

# Regulating the Right to Freedom of Association: Implications of LANGO in Cambodia

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## Abstract

The right to freedom of association is of particular importance for human rights defenders. Freedom of association is an indispensable agent for human rights change that permits human rights defenders to maintain their civic space and pursue their mission in promoting and protecting rights and fundamental freedoms in a democratic society. In the current legal and political climate, human rights defenders face increasing challenges in the exercise of their freedom of association and other nexus rights vis-à-vis fulfilling their mission to advocate for other peoples' rights. The Law on Associations and Non-Government Organizations, also known as LANGO, marks a significant turning point for the *de jure* and *de facto* exercise of the freedom of association, in particular for the most vocal and active human rights defenders and human rights organizations in Cambodia. This article first explores core elements, limitations and state obligations concerning the right to freedom of association provided by the international human rights treaties that Cambodia has ratified. It further examines key provisions of LANGO regarding the right to freedom of association of human rights defenders. It highlights that LANGO presents a critical challenge to the freedom of association due to its fundamental flaws, ambiguities and inconsistencies concerning its provisions on establishment, operation and suspension or dissolution of associations. This article concludes that LANGO offers extensive regulatory guidelines for all associations and NGOs in Cambodia; yet it also trigger concerns not due to the details, but the lack thereof which could undermine the promotion and protection of the right to freedom of association and other universally recognized human rights and fundamental freedoms in Cambodia as a whole.

Keywords: *Right to Freedom of Association, Human Rights Defenders, LANGO, Cambodia*

## I. INTRODUCTION

It is more than twenty years since the adoption of the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the Declaration on Human Rights Defenders (DHRD) in 1998. The Declaration was born as a recognition of the work of human rights defenders and of the centrality of individuals and groups within society for the realization of human rights in the

Universal Declaration of Human Rights (UDHR).<sup>1</sup> Human rights defenders are indispensable agents of human rights change and have assumed a significant role in the implementation of rule of law and democratic process as a whole.<sup>2</sup> Due to the critical nature of their works, human rights defenders across the world are still considered a ‘group most at risk’ and now face great challenges in fulfilling their human rights mission.<sup>3</sup> The issue is particularly critical for human rights non-governmental organizations (NGO) which essentially advocate for transparency and public accountability and promote human rights and fundamental freedoms at local, national and international levels.<sup>4</sup>

The term ‘human rights defenders’ refers to people who, individually or with others, act to promote and protect universally recognized human rights and fundamental freedoms, as affirmed in the DHRD. Their mission is to promote and protect all human rights and freedoms at local, national, regional and international levels in the forms of, including but not limited to, international or local NGOs, associations, trade unions, journalists, activists, students, teachers and the media.<sup>5</sup> Human rights defenders, no less than any individual in society, are entitled to all human rights and fundamental freedoms themselves, in particular the rights to freedom; of assembly, association, expression and to take part in the conduct of public affairs.<sup>6</sup> The right to freedom of association is of particular importance to human rights defenders as an essential tool for individuals and/or in association with others to exercise and maintain their civic space in order to defend their common interests.<sup>7</sup>

Marginalization and arbitrary restriction of rights both in law and practice for these organisations are often documented. In addition to administrative and judicial harassment, the adoption of what is known as ‘NGO laws’ has become an on-going trend of restriction practiced by many States around the world.<sup>8</sup> Michael Frost, the Special Rapporteur on the situation of human rights defenders, documented

