the responsibility of CCHR and do not necessarily reflect the reviews of OHCHR.

Queries and Feedback

Should you have any questions or require any further information about this Legal Review, please email CCHR at info@cchrcambodia.org. This Legal Review and previous reports can be found on CCHR’s website at www.cchrcambodia.org, and at the Cambodian Human Rights Portal, www.sithi.org.

Alternatively, please contact CCHR at:
#798, Street 99, Sangkat Boeng Trabek, Khan Chamkarmon, Phnom Penh, Cambodia
Tel: +855 (0) 23 72 69 01
Contents

Acronyms and Definitions ........................................................................................................... iv
1. Introduction .............................................................................................................................. 1
2. International standards on the rights to freedom of expression, association and assembly ....... 3
   2.1. Freedom of Expression ........................................................................................................ 4
   2.1.1. Restrictions to Freedom of Expression ........................................................................... 4
   2.2. Freedom of Assembly .......................................................................................................... 6
   2.2.1. Restrictions to Freedom of Assembly ............................................................................. 7
   2.3. Freedom of Association ....................................................................................................... 11
   2.3.1. Restrictions to Freedom of Association ......................................................................... 12
3. The Constitution of the Kingdom of Cambodia ...................................................................... 16
   3.1. Freedom of Expression, Association and Assembly .............................................................. 17
4. Penal Code of the Kingdom of Cambodia ................................................................................ 18
   4.1. Freedom of Expression ........................................................................................................ 18
   4.2. Freedom of Association ....................................................................................................... 20
5. Electoral Laws .......................................................................................................................... 21
   5.1. Freedom of Expression, Assembly and Association ............................................................. 21
6. The Law on Associations and Non-Governmental Organizations ......................................... 22
   6.1. Freedom of Expression ........................................................................................................ 22
   6.2. Freedom of Association ....................................................................................................... 23
   6.3. Freedom of Assembly .......................................................................................................... 27
7. Law on Peaceful Assembly ...................................................................................................... 28
   7.1. Freedom of Assembly .......................................................................................................... 28
8. Law on Political Parties ........................................................................................................... 31
   8.1. Freedom of Expression ........................................................................................................ 31
   8.2. Freedom of Association ....................................................................................................... 31
9. Press Law .................................................................................................................................. 35
   9.1. Freedom of Expression ........................................................................................................ 35
10. Law on telecommunications and the Prakas on Social Media and Website Control ............. 37
    10.1. Freedom of Expression ....................................................................................................... 37
    10.2. Freedom of Assembly ........................................................................................................ 38
    10.3. 28 May 2018 Inter-Ministerial Prakas on Websites and Social Media Control ................. 38
11. Trade Union Law ..................................................................................................................... 40
    11.1. Freedom of Expression ....................................................................................................... 40
    11.2. Freedom of Assembly ........................................................................................................ 40
    11.3. Freedom of Association ..................................................................................................... 41
12. Conclusion .............................................................................................................................. 45
<table>
<thead>
<tr>
<th>Acronyms</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambodia</td>
<td>Kingdom of Cambodia</td>
</tr>
<tr>
<td>CBO</td>
<td>Community Based Organizations</td>
</tr>
<tr>
<td>CCHR</td>
<td>Cambodian Center for Human Rights</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>Constitution</td>
<td>Constitution of the Kingdom of Cambodia</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Social, Economic and Cultural Rights</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
</tr>
<tr>
<td>ISPs</td>
<td>Internet Service Providers</td>
</tr>
<tr>
<td>LANGO</td>
<td>Law on Associations and Non-Governmental Organisations</td>
</tr>
<tr>
<td>LECC</td>
<td>Law on the Election of Commune Councils</td>
</tr>
<tr>
<td>LEMNA</td>
<td>Law on the Election of Members of the National Assembly</td>
</tr>
<tr>
<td>LGBTI</td>
<td>Lesbian, Gay, Bisexual, Transsexual Individuals</td>
</tr>
<tr>
<td>LPA</td>
<td>Law on Peaceful Assembly</td>
</tr>
<tr>
<td>LPP</td>
<td>Law on Political Parties</td>
</tr>
<tr>
<td>MFA</td>
<td>Ministry of Foreign Affairs and International Cooperation</td>
</tr>
<tr>
<td>MLVT</td>
<td>Minister of Labour and Vocational Training</td>
</tr>
<tr>
<td>MOI</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>MOL</td>
<td>Ministry of Labour</td>
</tr>
<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>RGC</td>
<td>Royal Government of the Kingdom of Cambodia</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
</tr>
<tr>
<td>UNHRC</td>
<td>United Nations Human Rights Committee</td>
</tr>
</tbody>
</table>
Executive Summary

At the time of writing this first edition of the Cambodian Center for Human Rights’ (“CCHR”) Legal Review, an array of repressive tactics, including intimidation, judicial harassment, threats, violence, arbitrary arrest and detention are being used in the Kingdom of Cambodia (“Cambodia”) to suppress civil society, in particular human rights defenders (“HRDs”), activists, trade union representatives, journalists and political opponents. This has largely diminished the space for the exercise of fundamental freedoms, including the rights to association, expression and assembly. This crackdown has been facilitated by the arbitrary application of laws governing these freedoms and the enactment of legislative amendments which further curtail them.

The freedoms of expression, association and assembly are enshrined in numerous international human rights treaties and are incorporated into domestic law by virtue of the Constitution of the Kingdom of Cambodia (“Constitution”). As such, the Royal Government of Cambodia (“RGC”) is obliged to respect, protect and, in some cases, promote these rights to all peoples within their jurisdiction, irrespective of an individual’s citizenship.\(^1\) However, despite this obligation, and the fact that these rights are indeed protected by the domestic legal framework, certain pieces of legislation continue to contradict these standards.

In line with its obligations under international law, specifically Article 2(2) of the International Covenant on Civil and Political Rights (“ICCPR”), the RGC is required to take all necessary steps to adopt laws or other measures to give effect to the rights enshrined in the ICCPR.\(^2\) This Legal Review serves to assist in this endeavour by (1) outlining the applicable international legal standards in relation to the fundamental freedoms of expression, assembly and association and (2) surveying the main legal instruments in the Cambodian legislative framework to highlight key areas in which these standards are not met.

The list of laws surveyed is not exhaustive – instead, this Legal Review targets key pieces of legislation that potentially unlawfully restrict fundamental freedoms. It should also be noted that where the laws under scrutiny are indeed compliant with international standards, details of their compliance have not been included. Instead, focus is paid to areas where restrictions of fundamental freedoms are in contradiction to international law, in order to highlight target areas for advocacy.

The analysis demonstrates that a number of provisions within the domestic legal framework of Cambodia do not fully comply with international human rights law and standards on fundamental freedoms. This is particularly concerning in light of the current human rights landscape in Cambodia. CCHR recommends that the RGC amends the provisions highlighted in this Legal Review to ensure that they are brought in line with international standards set out in the ICCPR. In particular, any restrictions which are not in line with international human rights law should be removed, and provisions which impose onerous requirements for the exercise of freedoms should be amended to ensure any such requirements are proportionate and necessary. Where freedoms are legitimately restricted by domestic legislation, any penalties for breach of this legislation must also be proportionate. Further, the RGC should consider amending provisions which are vaguely or broadly defined, to avoid the risk of arbitrary application and abuse by authorities.

CCHR encourages the RGC to act on these recommendations in order to strengthen respect and protections for fundamental freedoms within Cambodia.

---

\(^1\) Article 2(1) of the International Covenant on Civil and Political Rights and UN Human Rights Committee, General Comment 15, ‘The position of Aliens Under the Covenant’, 11 April 1986, para 1 “the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness,” and para 7 “[aliens] have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association”, https://www.refworld.org/pdfid/45139acfc.pdf.

1. Introduction

During the past few years in the Kingdom of Cambodia ("Cambodia"), there has been an increase in the use of repressive tactics, including intimidation, judicial harassment, threats, violence, arbitrary arrest and detention to suppress civil society, in particular human rights defenders ("HRDs"), activists, trade union representatives, journalists and political opponents. This has largely diminished the space for the exercising of fundamental freedoms, including the rights to association, expression and assembly. This crackdown has been facilitated by the arbitrary application of laws governing these freedoms and the enactment of legislative amendments which further curtail them.

The freedoms of expression, association and assembly are enshrined in numerous international human rights treaties and are incorporated into domestic law by virtue of the Constitution of the Kingdom of Cambodia ("Constitution"). As such, the Royal Government of Cambodia ("RGC") is obliged to respect, protect and, in some cases, promote these rights to all peoples within their jurisdiction, irrespective of an individual’s citizenship. However, despite this obligation, and the fact that these rights are indeed protected by the Cambodian legal framework, certain pieces of legislation continue to contradict these standards.

In line with its obligations under international law, specifically Article 2(2) of the International Covenant on Civil and Political Rights ("ICCPR"), the RGC is required to take all necessary steps to adopt laws or other measures to give effect to the rights enshrined in the ICCPR. The United Nations ("UN") Human Rights Committee have stipulated that unless ICCPR rights are already protected by domestic laws or practices, state parties are required to make changes to domestic laws and practices to ensure their conformity with the ICCPR. Where there are inconsistencies between domestic law and the ICCPR, domestic law or practice must be changed to meet the standards imposed by the ICCPR’s substantive guarantees.

This first edition of Cambodian Center on Human Rights’ ("CCHR") Legal Review serves to assist in this endeavour by (1) outlining the applicable international legal standards in relation to the fundamental freedoms of expression, assembly and association and (2) surveying the main legal instruments in the Cambodian legislative framework to highlight key areas in which these standards are not met. It is hoped that this exercise will serve two purposes. Firstly, it will increase knowledge of these rights to enable Cambodian citizens to better advocate for themselves. A public poll conducted under CCHR’s Fundamental Freedoms Monitoring Project highlighted a limited understanding of fundamental freedoms. Freedom of association was least understood, with only 3% of respondents demonstrating full knowledge of their rights. This suggests that a large proportion of the Cambodian public may be unable

---

3 Article 2(1) of the ICCPR and UN Human Rights Committee, General Comment 15, ‘The position of Aliens Under the Covenant’, 11 April 1986, para 1 “the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness,” and para 7 “[aliens] have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association”, https://www.refworld.org/pdfid/45139afdcf.pdf.


5 Ibid., para 13.

6 Ibid.


8 Ibid.

---
to identify occurrences when their fundamental freedoms are restricted. Moreover, the poll also showed that a significant proportion of participants displayed an incomplete knowledge of the legal restrictions to the freedoms of expression and association in domestic legislation, resulting in respondents believing that some aspects of laws pertaining to freedom of association and expression are more restrictive than they actually are, which could lead to a feeling of being less able to exercise their rights. It is hoped this Legal Review serves to remedy these issues and contribute to a more informed understanding of the fundamental freedoms both internationally and in the Cambodian context, allowing individuals to confidently assert their rights. Secondly, it is hoped this Legal Review can be used to inform and define advocacy efforts to strengthen the legislative framework in Cambodia.

The list of laws surveyed is not exhaustive – instead, this Legal Review targets key pieces of legislation that potentially unlawfully restrict fundamental freedoms. It should also be noted that where the laws under scrutiny are indeed compliant with international standards, the details of this have not been included. Instead, focus is paid to areas where restrictions of fundamental freedoms are in contradiction to international law, in order to highlight target areas for advocacy.
2. International standards on the rights to freedom of expression, association and assembly

<table>
<thead>
<tr>
<th>Freedom of Expression</th>
<th>Freedom of Association</th>
<th>Freedom of Assembly</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Universal Declaration of Human Rights</td>
<td>Article 19</td>
<td>Article 20</td>
</tr>
<tr>
<td>The International Covenant on Civil and Political Rights</td>
<td>Article 19</td>
<td>Article 22</td>
</tr>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights</td>
<td>Article 15</td>
<td>Article 8</td>
</tr>
<tr>
<td>ILO Conventions</td>
<td></td>
<td>N. 87 (1948), N. 98 (1949)</td>
</tr>
</tbody>
</table>

Figure 1 International Conventions governing the fundamental freedoms to which Cambodia is a party.

The fundamental freedoms are enshrined in numerous human rights treaties to which Cambodia is a party and serve as a “critical measure of a pluralistic and tolerant society and as a key to participatory rights in its political life.” These instruments are directly applicable in Cambodian domestic law by virtue of Article 31 of the Constitution. In addition, Cambodia has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities, which contain protections for the right to freedom of association in Articles 26 and 40, and Article 29, respectively. Cambodia has also ratified all eight fundamental conventions of the International Labour Organisation (“ILO”), including Convention No. 87 on Freedom of Association and Protection of the Right to Organize, and Convention No. 98 on the Right to Organize and Collective Bargaining.

With the exception of freedom of thought, conscience and religion (a component of freedom of expression), these rights to freedom of expression, association and assembly are not absolute. The state can under certain conditions restrict these rights. The grounds on which a state may restrict rights are enumerated in the treaties and include national security, public order or public health for example. The vagueness of these terms would appear to give states a large margin of appreciation when restricting rights. However, it is clear from the jurisprudence of human rights bodies that restrictions on these freedoms can only be justified if they are provided for by law, necessary and proportionate, and do not impair the essence of the right. The following sections outline the content of the rights to freedom of expression, association and assembly under international law and discuss the necessary criteria that must

---

be met for restrictions of these rights to be considered lawful under international human rights law. Focus is paid to the standards set by the ICCPR as these are of most relevance to Cambodia.