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- 1 Michel Frost. *Report of the Special Rapporteur on the situation of human rights defenders*, A/73/215 (Geneva, 2018).
  - 2 OHCHR. *Human Rights Defenders: Protecting the Right to Defend Human Rights (Factsheet No. 29)*, (2004) 2.
  - 3 Miana Kiai. *Reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/26/29 (Geneva, 2014) 11.
  - 4 Peter Baehr. *Non-Governmental Human Rights Organizations in International Relations*, (Basingstoke: Palgrave Macmillan, 2009) at 80; see also 1993 Vienna Declaration and Programme of Action; OSCE. *Guideline on Freedom of Association* (Warsaw, 2015).
  - 5 OHCHR, *supra* note 2, 4.
  - 6 Luis Enrique Eguren Fernández & Champa Patel. ‘Towards developing a critical and ethical approach for better recognizing and protecting human rights defenders’ (2015) 19:7 *The International Journal of Human Rights*, at 897; Alice Nah, Karen Bennett, Danna Ingleton & James Savage. ‘A Research Agenda for the Protection of Human Rights Defenders’ (2013) 5:3 *Journal of Human Rights Practice*, 401.
  - 7 HRC. *The rights to freedom of peaceful assembly and of association*, A/HRC/RES/15/21 (New York, 2010).
  - 8 Miana Kiai. *Reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*. A/HRC/20/27, (Geneva, 2012) at 56; Michel Frost. *Report of the Special Rapporteur on the situation of human rights defenders*. A/70/217 (Geneva, 2015) 37.

increasing cases of repressive law and regulation against human rights defenders to delegitimize and criminalize their human rights mission, in particular the restriction on their right to freedom of association.<sup>9</sup> Such a repressive law is indeed a potential threat to the presence of civil societies and pluralism in a democratic society.<sup>10</sup> This is not an exception in the case of Cambodia, where the Government is using the laws to publicly and legitimately restrict the right to freedom of association and selectively target human rights defenders.<sup>11</sup>

In the case of Cambodia, the presence of the United Nations Transitional Authority in Cambodia (UNTAC) in 1992 marked the first ever international NGO in Cambodia. The numbers of civil society organisations, i.e. associations and NGOs, has increased exponentially ever since. Civil society organisations have since become the core human rights defenders who are the most active and most vocal in the promotion and protection of human rights and fundamental freedoms in various fields across Cambodia advocating for specific rights (i.e. civil and political rights, labor rights and/or land rights) or for specific groups of people (i.e. children, women, workers and/or indigenous community).<sup>12</sup> Human rights defenders in Cambodia include, but are not limited to, local and international NGOs, community-based organizations, civil societies, trade unions, right activists and independent journalists.<sup>13</sup> There are approximately more than 5,300 registered associations and NGOs in Cambodia since 1993 in which more than 80 percent are local.<sup>14</sup> Local NGOs are recognized for their crucial advocacy for the respect, protection and promotion of human rights in Cambodia. Some of the prominent human rights NGOs include Cambodian League for the Promotion and Defence of Human Rights (LICADHO), Cambodian Human Rights and Development Association (ADHOC), Cambodian Center for Human Rights (CCHR), NGO Forum and Cooperation Committee for Cambodia (CCC).

The plethora of NGOs working in a wide range of fields across the country since 1993 does not necessarily reflect recent bona fide situation of human rights defenders. Human rights defenders, i.e. human rights organisations, civil society organisations, trade unions and journalists, are particularly at risk.<sup>15</sup> The recent trend of oppression shows that the Government has less and less tolerance for criticism and presence of civil societies in Cambodia. The enjoyment of the right to freedom of association and other nexus rights remains a concern due to the restriction both in

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9 Michel Frost. *Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/31/55 (Geneva, 2016) 25.

10 Hina Jilani. *Report of the Special Representative of the Secretary-General on human rights defenders*. A/59/401, (Geneva, 2004).

11 Melissa Curley. 'Governing Civil Societies in Cambodia: Implications of the NGO Law for the "Rule of Law"' (2018) 42:2 Asian Studies Review.

12 ADB. *Cambodia. Civil Society Briefs*. (Phnom Penh, 2010).

13 LICADHO. *Attack and Threats against Human Rights Defenders 2013-2014*. (Phnom Penh, 2015).

14 Ministry of Interior. (Phnom Penh, 2019). The exact number is however unknown due to unavailability of data.

15 Rhona Smith. *Report of the Special Rapporteur on the situation of human rights in Cambodia* A/HRC/39/73, (Geneva, 2018).