2.1. Freedom of Expression

The right to freedom of expression is recognized across international human rights instruments and constitutes an essential foundation of a democratic society. Article 19 of the ICCPR requires state parties to guarantee “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Article 19 International Covenant on Civil and Political Rights
1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have 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, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

The UN Human Rights Committee ("UNHRC") have found freedom of expression to include the expression and receipt of every form of idea and opinion, which can somehow be transmitted. This includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising. Article 19(2) of the ICCPR explicitly protects all forms of expression and the means of their dissemination. Forms of expression include spoken, written and sign language and non-verbal expression such as imagery or objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress, legal submissions and all forms of audio-visual as well as electronic and internet-based modes of expression.

2.1.1. Restrictions to Freedom of Expression

Freedom of expression is not absolute and may be restricted in accordance with Article 19(3) of the ICCPR. Any limitation must be:

(a) provided for by law; and
(b) necessary to protect the rights or reputations of others, and/or national security, public order (ordre public), public health, or morals.

---

11 Ibid., para 11.
12 Ibid.
When it comes to curtailing freedom of expression, the state does not enjoy a wide margin of appreciation and the UNHRC does not defer to the judgment of the state in this regard. The list of permissible grounds for restriction in Article 19(3) is exhaustive, and any measure taken on these grounds must additionally meet the strict tests of necessity and proportionality, and be applied only for the purposes for which they were prescribed.

- **Laws that restrict the freedom of expression must be ‘provided for by law.’**

This is a basic principle derived from the rule of law and necessitates that all laws be made public. Substantively, it requires any law to meet the test of legal certainty, i.e. it must be formulated in a definite and clear manner, be foreseeable and without retroactive effect. In essence, an individual should be able to determine from the content of the law what types of expression are restricted and regulate their behaviour as such. Generic bans are often incompatible with international human rights law, and a law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.

- **Restrictions must pursue a legitimate aim, be necessary and proportionate.**

The burden is on the state to specify the legitimate aim of a particular restriction. The state party must be able to demonstrate in a specific and individualized fashion that the measure is necessary to target the precise nature of the threat, by establishing a direct and immediate connection between the expression and the threat. The measure must also be proportionate, meaning that the restriction should not go further than is strictly necessary to achieve the legitimate aim. Accordingly, if the State has different ways of achieving the aim, it should choose the least intrusive measure. Legitimate aims are listed in the text of the ICCPR – this list is exhaustive. Public order refers to the sum of rules ensuring the peaceful and effective functioning of society, while national security refers to the political independence and/or territorial integrity of the State. However, national, political or government interest is not synonymous with national security or public order.

When reviewing the legitimacy of restrictions on freedom of expression, the UNHRC takes into account the form of expression at stake as well as the means by which it is being disseminated. For example, it has held that, in the context of political discourse, the value placed upon uninhibited freedom of expression is “particularly high” and therefore closer scrutiny is paid to any measure that limits freedom of expression in relation to public debate regarding figures in the public and political domain.

---

16 UN Human Rights Committee, General Comment 34, ‘Article 19: Freedoms of opinion and expression’ (12 September 2011) UN Doc CCPR/C/GC/34, para 25, [https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf](https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf).
22 UN Human Rights Committee, General Comment 34, ‘Article 19: Freedoms of opinion and expression’ (12 September 2011) UN Doc CCPR/C/GC/34, para 38, [https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf](https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf).
freedom of expression also protects those ideas and opinions which may “offend, shock or disturb” as such are the demands of pluralism and tolerance within a “democratic society.” Therefore, in any event, under international human rights law, permissible restrictions on freedom of expression may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.

The UNHRC has highlighted the importance of ensuring that the national security exception provided for by Article 19(3) is not employed to “suppress or withhold from the public information of legitimate public interest” or for the prosecution of journalists, researchers, environmental activists, human rights defenders, or others.

- Defamation laws must be crafted in a way that they do not in practice stifle the freedom of expression.

While defamation laws may permissibly restrict freedom of expression to protect the reputation of others, it has been made clear that such laws, in order to comply with Article 19(3) of the ICCPR, must afford a measure of protection against arbitrary interference by public authorities and against the extensive application of rights restrictions. Defamation laws must always include defences such as the defence of truth. In addition, public interest should be recognized as a defence for cases in which there is evident public interest in the subject matter of the statement under scrutiny.

The UNHRC has highlighted that care should be taken by states “to avoid excessively punitive measures and penalties” and where possible defamation should be decriminalized. For example, the arrest and detention of an author for publication of a journalist critical of the government was found by the UNHRC to have violated Article 19. Given “the paramount importance, in a democratic society, of the right to freedom of expression and of a free and uncensored press or other media” it was held that “the severity of the sanctions imposed on the author [could] not be considered as a proportionate measure to protect public order or the honor and the reputation of the President.”

2.2. Freedom of Assembly

The right to peaceful assembly, recognized by Article 21 of the ICCPR, is essential for the enjoyment of other human rights and freedoms, including the freedoms of association and expression. This right

---

23 European Court of Human Rights, Handyside v the United Kingdom App no. 5493/72 (7 December 1976), para 49, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57499%22]}.
26 Ibid., para 30.
27 European Court of Human Rights, Bakir and Others v. Turkey App no. 46713/10 (10 July 2018), paras 53 and 54.
includes the right to participate in peaceful assemblies, meetings, protests, strikes, sit-ins, demonstrations, and other temporary gatherings for a specific purpose.\textsuperscript{31}

**Article 21 International Covenant on Civil and Political Rights**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the 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.

Best practice requires a legal presumption in favor of holding peaceful assemblies – this should be clearly and explicitly established in national law (either through the constitution or other laws governing peaceful assemblies).\textsuperscript{32}

### 2.2.1. Restrictions to Freedom of Assembly

Enjoyment of freedom of assembly is not absolute. The first limitation is the fact that it is confined to peaceful assemblies. Riots and affrays therefore do not fall under the scope of Article 21. This does not, however, mean that states do not have any human rights obligations when it comes to responding to violent assemblies. Indeed, international human rights bodies and tribunals have found that the use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force.

The second set of permissible limitations are set out in Article 21 of the ICCPR. Any restriction to the right must be:

- imposed in conformity with the law;
- in pursuit of a legitimate aim; and
- necessary in a democratic society.

Generally, any measure taken by the authorities that may have an adverse impact on the exercise of the right to freedom of assembly will constitute a restriction which needs to satisfy the requirements set out in Article 21 – i.e. it must pursue a legitimate aim and be necessary and proportionate (as described above in relation to freedom of expression). Additionally, it must not be discriminatory – for example, states cannot prohibit foreigners or non-nationals from participating in peaceful demonstrations.\textsuperscript{33}

- **Any restriction to freedom of assembly must be provided for in national law, and the national law itself must be in accordance with international law.**

The requirement that restrictions be “in conformity” with the law is different from that found in Articles 19 (freedom of expression) and 22 (freedom of association), which require limitations to be “provided” or “prescribed” by law. Commentary has suggested that “this difference in formulation permits the exercise


\textsuperscript{33} Ibid., para 2.5, [https://www.osce.org/odihr/73405?download=true](https://www.osce.org/odihr/73405?download=true).
of more administrative discretion in imposing limits to Article 21, such as prior notice requirements, compared to the other mentioned articles, which stipulate that restrictions should be more carefully circumscribed by law.\textsuperscript{34}

- Domestic authorities are permitted to request advance notification of an assembly, where this is to allow State authorities to facilitate this exercise and to take measures to protect public safety and order and the rights and freedoms of others.\textsuperscript{35}

The European Court of Human Rights ("ECtHR") has held that "notifications, and even authorization procedures, for a public event do not normally encroach upon the essence of the right [of freedom of assembly] as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering."\textsuperscript{36} Where notification requirements are not in pursuit of a legitimate aim, they have been held to constitute an unjustified restriction.\textsuperscript{37} International best practice recommends only requiring notice when a substantial number of participants are expected, or only for certain types of assembly, such as assemblies where disruption is reasonably expected by the organizers.\textsuperscript{38} Authorities should not propose or negotiate an alternative time and place for an assembly when processing a notification – this would constitute a restriction and would have to satisfy the three-fold test.\textsuperscript{39}

The best practice is to allow organizers to notify the designated primary authority of the holding of a peaceful assembly in the simplest and fastest way, by filling, for instance, a clear and concise form, available in the main local language(s) spoken in the country, preferably online to avoid uncertainties and possible delays in postage.\textsuperscript{40} The notification should merely contain information regarding the date, time, duration and location or itinerary of the assembly, and the name, address and contact details of the organizer.\textsuperscript{41}

\begin{thebibliography}{9}


\bibitem{36} European Court of Human Rights, \textit{Kudrevičius and others v Lithuania}, App no. 37553/05 (15 October 2015), para 147, \url{https://hudoc.echr.coe.int/eng#{%22itemid%22:[$%22001-158200%22]}}.


\bibitem{40} Ibid., para 53.

\bibitem{41} Ibid.
\end{thebibliography}
While the UNHRC has not taken a decisive position on authorization requirements, it has made clear that any procedure in place must not operate in a way that is incompatible with the object and purpose of Article 21 of the ICCPR.  

Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. The imposition of any sanction – however minor – amounts to a restriction of the right to freedom of assembly and thus requires a clear justification in line with the three-part test. The ECtHR has held there must be “aggravating elements” before a penalty can be imposed for failure to give notice of an assembly.

- Blanket bans on peaceful assembly for reasons of national security, public safety or public order are prohibited.

Blanket bans on peaceful assembly for reasons of national security, public safety or public order are prohibited – such bans preclude the consideration of the specific circumstances of each assembly, and would therefore be intrinsically disproportionate and discriminatory (as they impact on all citizens willing to exercise their right to freedom of peaceful assembly).

- Whenever authorities decide to restrict an assembly and the restriction satisfies the three-fold test, they should provide assembly organizers, in writing, with “timely and fulsome reasons” for the denial. This decision must be capable of appeal before an independent and impartial court or tribunal.

Where a restriction is imposed, the organizers of the assembly should be able to appeal before an independent and impartial court, which should take a decision promptly. They should be given the possibility of an expedited appeal procedure, with a view to obtaining a judicial decision by an independent and impartial court prior to the notified date of the assembly. The decision of the regulatory authority and of the appeal court should be published for the purposes of transparency and fairness.

---

45 European Court of Human Rights, Novikava and Others v Russia App nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13 (26 April 2016), para 199, https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-162200%22}.
possibly on a specific website. The ECtHR has held that an appeal decision should be issued and capable of being enforced before the planned date of the assembly.

- **State authorities are to facilitate freedom of assembly and to take measures to protect public safety and order and the rights and freedoms of others.**

States must ensure the safe and effective conduct of the right to assemble, including by training law enforcement personnel, communicating effectively with organizers and participants, and being properly prepared for the assemblies. This obligation also applies to assemblies that have not been formally notified to the authorities, such as spontaneous assemblies.

In the case of simultaneous assemblies at the same place and time, it is good practice to allow, protect and facilitate all events, whenever possible. With this in mind, authorities have an obligation to ensure counter-demonstrations do not have the effect of inhibiting another group’s right to assembly.

The cost of protecting and facilitating the assembly (such as deploying security barriers, medical services or temporary sanitary facilities) should not be borne by the organizers.

- **The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality.**

The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least harmful means available), which is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat. In addition


53 Ibid.


58 Ibid.

59 Ibid.
to complying strictly with the principles of proportionality and necessity, international best practice provides that states should take precautionary measures to prevent the need for the use of force from arising in the first place.\footnote{Ibid., paras 50 and 52.}

International guidelines provide that legal frameworks should restrict the use of weapons and tactics during assemblies and protests, and include a formal approval and deployment process for weaponry and equipment.\footnote{Ibid., para 51.} Precautionary measures require that all feasible steps be taken in planning, preparing, and conducting an operation related to an assembly to avoid the use of force or, where force is unavoidable, to minimize its harmful consequences.\footnote{Ibid., para 52.}

In particular, this requires:

(a) Proper training: states must ensure that their law enforcement officials are periodically trained in and tested on the lawful use of force, and on the use of the weapons with which they are equipped.\footnote{Ibid., para 52.}

(b) A clear and transparent command structure: to minimize the risk of violence or use of force, and to ensure responsibility for unlawful acts or omissions by officers.

(c) Proper record keeping of decisions made by command officers at all levels and equipment provided to individual officers in an operation, including vehicles and weapons.

(d) Clear, individual identification of law enforcement officials – for example, through displaying a nameplate or number.

Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making force necessary). Firearms should never be used simply to disperse an assembly – indiscriminate firing into a crowd is always unlawful.\footnote{UN Human Rights Council, ‘Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies’, (4 February 2016) UN Doc. A/HRC/31/66, paras 59-60, \url{https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf}.}

2.3. Freedom of Association

The right to freedom of association is recognized internationally across human rights instruments.\footnote{See Article 11 of the European Convention on Human Rights, Article 16 of the American Convention on Human Rights and Article 10 of the African Charter on Human and People’s Rights.} Article 22 of the ICCPR protects the right of individuals to form, join and participate in groups to pursue common interests. These can include civil society organizations (“CSOs”), trade unions, political parties, corporations or even sports teams. Associations can pursue a broad range of objectives, including the protection of fundamental freedoms. In general, any objective will be permissible provided it is “legal” or “lawful.”