law and practice in light of the recent political and legal climate.<sup>16</sup> As the Special Rapporteur on the situation of human rights in Cambodia reported, the works of human rights defenders in promoting and protecting universally recognized human rights and fundamental freedoms were unduly restricted by the public authorities in many cases. The authorities did not only fail to facilitate human rights defenders in their works of human rights awareness-raising and education, but also actively disrupted their works, in particular, at community level.<sup>17</sup> The interruption by the authorities followed by warnings, threats, acts of intimidations and harassment on human right defenders and their respective institutions.<sup>18</sup>

Cambodia has adopted several controversial laws which potentially undermine the rights and freedoms of human rights defenders, i.e. the NGO law and trade union law. The adoption and implementation of the Law on Associations and Non-Governmental Organization (hereafter, “LANGO”) also known as the NGO Law presents further challenges to the enjoyment of human rights in Cambodia, in particular for human rights NGOs.<sup>19</sup>

This paper therefore aims to examine provisions of LANGO vis-à-vis the right to freedom of association in Cambodia under international human rights standards. On the basis of a comparative study, it delves into the legal standards under LANGO and international human rights standards concerning the right to freedom of association that Cambodia has ratified, in particular the International Covenant on Civil and Political Rights (ICCPR). In doing so, the legal framework of the right to freedom of association under international human rights law, in particular the ICCPR is discussed, by delving into general concepts and core elements including concept of voluntary association, legal personality of associations, operational autonomy of associations and grounds for termination, suspension and dissolution of associations as well as permissible restriction and corresponding State human rights obligations (section 2). The following part then explores the right to freedom of association in the context of Cambodia provided and protected under LANGO corresponding to international human rights standards abovementioned (section 3).

## II. THE RIGHT TO FREEDOM OF ASSOCIATION UNDER INTERNATIONAL HUMAN RIGHTS LAW

Before examining the right to freedom of association in Cambodia under LANGO, it is necessary to substantively explore the general notion of the right under the international human rights law. This section proceeds with discussion of general concept and core elements of the right followed by standards on permissible

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16 CIVICUS. *Civil Society Watch Report*, (2016) 7.

17 Surya Subedi. *Report of the Special Rapporteur on the situation of human rights in Cambodia*. A/HRC/24/36, (Geneva, 2013) 9.

18 *Ibid*, 24.

19 Rhona Smith. *Report of the Special Rapporteur on the situation of human rights in Cambodia*. A/HRC/42/60, (Geneva, 2019) 53.

restrictions and corresponding State's obligations under international human rights law.

### 1. The Right to Freedom of Association

The right to freedom of association is an inherent element of pluralism in a democratic society. The right is an essential means for individuals or groups to exercise and maintain their civic space in order to defend their common interests. The right to freedom of association is also a vehicle for the enjoyment of other civil and political rights as well as economic, social and cultural rights.<sup>20</sup> The right to freedom of association refers to the right to associate with others in order to pursue common interests.<sup>21</sup> The right to freedom of association is a civil right to associate with others without arbitrary interference by the State. It is also a political right to come together in community to pursue common interests. As an economic right or labour right, it particularly refers to the right to form or join trade unions to pursue economic interests.<sup>22</sup> The exercise of the right to freedom of association is an inherent part of democratic society in which there is a direct relationship between freedom of association, pluralism and democracy.<sup>23</sup>

The right *per se* is a twofold enabling right. First, it enables human rights defenders to enjoy other related or nexus rights including the right to freedom of peaceful assembly and of expression as an individual or in association with others. It is a tool for the enjoyment of other civil and political rights as well as economic, social and cultural rights. Second, it is fundamentally a prerequisite for human rights defenders, in line with the mission to 'defend' the rights of others, to support other peoples' ability to exercise their rights, in particular the marginalized and vulnerable ones.<sup>24</sup>

Another characteristic of the right to freedom of association is that it serves as an individual right as well as a collective right. The individual right to freedom of association is the right to form an association with like-minded persons or to join existing ones. As a collective right, the right refers to the right of associations to perform activities in pursuit of common interests of members or to join with other associations.<sup>25</sup>

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20 HRC, *supra* note 7, Preamble.

21 Sarah Joseph & Melissa Castan. *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, 3rd ed (New York: Oxford University Press, 2013) 652.

22 *Ibid.*

23 Margaret Sekagya. *Report of the Special Rapporteur on the situation of human rights defenders*, A/64/226 (Geneva, 2009) at 12; UN. *Commentary to the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Special Rapporteur on the situation of human rights defenders*, (2011) 35.

24 See e.g. Hina Jilani, *supra* note 10; Miana Kiai, *supra* note 8; HRC, *supra* note 7.

25 Manfred Nowak. *UN Covenant on Civil and Political Rights, CCPR Commentary*, 2nd revised ed (Kehl: N. AT Engel, 2005) 496.

The right to freedom of association was recognized in the 1948 Universal Declaration of Human Rights (UDHR). Article 20 of the UDHR stipulates that, “everyone has the right to freedom of [...] association. No one may be compelled to belong to an association.” It is essential to recognize the right to associate. It is equally important to recognize the right not to associate. The UDHR notably guarantees both positive and negative freedoms to associate with others.

The right is further guaranteed under Article 22 of the ICCPR. Article 22 of the ICCPR was built upon the principles enshrined in the UDHR. Article 22 states,

- “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 restriction 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, 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 authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, the guarantees provided for in that Convention.”

The ICCPR particularly recognizes the right to freedom of association as a civil and political right as well as an economic right, namely the right to associate and the right to form or join trade unions.<sup>26</sup> In parallel with the recognition in Article 22 paragraph 1, the ICCPR also recognizes the legal status as well as the importance of the International Labour Organization (ILO) Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize, also known as ILO Convention No. 87 which guarantees freedom of association as a fundamental labour right.<sup>27</sup> The provision therefore serves as the core analytical framework of the right in this paper. The right to freedom of association, as an economic right, is enshrined under Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right under Article 8 simply refers to the right to form or join trade unions. The right is also stipulated in the ILO Convention 87 and Convention No. 98 on the right to organise and collective bargaining of 1949.

The right is reaffirmed as one of the fundamental rights of human rights defenders in the 1998 Declaration on Human Rights Defenders, Article 5 paragraph (b) which reads,

“For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in

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<sup>26</sup> Manfred Nowak, *supra* note 25, 497.

<sup>27</sup> *Ibid.*

association with others, at the national and international levels: [...] (b) to form, join and participate in non-governmental organizations, associations or groups.”

The right to freedom of association under the DHRD builds upon the standard of norms under previous international human rights law. The DHRD includes the right to ‘participate’ in addition to the right to ‘form’ and to ‘join’ associations. The right to ‘participate’ refers to the right to take part or involve in activities of associations whereas the right to ‘join’ refers to the right to become members of association. The inclusion of the right to ‘participate’ reaffirms the principle of voluntary association as an essential element of the right to freedom of association which prohibits the compulsory membership of association.<sup>28</sup> Rather than a general organisation, the DHRD emphasizes on the ‘non-governmental organisation’ as a collective dimension of the right to freedom of association for human rights defenders to pursue their common interests. NGOs are probably the most well-known form of association for human right defenders. Human rights NGOs nowadays assume a central role in forming a vertical relationship between the State and the people.<sup>29</sup>

In addition, the right to freedom of association is also guaranteed in other UN human rights instruments including the International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(d)(ix); the Convention on the Elimination of All Forms of Discrimination against Women, Article 7; the Convention on the Rights of Persons with Disabilities, Article 29; and the Convention on the Rights of the Child (CRC), Article 15. The right to freedom of association is also recognized in various regional human rights instruments such as the European Convention on Human Rights (ECHR), Article 11; the American Convention on Human Rights, Article 16; the African Charter on Human and People’s Rights, Article 10; and the ASEAN Human Rights Declaration,<sup>30</sup> Article 27(2).