**Article 22 International Covenant on Civil and Political Rights**

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. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

The right to form and participate in trade unions specifically, is explicitly guaranteed by Article 8 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), as well as in the ILO Conventions No. 8766 and No. 98,67 A crucial element of the right to freedom of association is the right not to be compelled to join an association.68

2.3.1. Restrictions to Freedom of Association

Any restriction on the right to freedom of association must be:

(a) provided for by law;
(b) imposed in the interest of national security, public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others; and
(c) necessary in a democratic society for achieving one of these interests.

Article 22(2) of the ICCPR contains a list of permissible limitations to the exercise of the right of freedom of association. These are identical to those found in Articles 19. Recognising the importance of the existence and functioning of a plurality of associations, “including those which peacefully promote ideas not favourably received by the government” as a cornerstone of a democratic society,69 the UNHRC has been very strict when assessing limitations to the right to freedom of association. As is the case in relation to freedom of expression, any restriction must be prescribed by law in the manner described above. Similarly, it must be necessary and proportionate. It is not enough for a state to demonstrate that a limitation is reasonable and justified – it must also be able to show that it is the least intrusive measure available to protect the objectives allowed under Article 22(2).70

Article 8(1) of the ICESCR, which specifically covers the right to form trade unions and the right to strike, adds a further layer of protection for individuals by stating that they are to be subjected only to the rules of the organization concerned. Therefore, when it comes to trade unions, the state authorities are to refrain from interfering with their activities in any way that may restrict this right or impede their lawful exercise.71

68 Article 20, Universal Declaration of Human Rights.
70 Ibid.
• Procedural formalities for recognition of associations must not be so burdensome as to amount to a substantive restriction on Article 22 rights.

While individuals are not required to form a legal entity to enjoy freedom of association, international law protects the right of individuals to create a legal entity should they wish. There is no requirement under international human rights law that associations be registered; on the contrary, the right to freedom of association equally applies to unregistered associations.\(^\text{72}\) Whether a state uses a “declaration” or “registration/incorporation” system to do this, international human rights law dictates that any procedures should be transparent and fair.\(^\text{73}\) Namely, they should encompass simple, non-onerous, expeditious, or even free procedures. Importantly, any processes should be void of measures that disproportionately target or burden CSOs, such as by imposing onerous vetting rules, procedures, or other association-specific requirements that are not imposed on for-profit entities, including the need to ask permission to form an association in the first place.\(^\text{74}\) Any significant delays in the registration procedure, if attributable to the authorities, amount to an interference with the right of the association’s founders to freedom of association.\(^\text{75}\) Further, newly adopted laws should not require all previously-registered associations to re-register.\(^\text{76}\) This ensures that existing associations are protected against arbitrary rejection and hiatuses in the conduct of their activities.

State parties should not implement legislation that sets any specific limitation on individuals—including children, foreign nationals, ethnic or linguistic minorities, Lesbian, Gay, Bisexual, Transsexual and Intersex (“LGBTI”) individuals, and women—regarding the registration of associations.\(^\text{77}\) The ILO has also held that “the existence of an organization in a specific occupation should not constitute an obstacle to the establishment of another organization, if the workers so wish.”\(^\text{78}\) Thus, any domestic provisions prohibiting the creation of more than one trade union for a given occupational or economic category, regardless of the level of organization, are not compatible with the principles of freedom of association.\(^\text{79}\)


Where the State denies an association’s registration or legal personality, it must meet the three-part test for restricting the right to freedom of association described above.\textsuperscript{80} A restriction that does not meet these requirements is deemed arbitrary. Decisions rejecting the submission or application for registration must be clearly motivated and duly communicated in writing to the applicant.\textsuperscript{81} Moreover, individuals must have the opportunity to challenge the decision before an independent and impartial judicial authority.\textsuperscript{82}

- **Authorities must refrain from interfering in the internal affairs of an association and respect associations’ right to privacy, as stipulated in Article 17 of the ICCPR.**\textsuperscript{83}

Authorities should not be entitled to: condition the decisions and activities of an association; reverse an election of board members; condition the validity of board members’ decisions on the presence of a Government representative at the board meeting or request that an internal decision be withdrawn; request associations to submit annual reports in advance; or enter an association’s premises without notice.\textsuperscript{84} Although independent bodies possess a right to examine the associations’ records as a means of ensuring transparency and accountability, such procedures should not be arbitrary and must respect the principle of non-discrimination and the right to privacy, as it would otherwise put the independence of associations and the safety of their members at risk.\textsuperscript{85}

With regards to reporting requirements specifically, international human rights law allows states to impose reporting requirements on associations if they are established to pursue the legitimate interests of transparency and accountability.\textsuperscript{86} However, international standards require that such reporting obligations are not arbitrary or burdensome.\textsuperscript{87} In addition, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that reporting requirements must respect the principle of non-discrimination and the right to privacy.\textsuperscript{88} If an association fails to comply with its reporting obligations, such minor violations of the law should not lead to the closure of the association or criminal prosecution of its representatives; rather, the association should be requested to promptly rectify its situation.\textsuperscript{89}


\textsuperscript{81} Ibid.

\textsuperscript{82} Ibid.

\textsuperscript{83} Ibid.

\textsuperscript{84} Ibid.

\textsuperscript{85} Ibid.


\textsuperscript{87} Ibid.

\textsuperscript{88} Ibid.

\textsuperscript{89} Ibid.

The ability for associations to seek, receive and use resources from domestic, foreign, and international sources is an integral and vital part of the right to freedom of association. The term “resources” broadly includes financial transfers, in-kind donations, material resources, human resources, and more. The receipt of domestic or foreign funding should not be subject to the approval of the authorities, and both registered and unregistered associations should have the freedom to seek and secure funding and resources from domestic, foreign, and international entities.

Undue restrictions to funding, including percentage limits, have been found to violate freedom of association. The Declaration on Human Rights Defenders provides useful guidance on this issue. Article 13 states that “everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.” This provision is important because it makes no distinction between the sources of funding, be it from domestic, foreign, or international sources, furthermore, “it makes clear that not only legally registered associations, but also individuals – and therefore associations which have no legal status, such as unregistered associations – are eligible to access funding.”

In relation to financial reporting, The UN Human Rights Council has called upon states to ensure that reporting requirements “do not discriminatorily impose restrictions on potential sources of funding.”

The African Commission on Human and Peoples’ Rights has adopted guidelines on freedom of association and assembly which outline conditions for reporting which may not be considered burdensome. These provide some guidance as to best practices and include the laying out of the reporting requirements in one piece of legislation, the fact that reports should not require excessive details, and that the financial reporting requirements should be proportionate to the size and scope of the organization. The draft guidelines also note that in no circumstances shall not-for-profit associations be subjected to greater reporting requirements than for-profit entities.

---


92 Ibid., para 10.


94 Ibid.


98 Ibid., para 15.


100 Ibid., para 49.
• The right to freedom of association obliges states to take positive measures to establish and maintain an enabling environment in which associations may operate.\textsuperscript{101}

Associations must be able to operate without fear of subjection to any threats, acts of intimidation, or violence, including summary or arbitrary executions, enforced or involuntary disappearances, arbitrary arrest or detention, torture or cruel, inhuman or degrading treatment or punishment, smear campaigns in the media, travel bans, or arbitrary dismissal, notably for unionists.\textsuperscript{102}

• Where the right to freedom of association is unduly restricted, the victim(s) should have the rights to obtain redress and to fair and adequate compensation.\textsuperscript{103}

States are obligated to put into place procedural safeguards to ensure an effective remedy for violation of the right to freedom of association.\textsuperscript{104} A failure to investigate allegations of violations, or a failure to ensure that those responsible are brought to justice, could, in and of itself, give rise to a breach of the state’s international obligations.\textsuperscript{105} Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly, and effectively through independent and impartial bodies.\textsuperscript{106} Effective remedies include establishing accessible and effective complaint mechanisms that are able to independently, promptly, and thoroughly investigate allegations of human rights violations or abuses.\textsuperscript{107} Furthermore, for states to adequately discharge their duty to protect the right to freedom of association, they should promote awareness of, and access to information about relevant policies, practices and remedies for violations.\textsuperscript{108}

The following chapters of this Legal Review assess key pieces of legislation against these standards.

3. The Constitution of the Kingdom of Cambodia

The Constitution,\textsuperscript{109} adopted by the Constitutional Assembly on 21 September 1993, contains both explicit protections for the rights of Cambodian citizens, and also incorporates international human rights instruments into domestic legislation. The freedoms of expression, association and assembly are all protected by the Constitution. Specifically, Article 31 gives constitutional status to the human rights contained in the ICCPR, the ICESCR, the Universal Declaration of Human Rights (“UDHR”), the Convention


\textsuperscript{102} Ibid., para 63.

\textsuperscript{103} Ibid., para 81.

\textsuperscript{104} Ibid., para 77.


\textsuperscript{106} Ibid., para 15.


on the Elimination of all Forms of Discrimination Against Women ("CEDAW"), and the Convention on the Rights of the Child ("CRC").

The Constitution outlines the fundamental principles on which the state is governed. It is the supreme law and the yardstick by which all legislation is judged. This means that any legislation that violates the Constitution, can be challenged and struck down by the courts.

In February 2018 the Constitution was amended to include a number of provisions that potentially restrict the protection afforded to fundamental freedoms.

3.1. Freedom of Expression, Association and Assembly

- Article 42 of the Constitution specifically protects the right to establish associations and political parties and protects the right of Khmer citizens to “take part in mass organizations to work together to protect national achievement and social order.”

The rights enshrined in Article 42 are narrower than required by international human rights law in that they are limited to Cambodian citizens only. International human rights law stipulates that freedom of association (as well as other fundamental rights) applies to all people within a state’s jurisdiction.110

- Articles 42 (2) New and 49 (2) New, forming part of the package of the February 2018 Constitutional amendments, require political parties and every Khmer citizen respectively to “primarily uphold the national interest” and require that they “shall not conduct any activities” which “directly or indirectly” affect “the interests” of the Kingdom of Cambodia and of Khmer citizens.

As well as the issue that these articles only apply to Khmer citizens as discussed above, the larger concern is the fact that the amendments place undue restrictions on the right to freely associate. For these restrictions to be permissible, they must be (a) provided for by law, (b) imposed in the interest of national security, public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others, and (c) necessary in a democratic society for achieving one of these interests. The requirement that associations and political parties “primarily uphold the national interest” does not appear to meet the strict parameters of this test. Firstly, the expression “national interest” is overly broad and unduly vague, it is not clear what legitimate aim is being protected. While the expression could indeed encompass “the rights and freedoms of others” or “the protection of national security or of public order,” they appear to go above and beyond such strictly defined aims. Indeed, practice has shown that the authorities have equated “national interests” with “interests of the ruling party” and have considered any critic of public policies – real or perceived – as being against the “national interest.” Further, the two amended articles fail to meet the requirement of necessity, since the vague language could be interpreted to undermine the principles of pluralism, tolerance, and broadmindedness111 by restricting political parties from undertaking activities that are essential to a democratic society.

---

110 Article 2(1) ICPR and UN Human Rights Committee, General Comment 15, ‘The position of Aliens Under the Covenant’, 11 April 1986, para 1 “the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness,” and para 7 “Aliens receive the benefit of the right of peaceful assembly and of freedom of association”, https://www.refworld.org/pdfid/45139acfc.pdf.

Under international human rights law, “[t]he right to freedom of association necessarily entails the freedom [...] to decide and engage in activities of their own choosing.”\textsuperscript{112} However, these articles seek to limit the activities of associations and political parties by imposing the restriction that any activity must not “directly or indirectly” affect “the interests” of the Kingdom of Cambodia and of Khmer citizens. Again, the language used here is extremely vague making it difficult for individuals to know what type of conduct may fall under the provision. A plain reading does not limit such impact to a negative one, thereby rendering the type of activities falling under the scope of these articles virtually limitless, allowing for possible arbitrary application of the provision.

- **Article 53** New reads “the Kingdom of Cambodia absolutely opposes any interference from abroad conducted through any forms into its own internal affairs."

While the vagueness of the provision and the lack of further legislation on the subject make it difficult to know whether fundamental freedoms will be detrimentally affected via its application, the fact that such a provision was inserted into the Constitution, despite the fact that it already contained articles protecting Cambodia’s sovereignty, gives rise to suspicions that it may have been included with the aim to serve as a legal basis to further restrict human rights and fundamental freedoms. In particular, it could be used to discriminate against non-Khmer citizens’ activities, including some perceived as contrary to the interests of the RGC, or to prevent legitimate activities of foreign-based CSOs, media outlets or journalists, or NGOs receiving foreign funding.

4. **Penal Code of the Kingdom of Cambodia**

The Penal Code of the Kingdom of Cambodia (“the penal code”) contains various offences that infringe on the rights to freedom of expression and association. Of particular concern is the addition of the offence of insulting the king which has been arbitrarily used to target and silence voices critical of the government.