The right to freedom of association, in comparison to the other related rights such as the right to freedom of peaceful assembly and of expression, has received relatively less attention from the UN and its human rights bodies in terms of legal interpretation and commentaries. There is no General Comment of the Human Right Committee (CCPR) nor of the Committee on Economic, Social and Cultural Rights (CESCR) on the right up until now. The jurisprudence of the Committees on the right to freedom of association is also limited in providing interpretation of Article 22 and of Article 8. The mandates of the Special Rapporteur on the situation of human rights defenders was established in 2000 to support the work of human rights defenders in the world.<sup>31</sup> The works of the Special Rapporteur on the right to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders complements this deficiency.

28 Margaret Sakagya, *supra* note 23, 25 & 31; UN, *supra* note 23, 8.

29 Peter Baehr, *supra* note 4, 80.

30 Following the creation of ASEAN Inter-Governmental Commission on Human Rights in 2009, the Declaration was unanimously adopted in 2012 by all ASEAN members at the 21st ASEAN Summit in which Cambodia was the Chairman. The Declaration is a non-binding instrument adopted as the first human rights instrument for ASEAN to safeguard human rights in the region.

31 See OHCHR, “Special Rapporteur on the situation on human rights defenders” (2019).

The right to freedom of association is an extensive right that encompasses several fundamental elements which are indispensable for maximum enjoyment of the right. The enjoyment of the right is limited unless most, if not all, elements are guaranteed and protected to the maximum extent.<sup>32</sup> Those elements include the concept of voluntary association, legal personality of association, operational autonomy and dissolution, suspension and termination of associations.

#### a. Concept of Voluntary Association

The right to freedom of association, as the term itself suggests, indicates the ‘freedom’ in the exercise of the right. The right encompasses a positive right to associate and a negative right ‘not’ to associate. The right to ‘associate’ refers to the right to form, join and participate in associations in order to pursue common interests.<sup>33</sup> This right shall be exercised on a voluntary basis and without any previous authorization in terms of forming, joining and participating in any associations, organisations, or groups. This right also includes the freedom to choose organisations to which one wishes to belong.<sup>34</sup> It is also a collective right and freedom of associations to decide whether to accept membership or participation of individuals or other associations in the pursuit of common interests.<sup>35</sup> The exercise of the right to freedom of association can be one person or in group, formally or informally, single or organized, and temporary or permanent.<sup>36</sup>

Another aspect of the right to freedom of association is the negative freedom of association. The right ‘not’ to associate is equally protected in international human rights law. It is a fundamental freedom of individuals not to join or participate in any association. No one shall be compelled to join an association or organization. Compulsory membership of associations and organizations may result in a violation of the right to freedom of association guaranteed under Article 22 of the ICCPR unless valid justification is provided for such a restriction. The negative freedom also includes the right to withdraw from associations at any time.<sup>37</sup>

#### b. Legal Personality of Association

The exercise of the right to freedom of association in principle does not require associations to seek prior authorisation from public authorities. Acquisition of legal personality is nevertheless a pragmatic approach for associations to effectively

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32 Lee Swepston. ‘Human Rights Law and Freedom of Association: Development through ILO Supervision’ (1998) 137:2 *International Labour Review* at 181; OSCE. *Guideline on Freedom of Association* (Warsaw, 2015) 16-19.

33 Sarah Joseph & Melissa Castan, *supra* note 21, 652.

34 Manfred Nowak, *supra* note 25, 499.

35 Margaret Sekagya, *supra* note 23, 23.

36 Karl Joseph Partsch. ‘Freedom of Conscience and Expression, and Political Freedom’, in Louis Henkin. *The International Bill of Rights: The Covenant on Civil and Political Rights*. (New York: Columbia University Press, 1981) 235.

37 Sarah Joseph & Melissa Castan, *supra* note 21, 661-4.

exercise their rights and freedoms at local and national level in which they are entitled to rights and benefits as well as obligations under respective national legislation.<sup>38</sup>