4.1. **Freedom of Expression**

- **On 27 February 2018, the Cambodian Penal code was amended, and Article 437 bis was adopted creating the offense of ‘insulting the King.’** It defines an insult as “any speeches, gestures, writings, paintings or objects that are affecting the dignity” of the King, applies to both individuals and legal entities,\textsuperscript{113} and sets out severe penalties, including automatic imprisonment.

The offense contained in Article 437 bis imposes restrictions on freedom of expression which fail to meet the requirements of Article 19(3) of the ICCPR. The formulation of the criminal conduct is overly vague, and there is no definition of what kind of speeches, gestures, writings, paintings or objects would constitute the offense, thereby preventing an individual or legal entity from knowing what type of speech or conduct would constitute an offense under Article 437 bis. Further, the overly broad language means that even the private actions of individual staff or members of legal entities could conceivably be used to impute criminal responsibility to the legal entity – making the offense insufficiently precise to meet the threshold of “prescribed by law.” The required effect of the actions is also unclear: “affecting the dignity”


\textsuperscript{113} Legal entities can be held criminally responsible under Article 42 of the Penal code, which reads: “where expressly provided by law and statutory instruments, legal entities, with the exception of the State, may be held criminally responsible for offences committed on their behalf by their organs or representatives. The criminal responsibility of legal entities shall not preclude that of natural persons for the same acts.”
is too vague of a formulation, precluding any individual from understanding what type of behavior is
criminalized, and opening the door for arbitrary use and misinterpretation.

The penalties are also disproportionate compared to the aim sought – protecting the dignity of the King.
International human rights law unequivocally states that public figures must withstand a higher level of
criticism, the mere fact that forms of expression are considered to be insulting to a public figure is not
sufficient to justify the imposition of penalties.\textsuperscript{114} The wording of Article 437 bis – “one to five years \textit{and}
a fine” (emphasis added) – means that a sentence of imprisonment would be automatic upon a conviction,
which is unduly severe. Further, the fines imposed – from 2,000,000 Riel (about 500 USD) to 10,000,000
Riel (about 2,500 USD) are unjustifiably high, taking into account that the minimum wage for garment
workers in Cambodia is about 170 USD per month.\textsuperscript{115} Similarly, while the law should not impose more
severe penalties solely on the basis of the identity of the person who may have been impugned,\textsuperscript{116} the
penalties imposed by Article 437 bis are disproportionately high when compared to the one to six days
imprisonment and 1,000 Riel (about 0,25 USD) to 100,000 Riel (about 25 USD) provided for in case of
insult of a public official, which covers the same type of behaviour.\textsuperscript{117} Finally, the disproportionate
character is also illustrated by the penalties faced by legal entities, as they include, in addition to fines,
placement under judicial supervision for up to five years, the prohibition to conduct certain activities, and
dissolution.\textsuperscript{118} The provision also references Article 42 of the Penal code, which means that legal entities
such as media outlets and CSOs “may be held criminally responsible for offences committed on their
behalf by their organs or representatives.”\textsuperscript{119} It is unclear from this language whether this provision
requires that a legal entity be convicted separately from its representative, or whether the punishment
can be applied to the legal entity simply based on the conviction of its representative.

\begin{itemize}
\item Article 522 provides that “any publication, prior to the final decision of the court, of any
commentaries aiming at putting pressure on the court where a law suit is filed, in order to
influence over the decision of the court” is punishable with up to six months imprisonment and
a fine of up to one million riel. Article 523 provides for the same penalties for “any act of
criticizing a letter or a court decision aiming at creating disturbance of public orders or
endangering institutions of the Kingdom of Cambodia.”
\end{itemize}

These provisions create a real risk that they will be used abusively to harass and punish associations that
legitimately seek to analyze, comment on and criticize judicial processes and decisions, and as a result
these sanctions cannot be considered proportionate. In particular, for associations working in the field of
human rights and the rule of law, large areas of their work could potentially fall within these vague and
broadly drafted provisions, which are neither narrowly defined, transparent, nor easy to understand.

\begin{itemize}
\item Articles 305 and 307 of the Penal Code outline the definitions of public defamation and public
insult, respectively. Defamation is defined as “any allegation or charge made in bad faith which
\end{itemize}

\begin{footnotes}
\item 114 UN Human Rights Committee, General Comment 34 ‘Article 19: Freedoms of opinion and expression’ UN Doc
\item 116 UN Human Rights Committee, General Comment 34 ‘Article 19: Freedoms of opinion and expression’ UN Doc
\item 117 Penal code of the Kingdom of Cambodia, Art. 502.
\item 118 Note: the penalties listed in Article 502 mirror those included in Article 168, which covers additional penalties for legal
entities in general. Articles 170 to 172, 176, 178 and 179 provide details as to the definition of each penalty.
\item 119 Penal code of the Kingdom of Cambodia, Article 42.
\end{footnotes}
tends to injure the honour or reputation of a person or an institution”. An insult is defined as an “outrageous expression, term of contempt or any invective that does not involve any imputation of fact”. Under both articles, the commission of an offence merely requires that the defamation or insult be made through:

1. any words whatsoever uttered in a public place or in a public meeting;
2. written documents or pictures of any type released or displayed to the public;
3. any audio-visual communication intended for the public.

While actions (1) and (3) in theory respect individual’s right to privacy, the expression “released or displayed to the public” under action (2) is impermissibly vague, in the sense that it could lead to individuals being prosecuted for written documents or pictures which are later made public without their consent. In addition, the fact that criminal defamation charges can be brought against an individual for words against an “institution” is too far reaching to be proportionate under international human rights law.

The offence of defamation is punishable by a fine of 100,000 to 10 million Riel (approximately $25 to $2500 USD); no prison sentence can be imposed as a result, which is consistent with international standards, however, the qualification of defamation as a criminal offense would still appear to be out of step with international law.

4.2. Freedom of Association

Generally, under the Penal Code offenses are only capable of being committed by individuals, not legal entities, as legal entities are not explicitly considered liable. However, Article 42 states that, where expressly provided for by law and statutory instruments, a legal entity (with the exception of the state) may be held criminally responsible for offenses committed on their behalf by their organs or representatives, in addition to the natural person concerned.

The 2016 case of the prosecution of four members of the environmental Non-Governmental Organization (“NGO”) Mother Nature raises the worrying possibility that Article 29 of the Code (pertaining to accomplice liability) may be used to prosecute members and leaders of CSOs for offenses allegedly committed by other members. In this case, Alejandro Gonzalez-Davison, the director of Mother Nature, was charged as an accomplice in a crime allegedly committed by members of the group, despite not being in Cambodia at the time of the offense.120 The extension of the scope of criminal liability for legal entities cannot be considered proportionate.

As in a number of the sectorial laws mentioned above, where legal entities are held responsible under the Penal Code, they may be subject to a wide range of additional penalties, including dissolution, placement under judicial surveillance, banning of activities, and confiscation of property (Article 168). However, these additional penalties may only be imposed by the court if they specifically correspond to the charged offenses (Article 169). Judicial surveillance is limited to a period of five years. However, a ban on a particular activity by the group may continue for up to five years or indefinitely, which would constitute an extremely severe restriction on freedom of association. Depending on the activity concerned, such a penalty could completely deprive the entity of the ability to carry out its primary function.

5. Electoral Laws

The Law on the Election of Members of the National Assembly ("LEMNA") and the Law on the Election of Commune Councils ("LECC") are the key laws in Cambodia governing participation of civil society in political activity and the conduct of electoral campaigning. Both laws contain restrictions on freedom of expression, association and assembly. They include several vaguely worded provisions which create uncertainty, and impose penalties on NGOs which participate in political activities. Of particular concern is the fact that these laws curtail the role of civil society in election monitoring and other election related activities.

5.1. Freedom of Expression, Assembly and Association

- Electoral campaigns, covered by Chapter 7 of the LEMNA and the LECC, are defined as involving "some activities carried out in public to convince voters to vote in favor of a candidate or a political party." Article 68 of the LEMNA and Article 68 of the LECC provide a lengthy list of activities considered to form part of an electoral campaign, including, among others: public meetings; marches; door to door visits; broadcasting in the media or in public spaces; public displays such as banners; distribution of leaflets; concerts; and organizing sports matches or boxing tournaments.

This is an extremely extensive and broadly defined list of activities which when combined with the other provisions of the LEMNA and LECC has the potential to disproportionately restrict the legitimate exercise of all three fundamental freedoms, even outside the electoral campaign period. Further, the broad and vague terms used to describe the restricted activities creates a real risk that these provisions may be abused by authorities.

- Article 71 LEMNA and Article 71 LECC restrict political parties and candidates or supporters from making verbal remarks or written statements that are "immoral" or "insult" candidates, their supporters or any person.

The vague nature of this provision is not compliant with international standards and is open to abuse – simply disagreeing with a political party could be characterized as immoral or insulting.

- Article 84 LEMNA and Article 74 LECC require NGOs to maintain neutrality and impartiality during elections and specify an extensive list of prohibited activities directly or indirectly related to elections, including releasing a statement or conducting any activities with the aim of supporting or showing bias towards or against a political party or candidate. Remarks aiming to insult any political party or candidate are also prohibited.

These provisions substantially restrict the freedoms of expression, assembly and association of NGOs during election periods. By requiring them to remain neutral, they are prohibited from expressing any political views, exercising their right to peaceful assembly through participating in political events and associating with any political parties or candidates. The blanket prohibition on political activities during

121 The electoral campaign period lasts for 21 days for national elections (Article 72 LEMNA) and 14 days for commune elections (Article 70 LECC), and in both cases ends 24 hours before polling day. Article 73 LEMNA further provides that all electoral activities shall take place between 6 am to 10 pm.

this period is entirely disproportionate and does not appear to be in pursuit of any of the legitimate aims cited in Article 21 of the ICCPR.

Further, these provisions are broadly-drafted and contain vague and subjective terms, such as “neutral” and “partiality,” which make it difficult for NGOs to understand what behavior falls under the law’s prohibition and are therefore open to abuse by authorities. The UN Special Rapporteur on Freedom of Expression has noted that references to the terms “political nature,” “political activities,” or “political interests” are too vague, and could encompass almost all potential activities of an organisation, including those that are allowed and even encouraged by the ICCPR to exist, such as those promoting knowledge of basic rights and participation in government.\footnote{Office of the High Commissioner Human Rights, ‘Analysis on International Law, Standards and Principles Applicable to the Indian Foreign Contributions Regulation Act 2010 and the Foreign Contributions Regulation Rules 2011, by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai’ (20 April 2016), para. 25, \url{https://www.ohchr.org/Documents/Issues/FAssociation/InfoNotelIndia.pdf}.}

- **Article 85 LEMNA and Article 75 LECC prohibit “foreigners” from “direct or indirect activities in the election campaign to support or oppose any political party or candidate”**.

These provisions may in particular restrict the ability of foreign NGOs or NGOs with foreign staff to exercise their rights of freedom of expression, assembly and association – for example, they are prohibited from monitoring or commenting on election campaigns or processes, or associating with any particular party or candidate.

- **Chapter 10 LEMNA (Articles 140 – 166) and Chapter 14 LECC (Articles 169 – 193) provide for penalties in cases of breaches of other provisions. Penalties include fines of between five and 20 million Riel, removal from the voter list for five years, removal as a candidate from the election, and the potential of deportation for foreigners.**

The fines are not insignificant and could have serious financial consequences for those sanctioned, particularly smaller organizations who risk bankruptcy as a result. In this light, these penalties appear to be entirely disproportionate, unnecessary and therefore not compliant with international standards.

### 6. The Law on Associations and Non-Governmental Organizations

The Law on Associations and Non-Governmental Organisations (“LANGO”) contains the rules and regulations governing the establishment and running of domestic and international associations and non-governmental associations in Cambodia. The law contains a number of clauses that significantly hinder fundamental freedoms, in particular the right to freedom of association.

#### 6.1. Freedom of Expression

- **Article 24 of the LANGO stipulates that “domestic non-governmental organizations, foreign non-governmental organizations, or foreign associations shall maintain their neutrality towards political parties in the Kingdom of Cambodia.”**

Failure to comply with this provision is punishable with a penalty of deregistration for domestic associations and NGOs, or in the case of foreign NGOs, termination of the Memorandum of Understanding (“MoU”) and thus an inability to function lawfully. Freedom of opinion is a non-derogable right, yet the effect of imposing neutrality on NGOs is to curtail it. In relation to freedom of expression, the broad wording of the provision could very easily encompass legitimate expression made by associations, for
example, commenting on political events or criticizing government action and is particularly concerning for CSOs working in the field of human rights and the rule of law.\textsuperscript{124}

6.2. Freedom of Association

- The LANGO explicitly recognizes freedom of association in Article 1, albeit in a worryingly qualified form: “This law aims at safeguarding the right to freedom of establishing associations and nongovernmental 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 and the public authorities.”

The use of the subjective terms “legitimate interest” and “public interest” raise concerns that they could be construed as potential limitations on freedom of association. On 15 June 2016, almost one year after the LANGO was adopted, the RGC published a “Press Release of Ministry of Interior on Law on Associations and Non-Governmental Organizations”\textsuperscript{125} (hereafter referred to as the “LANGO Press Release”), in which the Ministry of Interior (“MOI”) reiterated the Constitutional right to freedom of association and stated that the wording of the LANGO is not, in any manner, intended to restrict freedom of association or expression. However, a press release does not have any normative status in the domestic legal order and contrary to the views expressed in the press release, many of the LANGO’s provisions as drafted constitute severe restrictions on freedom of association.

- LANGO is the main instrument regulating the registration of associations. Article 6 provides for the compulsory registration of associations and NGOs with the MOI. Article 9 stipulates that any association or organization which is not registered “shall not be allowed to conduct any activity” within Cambodia. Article 5 contains substantive limitations on who can establish domestic associations or NGOs, and excludes persons under 18 or those without Khmer nationality.

Denying legal capacity and prohibiting unregistered entities from conducting any activity is inconsistent with the right to freedom of association – associations should be presumed to be operating lawfully until proven otherwise. Registration should be voluntary, based on a system of notification rather than authorization, and aimed only at obtaining legal capacity; it should not be a prerequisite for the ability to function lawfully.

- Article 6 provides that Cambodian associations and NGOs must register with the MOI, while under Article 12, foreign entities must discuss and agree on all projects with the Ministry of Foreign Affairs and International Cooperation (“MFA”) before submitting a request to enter into a MoU with the MFA. These provisions allow authorities to exercise highly intrusive powers over the activities of CSOs. In the case of foreign associations and NGOs, MoUs have a duration of only three years, requiring associations to re-register or request extensions (Article 16).

\textsuperscript{124} As noted by then Special Rapporteur on the Situation of Human Rights in Cambodia Surya Subedi following a visit to the Kingdom in 2014, in relation to the (then draft) LANGO and draft Cybercrime Law, “Any laws regulating freedom of expression online and the formation and operations of associations and NGOs are necessarily a direct concern for civil society,”. See Surya Subedi, ‘Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia’, (24 June 2014), \url{https://reliefweb.int/sites/reliefweb.int/files/resources/SR_statement24062014_Eng.pdf}

Further, under Article 8, the MOI may deny the request for registration of a domestic association or NGO if its “purpose and goals” would “endanger the security, stability and public order, or jeopardize national security, national unity, culture, traditions and customs of Cambodian national society”.

In reality, complying with these onerous registration requirements would be particularly burdensome for small organizations with limited resources. Furthermore, there is a notable lack of procedural safeguards in the registration process, although it is possible that the operation of the law in practice could be improved through the issuance of Prakas given that the LANGO leaves the actual registration procedure to be determined by the MOI through administrative orders or Prakas.

There is no administrative remedy against a refusal of registration. For domestic associations, the only potential recourse against a negative registration decision is the possibility for an association or NGO to appeal the decision in the courts, as provided explicitly in Article 8(5). Foreign associations and NGOs do not have the right to appeal registration decisions of the MFA.

Article 8 confers upon the MOI the power to examine the documents submitted by the requesting association or NGO and the legality of its statutes, and to decide on the request. The body responsible for registration is not independent from the government and is therefore susceptible to manipulation. Similarly, it is the MFA that is responsible for the registration of foreign associations and NGOs.

Despite obliging the MOI to notify the applicant in writing of necessary corrections to the application, the law does not require the MOI to communicate in writing the reasons for its final decision. Decision-making is therefore lacking transparency, and applications are therefore vulnerable to rejection for opaque, unjustified, and unexplained reasons. Article 8(3) states that in cases of late decisions (beyond 45 working days), the association or NGO shall be automatically considered legally registered, and the MOI (or MFA in the case of foreign organizations) must process the registration documents. While the automatic registration provision is encouraging, 45 working days is a long period for associations and NGOs to remain in limbo, unable to operate lawfully or enjoy legal recognition.

The current lack of safeguards is particularly concerning given that the LANGO fails to clearly define the grounds on which registration applications can be rejected, allowing authorities total discretion to deny registration. Notably, under Article 8(4) registration can be denied on the broad grounds of “endanger[ing] the security, stability and public order or jeopardizing the national security, national unity, cultures, tradition, and custom of the Cambodian national society.” This stipulation goes far beyond 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 “which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others” may be imposed. The LANGO’s broadly-worded criteria subjects every association and NGO to the threat of arbitrary closure.

Article 30(3) states that the MOI must remove from the list of registered organizations domestic associations and NGOs that conduct 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. Similar provisions apply to foreign associations and NGOs under Article 35.
This is a deeply concerning provision, leaving room for the arbitrary deletion of CSOs. These sanctions contained in LANGO are likely unnecessary since other legislation, such as the Penal Code, is sufficient to regulate the activities of NGOs and other associations, and allows for prosecution of criminal acts committed by individuals or associations. As a result, these sanctions cannot be considered to be proportionate, narrowly defined, transparent, and easy to understand.

Failure to comply with Articles 10, 24, or 25, first results in a written warning providing 30 days for compliance, followed by a 90-day suspension of activities, and finally deregistration. When a domestic association fails to comply with its own statutes, it will only be issued with a written warning and 30 days to comply before deregistration. However, when a domestic association “conducts activities that endanger the security, stability and public order, or jeopardize the national security, culture, tradition, and custom of Cambodian national society,” it may be removed from the register without any prior steps. Article 31 also provides some further safeguards for domestic associations faced with the threat of deregistration and other lesser sanctions. There is a right of appeal to a court against decisions of denial of registration, suspension of activity, deletion from the register, and fines. However, the window for its exercise is relatively small, appeals must be made within 30 days of receipt of notification of the decision. In addition, uncertainty is created by the absence of any provision authorizing continued operations of the association or NGO while an appeal against deregistration is underway; if an association or NGO has been deleted from the register then prima facie under the LANGO it will not be able to act lawfully to lodge an appeal, and would not enjoy the legal personality necessary to initiate legal action. While an explicit statutory right of appeal such as Article 31 would appear to provide a sufficient basis to file an appeal even if the CSO has been removed from the register, or, alternatively, would appear to constitute an implicit authorization to operate, there is considerable uncertainty left by the LANGO’s provisions. Equally, it is not clear whether deletion takes effect while the appeal is still pending or if deletion would only take effect on the conclusion of an unsuccessful appeals process; in the latter case the CSO would be permitted to continue to act lawfully while the appeal is ongoing. No equivalent provision is included to allow foreign associations and NGOs to appeal decisions of the MFA.

- Article 26 of the LANGO provides that a domestic association “may suspend its activities by providing a written notification to the Ministry of Interior” and by providing its final activity and financial reports in accordance with the requirements of Article 25(1) (see above).

The vague provisions of Article 26(2) may create barriers to voluntary dissolution, as they require that a domestic association “shall, prior to its dissolution, clear its obligations in accordance with the procedures and provisions in force.” Article 7 of the LANGO also requires the statutes of domestic associations and NGOs to contain rules for dissolving the organization and for disposing of its resources and properties upon dissolution.

Assuming LANGO’s provisions on this question are not intended to be exhaustive, and that the Civil Code continues to apply, the latter provides further guarantees of the right to voluntary dissolution for legal persons. Under Article 64(1), a legal person shall be dissolved on “the occurrence of a ground of dissolution prescribed in the articles of incorporation.” Associations may be dissolved by a vote or resolution among its members, provided the decision is supported by a majority of all the members holding not less than three-quarters of the voting rights (Article 64(2) and (3)).

Article 29 of the LANGO refers to the possibility of a domestic association being dissolved by court decision, although no criteria are given for when an association may be so dissolved. As the LANGO does not provide any grounds on which an association may be dissolved by a court, it is unclear whether this is
referring to Chapter II, Section I, Subsection VII of the Civil Code, which sets out a number of scenarios in which legal persons, including associations, may be dissolved by a court. More worryingly, the ambiguous drafting of Article 29 raises the possibility that the courts may be able to dissolve associations for undefined reasons not included in the LANGO, on grounds not set out in any legislation, or without providing reasons.

- The LANGO contains onerous reporting requirements for both domestic and foreign organizations. Article 25 requires domestic associations to provide activity and financial reports on an annual basis. Under the first paragraph of Article 25, after receiving financial support from donors, domestic associations and NGOs must provide copies of documents shared with donors to the MOI within 30 days, and when a project or financial agreement is concluded with donors, copies must be sent to the MOI within 30 days.

Copies of such documents must be kept at the association’s office for five years, regardless of the duration of the agreement concluded — a disproportionate requirement that may easily be abused to harass or penalize associations. Additionally, paragraph two of Article 25 also appears to give the MoI the power to request such reports at any time, creating a risk that this power could be used to harass associations and obstruct their work.

Foreign associations are also required to submit annual activity reports and are subject to burdensome reporting obligations with regard to financial documents. Under paragraph three of Article 25, foreign NGOs are obliged to provide the MFA and Ministry of Economy and Finance (“MEF”) with copies of financial documents sent to donors within 30 days. In addition, when new projects or financial agreements are concluded with donors, foreign NGOs are required to provide the MFA and MEF with copies of the documents within 30 days of the agreement being reached. Under Articles 26 and 27, these reporting requirements must be met before domestic associations and NGOs, and foreign NGOs respectively can suspend their activities.

The varying formats, requirements, and frequencies of reporting pose a formidable challenge to organizations, particularly smaller groups. It is difficult for NGOs that are working on sensitive issues, such as human rights violations, human trafficking, and legal aid, to report the status of these cases during the investigation process, which often requires confidentiality and privacy. Under Article 30, failure by domestic associations to comply with the reporting requirements in Article 25 is punishable by written warning, 90-day suspension of activities, and deregistration. Under Article 33, if a foreign NGO fails to comply with the financial reporting requirements in paragraph three of Article 25 it may receive up to two written warnings with 30-day periods to come into compliance, after which the MFA may terminate its MoU.

On 11 December 2017, the MOI issued a notification calling on local associations and NGOs to comply with the LANGO’s reporting requirements by the end of February 2018, under threat of legal action and

---

126 Article 25(2) LANGO provides: “The Ministry of Interior may, if necessary, request the activity report and annual financial report of an association.”
deregistration. The MOI stated that only 648 associations and NGOs have fulfilled their obligations under the LANGO.

- **Paragraph two of Article 30 provides for the suspension or deregistration of associations for actions contrary to their statute.**

This amounts to an unnecessary interference in issues internal to associations. Authorities must refrain from interfering in the internal affairs of an association and respect associations’ right to privacy, as stipulated in Article 17 of the ICCPR. Neither sanction, both of which entail severe penalties for relatively minor breaches of the LANGO, can be considered proportionate.

### 6.3. Freedom of Assembly

The text of the LANGO is sufficiently vague to cause significant confusion regarding its application to community-based organizations (“CBOs”) and other informal popular movements. Since the circulation of the LANGO’s first draft, civil society has been concerned about the application of the LANGO to CBOs and other informal groups. Days after the final adoption of the LANGO, and despite previous reassurances that it would not be used to restrict grassroots movements, those concerns proved real.

Shortly after the adoption of the LANGO, a group of 69 families in Khsoem Commune, Snuol District, Kratie Province came together to express concerns regarding a dispute over a 250-hectare plot of land. On Saturday, 15 August 2015, three days after the LANGO was promulgated but before it had entered into force, Snuol District Deputy Police Chief Nom Srun summoned two representatives of the families to the district police office and told the community representatives that they must register their group with the MOI as required by the new LANGO. According to one of the representatives, the deputy police chief asked the group to sign a contract promising to refrain from all protest activity until the MOI approved their registration under the LANGO and threatened punishment if the group did not comply. When contacted, Deputy Police Chief Nom Srun confirmed that he told the community that, under the

---


130 CCHR wrote to the MOI seeking clarification on this matter on 21 August 2015, and received a response on 22 September. Encouragingly, the response letter from the MOI indicated that the LANGO should not apply to small CBOs; however, there is still significant scope for local authorities and officials to misapply the law due to the vague wording of the LANGO: see CCHR, ‘Letter from CCHR to Samdech Kralahom Sar Kheng’, (21 august 2015), https://cchrcambodia.org/index_old.php?title=CCHR-Open-Letter-Seeks-Clarification-Regarding-Application-of-the-LANGO-to-CBOs-and-Informal-Groups&url=media/media.php&p=press_detail.php&prid=569&id=5.

131 Article 93 of the Constitution provides that, after signature by the King, laws shall take effect in Phnom Penh 10 days after signing and throughout the country after 20 days. However, laws stipulated as urgent will take effect immediately upon promulgation. The LANGO was not stipulated as urgent, meaning that it had no legal effect at the time of this case.

LANGO, they were required to be registered with the MoI. On 21 August 2015, CCHR wrote to the MOI seeking clarification on this matter, and received a response on 22 September 2015. Encouragingly, the response letter from the MOI indicated that the LANGO should not apply to small CBOs.

7. Law on Peaceful Assembly

The Law on Peaceful Assembly\(^{133}\) (“LPA”) was adopted by the National Assembly on 21 October 2009. The LPA should be read in conjunction with the Implementation Guide to the Law on Peaceful Demonstration\(^{134}\) (the “Implementation Guide”), which was adopted in the form of an Implementing Decision by the Minister of Interior. The LPA sets out the definition of peaceful assembly (Chapter I), deals with procedures for notifying the authorities of peaceful demonstrations (Chapter II), outlines the responsibilities of organisers and competent authorities (Chapter III) and details penalties for any violations of these provisions (Chapter IV).

7.1. Freedom of Assembly

- **Article 2** states that the purpose of the LPA is “to assure freedom of expression of Khmer citizens through peaceful assembly, but this right shall not be used abusively affecting the rights, freedoms and honor of others, good customs of the national society, public order and national security.”

This article does not adhere to international human rights law which requires states to guarantee the human rights of all people within a state’s jurisdiction, not just those of citizens. Further, the limits placed on the right, i.e. the fact that it shall not be used abusively “affecting the rights freedoms and honor of others, good customs ... public order and national security,” are vague and not defined, leaving open the possibility of arbitrary restrictions being placed on the right.

- **Article 4** defines peaceful assembly as “a gathering or a march conducted by a group of people to publicly demand, protest or express their sentiments, opinions or will by using various forms or means peacefully.” The following activities are excluded from the scope of the LPA and are listed at Article 3: (1) meetings, gatherings or marches during electoral campaign rallies; (2) gatherings inside or outside, adjacent to the fence of a factory or enterprise or other institution in regard to labor disputes, which is covered by the Labor Law; (3) parades, funeral processions and other gatherings for the purposes of serving religion, art, culture, national customs and tradition and educational dissemination activities for social interests.

- The implementation Guide provides further clarification and states that the LPA also does not cover: (a) people coming together for purposes other than a public protest; (b) meetings to discuss and find solutions for any particular issue; (c) educational dissemination activities “such as trainings, workshops, public forums, press conferences; (d) strikes and labor union elections and; (e) gatherings for a strike a reasonable distance outside a factory.

The Special Rapporteur on the rights of freedom of peaceful assembly and of association defines an “assembly” as an “intentional and temporary gathering in a private or public space for a specific

---


purpose...[including] demonstrations, inside meetings, strikes, processions, rallies or even sits-in.”\(^{135}\) The types of gatherings, such as strikes, excluded from the protection of the LPA via Article 3 and the Implementation Guide, are therefore not compatible with international human rights law which requires a broader definition of gatherings to be protected under the right to freedom of assembly.

- **Article 5** states that a group who wishes to organize a peaceful assembly at any public venue shall notify the competent municipal or provincial territorial authorities in charge of that place in writing. Article 6 outlines that the notification letter shall include: (a) Family name, given name and permanent address for the contacts of three leaders attached with a photocopy of their Khmer national identification cards; (b) purposes for holding the peaceful assembly; (c) date, time and duration of peaceful assembly, venues and passages to be used for activities, number of participants and number of vehicles involved by category.

- **Article 7** prescribes that the notification letter must be submitted at least five working days prior to the date of holding the peaceful assembly.

International best practice recommends that notice of a gathering is only required when a substantial number of participants are expected, or for certain types of assembly, such as assemblies where disruption is reasonably expected by the organizers.\(^{136}\) The LPA imposes prior notification requirements for all gatherings, with no minimum number of participants which could be considered unduly restrictive to the right to freedom of assembly.

The requirement that three leaders provide photocopies of their identification cards also does not appear to serve a legitimate aim, and is an unnecessary and disproportionate restriction on the freedom of assembly. For smaller assemblies this requirement may be difficult to fulfil, providing an unjustified obstacle to the freedom of assembly.

The lengthy notice period of five days acts as a restriction on freedom of assembly as it prevents assemblies from being organized in rapid response to current events. International best practice provides that spontaneous assemblies which are held in response to unforeseen developments should not be subjected to prior notification procedures.\(^{137}\) Neither the LPA nor the Implementation Guide make any provision for the management or the protection of the right to spontaneous assemblies.

- **Article 9** contains a presumption in favor of holding peaceful assemblies. However, the authorities may reject applications for assembly if: (a) the peaceful assembly is to take place during the following public holidays: the King’s birthday, Coronation Day, the Water Festival, National Independence Day, Khmer New Years Day, and Pchum Ben Day; (b) there is “clear information” indicating that the demonstration “may cause danger” or “may seriously jeopardize security, safety and public order.”

- In such cases as (b) above, Article 11 prescribes that the authority must inform the organizers “immediately” in order to “have time to meet with local authorities and other relevant

---


authorities to discuss solutions.” If no agreement is reached, under Article 12, the Minister of Interior shall provide the final decision in writing and at least 24 hours before the scheduled peaceful assembly.

Article 9(a) imposes a blanket ban on peaceful assemblies held on these days. This restriction appears to be based on convenience rather than in pursuit of a legitimate aim and cannot be considered either necessary or proportionate which would constitute an unjustified restriction on freedom of assembly. Furthermore, there is no provision in the LPA to challenge or appeal a negative decision made under Article 9(a).

Article 9(b) allows authorities to refuse applications for peaceful assemblies where there is clear information that a demonstration “may cause danger or would seriously jeopardize security, safety and public order.” This broad and vague language creates a risk that the law may be applied in a manner that would unduly restrict freedom of assembly, for individuals and associations.

Whilst the procedure for dealing with refusal to hold a peaceful assembly under Article 9(b) is expediated, the Minister of Interior has the final decision if no agreement is reached between the authority and organizers. The Minister of Interior is a member of the executive branch and as such is not an “independent body.” The LPA provides no possibility of further appeal to a court of law, as would be required by international law.

- Article 15 provides that if a peaceful assembly is to take place in the form of a march on public roads, local authorities and the police will designate a route for the march which prevents “negative consequences” and is “convenient to the vehicles to avoid serious disturbance to businesses, services, commercial or other trading activities.”

Demonstrations in a public place will normally cause some disruption to others. The free flow of traffic should not automatically take precedence over freedom of peaceful assembly. Authorities should show tolerance for disruption or inconvenience that is necessarily entailed by a peaceful assembly. In principle, restrictions in respect of the route of a mobile demonstration could be considered necessary and proportionate. Article 15’s compliance with international human rights law will therefore depend on its interpretation by authorities and the police. Any restrictions on the freedom of association must meet the requirements of Article 22(2) of the ICCPR.

- Articles 19-20 permit authorities to stop a demonstration, even if it is peaceful, if no notification was submitted. The Implementation Guide specifies that the competent authority “shall have the right to make the decision based on the actual circumstances” (Section 3, paragraph 3-6-7).

This Article does not set out criteria for when an authority should use their discretion to stop a peaceful demonstration in circumstances where no notification of the assembly was provided. This could result in a restriction on the freedom of assembly which does not satisfy the requirements of Article 22(2) of the ICCPR, especially in respect of assemblies organized in rapid response to current events.

---

8. Law on Political Parties

The Law on Political Parties ("LPP") was adopted by the National Assembly on 28 October 1997 and amended in March 2017 and July 2017. It deals with the establishment (Chapter II), membership (Chapter III), organization (Chapter IV), registration (Chapter V), finances (Chapter VI), reporting and controlling/inspection (Chapter VII) and dissolution, merger and alliance (Chapter VIII) of political parties.

8.1. Freedom of Expression

The LPP contains restrictions on freedom of expression which fail to meet the requirements of Article 19(3) ICCPR.

- Article 6 New (March 2017/July 2017) was amended in March 2017 (subparagraphs 1-5) and July 2017 (subparagraphs 6-8). Article 6 New forbids political parties from: (1) creating a secession that would lead to the destruction of national unity and territorial integrity of Cambodia; (2) conducting a sabotage that would lead to counter liberal, multi-party democracy and constitutional monarchy regime; (3) carrying out an activity that would affect the security of the state; (4) creating an armed force; (5) inciting to break the national unity; (6) using voice messages, images, written documents or activities of a person convicted of felony or misdemeanor for political gains interests of its party; (7) openly or tacitly agreeing or conspiring with a person convicted of felony or misdemeanor to carry out any activities for political gains interests of its party; (8) supporting or developing any plans or conspiring with any individuals who carry out activities aimed at opposing the interest of the Kingdom of Cambodia as provided for from point 1 to point 5 above.

The Venice Commission, in their Guidelines on Political Party Regulation, state that the laws on political parties must be clear and precise, specifying activities considered unlawful and the applicable sanctions. The vague and unclear language in this provision does not meet this condition. Terms such as “destruction”, “integrity”, “sabotage” and “national unity” are undefined, leaving open the possibility of arbitrary application resulting in undue or disproportionate restrictions on the right of freedom of expression.

- Article 11 (3) New (July 2017) states that “the symbol/logo of a political party should not be copied or taken from a national symbol or picture representing a religion, Angkor Wat temple or pictures or sculptures of all Khmer Kings or the picture of a physical person.”

The prohibition on the use of “the picture of a physical person” constitutes an unjustifiable restriction on freedom of expression. Banning all images of all individuals from political party symbols does not serve a legitimate aim, such as for the protection of public health or of national security. As such this provision constitutes an impermissible restriction on freedom of expression.

8.2. Freedom of Association

The protection against being compelled to join a political party is an important component of the right to freedom of association. The LPP guarantees the right of all persons to join – or not join – political parties,

---


and the protection of all civil, political, and professional rights to members and non-members of political parties alike in Chapter I, Article 5:

- Participation as a member of any political party is the free own choice of every Khmer citizen. No person may have right to compel anybody to join any political party.
- No person shall be deprived of his/her rights from exercising the civil rights, political rights or professional rights, on the grounds that he/she is or is not a member of any political party which is legitimately established.

The LPP contains restrictions on freedom of association which fail to meet the requirements of Article 22(2) ICCPR.

- Article 6 New, which is set out above, forbids political parties from undertaking a number of activities.

While some restrictions on freedom of association imposed by Article 6 New may be legitimate, the vague wording of the provisions fails to meet the requirements of international human rights law. The prohibited activities are not defined, overly broad, and lack references to other legislation, such as the penal code, which would help narrow its scope. This ambiguity could lead to unjustifiable restrictions of freedom of association.

Subparagraphs 6 and 7 of Article 6 New prohibit a political party from using voice messages, images, written documents or activities of a person convicted of a felony or misdemeanour for political gains or interests of its party. This is a very broad restriction to the freedom of association and cannot be deemed necessary or proportionate pursuant to Article 22 (2) of the ICCPR. Further, the reference to “tacit agreement” is vague, and the absence of specific criteria defining how it is to be understood or established creates the risk that a political party may contravene Article 6 New unintentionally.

Subparagraph 8 of Article 6 New is excessively broad, potentially prohibiting a political party from being associated with an individual involved in any of the activities listed in subparagraphs 1 to 5 of Article 6 New, even if the individual is not a member of the party or involved in its leadership.

- Article 12 New (March 2017) provides that only a Cambodian citizen who is at least 18 years of age and holds civil rights can become a member of a political party.

Article 12 New prohibits an individual from becoming a member of a political party on the grounds of nationality, age, and possession of “civil rights.” This contravenes Article 22 of the ICCPR which grants everyone the right to freedom of association subject to the narrow restrictions set out in Article 22(2) of the ICCPR. As the Office of the United Nations High Commissioner for Human Rights in Cambodia pointed out, the term “civil rights” is ambiguous and may lead to people being denied membership of a political party and an infringement of their freedom of association.141

- Article 18 New (March 2017) prevents those who have not had Cambodian citizenship from birth from being the chair, deputy chair or member of the management of a political party. It also prescribes that the chair, deputy chair and members of the steering committee, permanent committee or any organ that has an equivalent rank of the steering committee or permanent

committee of a political party, shall not be a person convicted of a misdemeanour or a felony without having had their sentence suspended.

Human rights standards do not allow for differential treatment between those who are citizens by birth or by naturalization. This constitutes discrimination.

Article 18 New does not specify whether having committed a crime as a minor precludes one from running for a leadership or managerial position in a political party. As the Office of the United Nations High Commissioner for Human Rights in Cambodia highlights, misdemeanour offences are not all so serious as to warrant disqualification from party leadership for life.\(^{142}\) Given this restriction would be imposed for life on an individual who committed a petty misdemeanour or an offence as a minor, the provision is likely to lack proportionality.

- **Article 19 New (March 2017)** requires political parties to register with the MOI within 180 days of creation in order to carry out their activities. In order to be validated, the political party must have at least 4,000 members. Not being registered precludes a political party from undertaking any political activity in Cambodia.

The requirement for prior registration goes against the right to freedom of association, which equally protects associations that are not registered.\(^{143}\)

As the Office of the United Nations High Commissioner for Human Rights in Cambodia commented, the “requirement of securing at least 4,000 members within 180 days of creation could constitute an obstacle to the registration of new political parties, particularly if, as established under subparagraph 2, they are unable to undertake “political activities” prior to registration.”\(^{144}\) This requirement does not pass the test for legitimate restrictions imposed on the right of freedom of association.

The term “political activities” is ambiguous and as such could include activities that are within the legitimate rights of all persons to undertake, regardless of whether they take place through the vehicle of a political party. As the Office of the United Nations High Commissioner for Human Rights in Cambodia has noted, these potentially prohibited activities include “organizing or participating in debates on issues deemed to be of a political nature, conducting civic education, mobilizing support for or against policy initiatives, or other activities falling under the scope of freedom of expression, peaceful assembly, or association.”\(^{145}\)

The legislation does not outline how membership should be evidenced (for example through names, signatures or other means), and could therefore lead to new political parties not being registered, resulting in violations of the right to freedom of association.

- **Article 25 New (March 2017)** provides that a political party who has received a written letter refusing them registration by the MOI has a right to appeal to the Supreme Court.

---

\(^{142}\) Ibid., page 16.


\(^{145}\) Ibid.
Article 25 New ignores the regular procedures set out in the Law on the Organization of the Courts\textsuperscript{146} by stipulating that parties appeal to the Supreme Court, bypassing the Court of first instance and the Court of Appeal. This contravenes international human rights law by only providing one stage of the appeal process, when ordinarily an appellate would have three.

By stipulating that the ability to appeal is subject to having received a refusal letter from the MOI, this Article may preclude any recourse to a political party where the Ministry fails to issue a refusal letter. This contravenes the right to obtain a remedy for violations of freedom of association.

- Article 38 New (March 2017) requires political parties to respect the Constitution, the LPP and ‘other laws currently in force in the Kingdom of Cambodia.’ If political parties do not, the MOI may take the following measures: (1) issue a notification letter in writing to the political party to make corrections within a specific timeframe; (2) issue a warning and take action to stop the illegal activities if necessary; (3) suspend the activities of that political party temporarily within a specific timeframe; (4) file a complaint to the Supreme Court to dissolve that political party in case of committing a serious mistake (offence).

This Article’s extended reach to all domestic legislation renders it potentially disproportionate depending upon the triviality of the laws in question. The MOI’s ability to suspend a party’s activities extends the power of the executive, which is only restricted by the condition of being able to suspend a party’s activities “temporarily”. What constitutes “temporarily” is not specified. Without this, as the Office of the United Nations High Commissioner for Human Rights in Cambodia commented, there is a risk that a temporary suspension could result in de facto dissolution of political parties.\textsuperscript{147}

The term “serious mistake (offence)” is ambiguous and the Office of the United Nations High Commissioner for Human Rights in Cambodia point out that this grants the MOI considerable discretion in filing a complaint to the Supreme Court to dissolve a political party and leading to a restriction on the freedom of assembly which potentially does not satisfy the requirements of Article 22(2) of the ICCPR.\textsuperscript{148}

- Article 44 New (March 2017) states, regardless of other criminal penalties, for a political party that violates Article 6 New and Article 7 of LPP, the Court may do the following: (1) suspend the activities of political parties within a period of five years; (2) dissolve the political party.

The Venice Commission, in its Guidelines on Political Party Regulation, makes clear that any limitations imposed on political parties must be proportionate and aimed at achieving their specific purpose.\textsuperscript{149} This Article provides no guidance as to what warrants a suspension or factors dictating the duration of the suspension. This leaves the provision open to being implemented incompetently with Article 22.

- Article 45 New (July 2017) states, political parties that have been dissolved or whose activities have been suspended cannot participate in elections, and must be removed from the list of registered political parties.

\textsuperscript{148} Ibid.

34
As discussed above, the underlying justifications for such measures are too vague to form a legitimate basis for such far-reaching sanctions without recourse to judicial review. Further, prohibiting a political party from standing in elections obstructs its primary purpose. This constitutes an extremely severe restriction on freedom of association, which should only be permitted in exceptional circumstances.

- **Article 48 New (July 2017)** states that if a political party has the name, or uses the name of a physical person on its symbol or logo, it is given 90 days to change it.

It is unclear whether this provision necessitates the alteration and removal of all physical manifestations of the offending symbol/logo (e.g. printed materials and signage), or if it simply requires a change to the ‘official’ symbol/logo. The lack of clarity in the law is in itself problematic and violates the principle of legal certainty. Further, if the provision is interpreted to entail a requirement for physical alterations to all signage etc., it would constitute an undue financial burden on political parties, thereby restricting the right to freedom of association.

In conclusion, the restrictions on political parties and the criteria for the suspension and dissolution of a political party in the LPP are broadly drafted, vague, and subjective. Further, the implementation of these provisions are mainly overseen by the MOI, which cannot be considered independent. This provides scope for manipulation to cover a wide range of legitimate activity, and to intimidate and harass political parties.

**9. Press Law**

Article 1 of the Press Law 1995\(^\text{150}\) guarantees freedom of the press and freedom of publication consistent with the protections contained in Articles 31 and 41 of the Constitution, which incorporates into domestic law international human rights standards and the protection of freedom of expression respectively. Positive provisions of the Law include Article 3\(^\text{151}\) which prohibits pre-publication censorship, and Article 20\(^\text{152}\) which guarantees that no person shall face criminal liability for the expression of an opinion. Despite this, the Press Law contains many broad and vague provisions, which have the potential to restrict expression which should be protected.

The Press Law should be read in conjunction with the Code of Conduct for the Media (“the Code”) released on 24 May 2018 by the National Election Committee. The Code outlines measures to foster “professionalism, fairness, transparency, independence, and impartiality” during the national elections in July 2018.

**9.1. Freedom of Expression**

- **Articles 11 to 16** of the Press Law regulates content by prohibiting and punishing the publication and reproduction of the following:
  - any material that “may affect the public order by inciting directly one or more persons to commit violence” (Article 11), punishable by a fine of 1 to 5 million riels;
  - any information that may affect national security and political stability” (Article 12), punishable by a fine of 1 - 5 million riels as well as possible criminal liability under the Criminal Code. In such cases, the Ministries of Information and Interior have the right to

---


\(^{151}\) “To maintain the independence of the press, pre-publication censorship shall be prohibited.”

\(^{152}\) “Any act committed by an employer, editor or author of a text which violates the criminal law shall be punished according to the criminal law. No person shall be arrested or subject to criminal charges as the result of the expression of opinions.”
immediately confiscate the offending issue of the press and have the right to suspend the publication for a maximum of 30 days and transfer the case to the Court.

- false information that humiliates or contempts national institutions (Article 13), punishable with a fine of 2 – 10 million riels.
- material that “affects the good customs of society” (Article 14) including curse words, words directly describing explicit sexual acts, drawings or photographs depicting nudity, human genitalia (unless published for educational purposes) and degrading pictures that compare human beings to animals – all punishable with a fine of 1 – 10 million riels.

Firstly, the fact that content restrictions are applied to the press at all is problematic. International NGO Article 19 have commented that the restrictive provisions of the Press Law have no particular application to the Press and as such, to the extent that they are legitimate, should take the form of general laws applicable to the population as a whole.\(^{153}\)

Secondly, the above provisions restrict a wide array of legitimate expression. Article 12 uses the vague term “political stability” which is open to broad interpretation and risks being used to censor media outlets. Article 12 does not require a close nexus between the publication and the risk of harm to national security or political stability. To comply with the necessity prong of the three part test under Article 19(3) of the ICCPR, the state must be able to prove imminent risk of harm in order to avoid instances of arbitrary application. Finally, the power granted to the government to suspend the activities of press outlets for 30 days under Article 12 means the Article could easily be abused for political ends. Furthermore, there is no provision for judicial review.

Article 14 is similarly problematic, the term “good customs” is undefined and the list of examples are not exhaustive. While freedom of expression may be restricted on the grounds of public morality, it is not clear whether this Article would fall into this category. Further there is no requirement that the harm caused by the material be imminent.

Article 13 is problematic for two reasons, firstly because it is “increasingly recognised that national institutions simply do not have reputations and therefore cannot be humiliated or otherwise dishonoured.”\(^{154}\) Secondly, it impermissibly restricts the press’s ability to comment critically on government institutions – a central component of their role in a healthy democracy.

- **Under the Code, journalists are forbidden from:**
  - “Broadcasting news leading to confusion and confidence loss in the election”;  
  - “Broadcasting news based on rumors or non-evidence based information”;
  - “Using provocative or offensive language that may cause disorder or violence”;
  - “Expressing personal opinion or prejudice in the ongoing events which are reported”;
  - “Interfering, disrupting and/or conducting interviews in voter registration stations, polling stations, and ballot counting stations”;
  - “informing people not to register to vote and [not] to vote”;
  - “conducting interview in voter registration stations, polling stations and ballot counting stations”;


\(^{154}\) Ibid.
“Publishing or broadcasting news that affects national security, political and social stability”.

The restrictions contained in the Code do not pursue a legitimate aim. While it was adopted to “further promote the effectiveness of dissemination on the election with professionalism, fairness and transparency”, such aim falls outside of the legitimate aims listed in Article 19 (2).

Terms such as “any activity”, “serious violation of professionalism”, “confusion”, “confidence loss”, “provocative or offensive language”, “disorder”, “prejudice”, “interfering/disrupting”, “informing”, “national security” “political and social stability” are overly broad and unduly vague, precluding individuals from knowing what type of behaviour is or is not permitted. In practice, it imposes a blanket prohibition of a wide-range of matters related to election coverage - which are not necessary or proportionate to the stated aim.

10. Law on telecommunications and the Prakas on Social Media and Website Control

The Law on Telecommunications created a series of new criminal offences related to the use of telecommunications devices, violations of which are subject to imprisonment and significant fines. These offenses amount to severe restrictions on freedom of expression. On 28 May 2018, the Ministry of Information, MOI and Ministry of Posts and Telecommunication issued an inter-ministerial Prakas on website and social media control supplementing this law.

10.1. Freedom of Expression

- Article 66 includes a general prohibition on the “establishment, installation, utilization, and modification of telecommunication infrastructure...which may affect public order and lead to national insecurity are prohibited.” The punishment for a violation of this offense is a prison sentence of between seven and fifteen years (Article 80).

The commission of a crime under Article 66 does not require the causation of actual harm, but rather any activity that “may” affect public order or national security is criminalized, rendering the application of this provision extremely broad. While national security and public order are indeed legitimate grounds for restriction of freedom of expression under international human rights law, the criminalization of any form of expression must meet the test of legal certainty. Restrictions must be formulated in a defined and clear manner, and individuals should be able to determine what behavior is criminalized. The vagueness of this provision does not appear to meet this test - it is unclear what conduct may affect public order, risking arbitrary application of the clause. While such broad criminalization of expression affects all individuals and groups in Cambodia, it is of particular concern to associations who may in their work be critical of the government, and could easily be subject to targeting by authorities choosing to construe their internal or external communications as contributing to “national insecurity.”

- There are no legislative provisions that explicitly grant the government the power to shut down the Internet. However, Article 7 of the Law on Telecommunications provides that: “in the event of force majeure, the Ministry of Posts and Telecommunications or competent ministries or

---

institutions may order relevant telecommunications operators to take necessary measures by relying on the Decision of the Royal Government.”

This provision grants significant powers to the government, and could potentially be used to shut down the internet arbitrarily.

10.2. Freedom of Assembly

- Article 107 establishes the legal liability of leaders of organizations for the professional acts of individual staff members.

As a result of this provision, leaders of associations may easily be targeted through the application of the law’s broad offenses to their staff members. This creates a further risk for unions and employer associations, as any offenses perpetrated by their leaders become possible grounds for dissolution.

10.3. 28 May 2018 Inter-Ministerial Prakas on Websites and Social Media Control

The 28 May 2018 Inter-Ministerial Prakas on Websites and Social Media Control (“the Prakas”) aims at “obstructing and preventing all publications or news content sharing or written messages, audios, photos, videos, and/or other means intended to create turmoil leading to undermine national defence, national security, relation with other countries, national economy, public order, discrimination and national culture and tradition.” It covers “all news contents or written messages, audios, photos, videos, and/or others means” in “website publications” as well as “any kind of social media network” on the internet in Cambodia, and applies to all websites and social media networks in Cambodia.

The Prakas establishes a joint “specialized unit” including representatives of the Ministry of Information, MOI and Ministry of Posts and Telecommunications, whose task it is to “cooperatively monitor, study, research, find out illegal business activities and publications on websites and social media” and to take action against them. According to the MOI, the Unit was created to combat cybercrime, and enforce the new offense of lèse majesté. Together the task force has the power to surveill, share information, sanction, block or shut down Internet Service Providers (“ISPs”) and take legal action against those individuals in violation of the Prakas.

- The Prakas creates a number of offences, including:
  - Creating social turmoil (Clause 8 (a));
  - Publicizing information willing to create turmoil (Clauses 6 (c));
  - Undermining national Defence (Clauses 6 (c), 8 (a));
  - Undermining national security (Clauses 6 (c), 8 (a));
  - Undermining relations with other countries (Clauses 6 (c), 8 (a));
  - Undermining public order (Clauses 6 (c), 8 (a));
  - Undermining national economy (Clause 6 (c));

156 Social Media Prakas, clause 2.
157 Social Media Prakas, clause 1.
158 Social Media Prakas, clause 2.
159 Social Media Prakas, clause 3.
Creating discrimination (Clauses 6 (c), 8 (a));
Undermining national culture and tradition (Clauses 6 (c), 8 (a));
Publicizing illegally contents which considered as incitement, breaking solidarity, discrimination, create turmoil by will, leading to undermine national security, and public interests and social order. (Clause 7 (c));
Publicizing/operating “illegally” (Clause 6 (c), 7 (c), 8 (a));
Running illegal business activities (Clause 7 (c), 8 (c)); and
Publicizing news or written messages, audios, photos, videos, and/or other means which considered as contrary to the law of the Kingdom of Cambodia (Clause 8 (c)).

In addition, the Prakas orders, inter alia, all ISPs to “install software programs and equip internet surveillance tools to easily filter and block any social media accounts or pages” deemed “illegal” and the Ministry of Posts and Telecommunications to “block or close” websites and social media pages containing content “considered as incitement, breaking solidarity, discrimination and wilfully creating turmoil leading to undermining national security, public interest and social order.”

The actions permitted by the Prakas constitute an unjustified and disproportionate violation of freedom of expression. Though the restrictions on freedom of expression contained in the Prakas are contained in a legal instrument, they are so broad and imprecise that they do not enable individuals to regulate their conduct accordingly, and therefore cannot be said to be provided by law. Terms such as “offensive content”, “willing to create turmoil”, or “illegal business activities” are too vague and too broad to allow the identification of a specific conduct.

- Clause 2 of the Prakas sets out eight goals underpinning its adoption, namely the protection of “national defence”, “national security”, “relation with other countries”, “national economy”, “public order”, “discrimination”, “national culture”, and “tradition.”

“National economy” does not constitute a legitimate aim. The terms of “national culture” and “tradition” are broad and open to abuse - they would only be considered legitimate aims if they fell into the ambit of “public morals.”

Where national security is relied on as a legitimate ground for restriction of the right to freedom of expression, a direct and immediate connection between the expression restricted and the threat said to exist must be established. It must be shown that (a) the expression is intended to incite imminent violence; (b) it is likely to incite violence and (c) there is a direct and immediate connection between the expression and the likelihood of such violence. Using ‘national security’ as a ground to restrict speech should be limited to “situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime or power group...Similarly, public order (ordre public) must be limited to specific situations in which a limitation [to speech] would be demonstrably warranted.”

The actions justifying the restriction on freedom of expression are not defined in the Prakas; instead, the

---

language used is overly broad and unduly vague: terms such as “fake news”, “illegal broadcasts”, “social turmoil”, “relations with other countries”, “illegal contents”, and “illegal activities” are not strictly defined to constitute a reasonable and proportionate restriction to freedom of expression.

Further, the far-reaching effects of the Prakas, namely the disappearance of online privacy, suspension of websites, shutting down of social media accounts, and the fact that there is no mention of judicial supervision or of any possible recourse to those wanting to challenge the actions taken by the Specialized Unit, mean that the Prakas is widely disproportionate to the stated aims and as such, contravenes human rights law.

11. Trade Union Law

The Law on Trade Unions, (“TUL”)165, regulates the right to form and join unions and employer associations. While the TUL contains a number of protections for the right to freedom of assembly, it also contains a number of restrictions which do not comply with the standards under international human rights law.166 As of December 2019, the Law is in the process of being amended by the government – the proposed amendments remove some of the current restrictions contained in the law which pertain to fundamental freedoms.

- Article 2 sets out the scope of the TUL, stating its purpose is to “protect the legitimate rights and interests of all persons who fall within the provisions of the labor law and personnel serving in the air and maritime transportation.”

This excludes many individuals – for example, civil servants and military or police personnel – from the enjoyment of the rights and freedoms it contains. Further, the phrase “legitimate rights” is very broad, leaving it to the discretion of the authorities as to whether certain rights will be protected.

11.1. Freedom of Expression

- Article 65(f) states that it is unlawful for a union “to agitate for purely political purposes or for their personal ambitions or committing acts of violence at the workplace and other places.”

Unions have long been legitimate centres of political activity, indeed their key objectives of protecting and promoting the rights of workers will inevitably entail engagement with political issues, institutions and processes. Similarly, regardless of the moral or social merits of “personal ambitions” it cannot seriously be argued that they should render a union’s activities unlawful. The subjective and broad nature of these terms also means that they could easily be abused by authorities to characterize a union leader’s social media commentary as unlawful.167

11.2. Freedom of Assembly

- Article 65 dictates that it is unlawful “to agitate for purely political purposes or for their personal ambitions” and “to block an entrance and exit gate of the enterprise or establishment or to incite or threaten or to violently disturb or coerce non-striking workers by all means not

to work and to close off public roads.”

The broad scope and vague wording of this provision makes it open to abuse by authorities seeking to characterize a legitimate strike action as unlawful.

- Article 92 states that if the strikers continue a strike declared to be illegal, “any person leading such illegal strike shall be admonished in writing”. The failure to comply with the admonishment will be subjected to a “transitional fine” not exceeding 5 million riel (approximately $1200).

Penal sanctions should only be imposed on strike action where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike.168

According to the ILO Committee on Freedom of Association, fines which are equivalent to a maximum amount of 500 or 1,000 minimum wages per day of abusive strike may have an intimidating effect on trade unions and inhibit their legitimate trade union activities. Therefore, while the fine is only a last recourse following several warnings, the amount of the fine constitutes a disproportionate restriction on workers right to freedom of association.

11.3. Freedom of Association

Certain registration requirements for associations and NGOs are set out in articles 11, 12, 15 and 20 of the TUL.

- Article 11 stipulates that only unions which are registered with the Ministry of Labor (“MOL”) can benefit from the rights provided in the TUL. Article 12 states that in order for an application for registration to be approved, it must meet a number of requirements. There must be a minimum of ten members and unions must submit a number of things including, inter alia, a list of leaders, managers, and those responsible for the administration of the union, the names of all the workers who are members of the union, and a copy of the official minutes of elections for its establishment.

- Article 15 stipulates that procedures for application for registration are to be defined by the Minister of Labor and Vocational Training (the “MLVT”) in a Prakas, and the MOL can change the requirements at any time. Prakas 249169 sets out in greater detail how a union applies for registration.

- Article 20 requires that leaders, managers and those responsible for the administration of a union must meet certain criteria, including that they are over 18 years of age, can read and write Khmer, and have never been convicted of any criminal offence.

The use of the word “approved” in article 12 suggests that the registration procedure may be viewed as an authorization procedure, which would be contrary to international human rights law.170 These provisions permit a lot of discretion to the government in determining whether a union will be given registration.

---


169 ‘Registration of Worker Organizations/Trade Unions and Employer Associations’, 27 June 2016.

The registration process does not pursue one of the specified legitimate aims and is not proportionate or necessary – the requirements are very onerous and exclude persons who are under 18, illiterate or have been previously convicted of any minor crime, such as obstructing a public road, from leading or managing a union and thus exercising their right to freedom of association. The criminal conviction aspect is particularly concerning in Cambodia, where union leaders and other members of civil society have been subject to spurious criminal charges as a result of their activism. It does not comply with international standards which require that workers should have the right to elect their representatives in full freedom.171 Further, Cambodia is obliged under international law to recognize the rights of the child to freedom of association and freedom of peaceful assembly.172 The language and criminal conviction requirements are due to be removed in the proposed amendments to the TUL, but these amendments have yet to be implemented.

- **Article 14** stipulates that if a union or employer association is not registered, it is illegal for it to operate, meaning that it cannot benefit from any of the rights or protections in the TUL.
- **Article 17** sets out a number of requirements for a union or employment association to maintain registration, including submitting detailed annual financial statements and bank account details.
- **Article 80** provides for a five million riel fine for continuing to operate a union that is not registered.

This does not comply with international human rights law best practice, which dictates that the exercise of legitimate trade union activities should not be dependent upon registration.173 The threat to freedom of association from this requirement is compounded by the lack of adequate procedural safeguards to ensure that these provisions are not applied arbitrarily.

- **In accordance with Article 16**, the application of a trade union or employer association may be delayed for a number of reasons, including if the stated objectives of the union or employment association are not to defend or promote the rights and interests of persons that the statute of organization has defined. If the union does not rectify the issue within 30 working days, the application will be automatically denied.

These vague provisions do not comply with international human rights law standards as they confer a broad discretion which could be used by the registrar to delay registration to legitimate unions.

- **Prakas 250 and 251** state there is a limited right of administrative appeal to the MLVT where registration is denied, but no right of appeal to an independent judicial authority.

This does not comply with international best practice, which requires that “associations should be able to challenge any rejection [of registration] before an impartial and independent court.”174

- **Article 10** contains the right of unions and employer associations to freely consult each other and affiliate with other unions and employer associations, both national and international; and

---


172 Convention on the Rights of the Child (1990), Article 15.


the right for unions to join in membership with a single higher-level union. It defines the minimum membership of union federations (seven registered unions), coalitions (five registered union federations), and of employer federations (six registered employer federations).

These requirements may be difficult to meet in practice for smaller groups and constitute an unjustified barrier to the formation of such networks.

- Under Article 3, unions or employer associations must provide information about all members who participated in the election of the leaders.

Such provisions create a risk that if these details are shared with the employer – union members could potentially be dismissed or blacklisted.  

- Article 9 sets out the rights of unions and employer associations. It states that they have the right to draw up their own statutes and administrative regulations, their organization and functioning, and their work program as long as they are not contrary to public orders, provisions and laws in effect. They may also freely elect their representatives.

This provision implies that the functioning of a union may be restricted by any public order, with no regard for whether the order itself is compliant with international standards. Further, it does not explicitly include other rights which are required to be accorded to unions and employer associations under international human rights law, such as the right to strike and the right to function freely.

- Article 13 prescribes in detail the required contents for a union’s statutes – they must specify term limits for leaders and dues to be paid by members, and must include a provision that decisions on strike action, amendments to the statutes, and general assemblies of the union require an absolute majority (50% +1) of union members.

- In order to maintain its registration – and thus continue to function – Article 17 requires that a union or employer association must comply with a variety of reporting requirements, including: the annual provision of financial statements and activity reports, based on the union’s financial records, detailing all income and its sources; expenditure; activities; and number of members; provision of bank account details within 45 days of registration; and the updating of any of the information required for registration (with the exception of changes in membership) within 15 days of any change.

- Articles 18 and 19 stipulates that if these requirements are not complied with, the MLVT may apply to the Labor Court for revocation of the union’s registration.

This very prescriptive approach does not appear to be motivated by legitimate aims, such as concern for the rights of others or public order, and neither the requirements themselves nor revocation of the
union’s registration for non-compliance appear to be necessary or proportionate nor justified interferences with freedom of association.

- **Chapter 15 of the TUL includes fines for all breaches by unions or employer associations. These are set at either 1 million riel or 5 million riels. Article 77 stipulates that while the imposition of fines will be preceded by a written admonishment, failure to pay will result in criminal prosecution.**

The amounts do not appear to correlate with the gravity of the offense concerned, and do not take into account the proportionate impact of the amount depending on whether the fine is for an individual compared with, for example, an employer association. There is therefore a risk that when applied to individuals or small unions, or where imposed for a minor offence, this will not be a proportionate interference with the individual or union’s right to freedom of association. International standards require proportionality between the seriousness of the acts and the penalties. Furthermore, the possibility of the imposition of criminal responsibility for such minor infractions such as the failure to maintain and update the name lists of workers is not proportionate and is open to abuse to harass and punish unions and their members.

- **Articles 2(3) and 2(4) of Prakas 251 create rights of administrative appeal where penalties are imposed under Chapter 15 of the TUL.**

These provisions introduce some additional safeguards at the stage before criminal charges are imposed – however, it still does not appear that the imposition of administrative sanctions may be appealed to a court of law. The possibility of administrative appeals alone is not a sufficient safeguard or an adequate substitute for the right to appeal to an independent judicial authority. International best practice requires that restrictions of freedom of association must be subject to independent, impartial and prompt judicial review.178

In addition, the MLVT lacks the independence necessary to provide a meaningful appeal against the penalty imposed. Under Prakas 250, the power to impose penalties under Chapter 15 of the TUL is delegated to labor inspectors, governors, or officers who are themselves appointed by the MLVT.

- **Article 29 stipulates that a union may be dissolved on the grounds that its activities “contravene the law or the objectives of the union as stated in the statutes;” or that its “leaders, managers and those responsible for the administration were found [guilty] of committing a serious misconduct or an offense in the capacity of the union or the employer association.”**

Neither of these grounds satisfy the three-part test set out in international human rights law. The TUL defines the potential grounds for dissolution of a union in vague and ambiguous terms that could easily be manipulated to cover a wide range of legitimate union activity, or to intimidate and harass union leaders.

Failure of a union to comply with its own internal regulation and objectives is a matter to be resolved by its membership and leaders, and cannot be considered necessary for the protection of national security, public order, or the protection of the rights of others. The dissolution of a union is an entirely disproportionate response to the commission of an offense or mere “serious misconduct,” a term the law leaves undefined, by one of its leaders. The ILO has stated that the dissolution of a trade union or

employer association should only be taken as a last resort, and after exhausting other possibilities with less serious effects for the organization as a whole.\textsuperscript{179}

**12. Conclusion**

This analysis demonstrates that a number of provisions within the domestic legal framework of Cambodia do not fully comply with international human rights law and standards on fundamental freedoms. This is particularly concerning in light of the current human rights landscape in Cambodia, which has in recent years been characterized by attacks on the legitimate exercise of fundamental freedoms.

As previously noted, the RGC has obligations under international law and under the Constitution to ensure that domestic law is in line with international conventions ratified by RGC, such as the ICCPR. CCHR recommends that the RGC amends the provisions highlighted in this report to ensure that they are brought in line with international standards. In particular, any restrictions which are not for the purpose of pursuing one of the specified legitimate aims should be removed, and provisions which impose onerous requirements for the exercise of freedoms should be amended to ensure any such requirements are proportionate and necessary. Where freedoms are legitimately restricted by domestic legislation, any penalties for breach of this legislation must also be proportionate. Further, the RGC should consider amending provisions which are vaguely or broadly defined, to avoid the risk of arbitrary application and abuse by authorities.

CCHR encourages the RGC to act on these recommendations in order to strengthen respect and protections for fundamental freedoms within Cambodia.