Legal personality of associations can be obtained via notification/declaration or registration. ‘Notification’ or ‘declaration’ regime refers to “a process in which associations or organizations are able to operate and obtain their legal personality once they have notified the competent authority regarding their existence and structure as such”.<sup>39</sup> ‘Registration’ on the other hand requires associations to fulfil the registration requirements and seek approval from the authority before they are able to operate.<sup>40</sup> Registration regime is not necessarily a violation. In that regard, the registration regime nonetheless must not be compulsory, and the procedure should be simple, non-onerous, expeditious and non-discriminatory; the same standard shall apply in cases of re-registration.<sup>41</sup> Regardless of legal status, unregistered or *de facto* associations, with certain levels of institutional structure, are also entitled to equal legal protection.<sup>42</sup> Furthermore, no criminalization or criminal sanctions shall be imposed on unregistered associations or otherwise undermining the essence of the ICCPR.<sup>43</sup>

Denial of registration is considered as an extreme measure taken by the State against the exercise of the right to freedom of association. Denial of registration shall be justified and communicated within a reasonable time or may otherwise amount to violation of the right.<sup>44</sup> The procedure for foreign associations should not be significantly differentiated from that of domestic ones, or otherwise it may prejudice the exercise of the right of foreign associations protected by the principle of non-discrimination.<sup>45</sup>

### c. Operational Autonomy of Association

The right to freedom of association under international human rights law does not only provide the right to form or join association, but also guarantees the right to freely carry out activities, namely independence and autonomy of associations.<sup>46</sup> The independence of associations is guaranteed by the exercise of the freedom to conduct administration and activities, the right to solicit, receive and utilize resources and the right to take part in the conduct of public affairs.

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38 Margaret Sekaggya, *supra* note 23, 21 & 59.

39 *Ibid.*

40 Miana Kiai, *supra* note 8, 58.

41 Sarah Joseph & Melissa Castan, *supra* note 21, 654.

42 Margaret Sekaggya, *supra* note 23, 19.

43 *Ibid.*, 65.

44 *Ibid.*, 67.

45 Miana Kiai, *supra* note 8, 57; Miana Kiai, *Reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*. A/HRC/23/39 (Geneva, 2013) 17.

46 Alex Conte. ‘Democratic and Civil Rights’, in Alex Conte & Richard Burchill, *Defining Civil and Political Rights: The jurisprudence of the United Nations Human Rights Committee*, 2nd ed (Surrey: Ashgate, 2009) 93.

Freedom to conduct administration and activities is the essence of the right to freedom of association. Aforementioned, the right to freedom of association is a democratic tool to maintain civic space and thus this freedom shall be respected by State. Associations should enjoy and exercise the rights without undue interference and restriction by State. Freedom to conduct activities includes the right to determine objectives, statutes, structure and activities.<sup>47</sup> Furthermore, a safe and enabling environment is a precondition for associations to operate freely in order to pursue their common interests, particularly without fear of threats, intimidation, violence, or any act of retaliation by State or by private individuals.<sup>48</sup> In that regard, the right to privacy of associations shall also be respected by State and balanced in case of the pursuit of transparency and accountability in line with non-discrimination principle.<sup>49</sup>

The right to access resources or in particular right to access funding is an inherent element of the right to freedom of association which is recognized under international human rights instruments.<sup>50</sup> The right of associations to access funding shall be respected in term of soliciting, receiving and utilizing the funding. The DHRD recognizes the importance of resources in the work of human rights defenders and human rights organizations to promote and protect human rights and fundamental freedoms. Article 13 of the DHRD guarantees the right to ‘solicit’, ‘receive’ and ‘utilize’ resources regardless of the legality. State shall refrain from any act of undue interference and shall take positive measures to facilitate the exercise of this right as an inherent part of the right to freedom of association.<sup>51</sup>

In order to effectively exercise the right to take part in the conduct of public affairs, the right to freedom of association enables associations to exercise other nexus rights including the right to freedom of peaceful assembly and of expression guaranteed under the ICCPR.<sup>52</sup> The right to take part in the conduct of public affairs, recognized in Article 25 of the ICCPR, includes the right of associations to participate in political and public affairs. In case of the adoption of new national law or regulation concerning human rights defenders or human rights in general, the right to participate in public affairs including engaging in drafting process and providing consultation and comments to the State should be exercised for genuine dialogue and inclusive consultation process.<sup>53</sup> It is necessary for human rights defenders to ensure that any national law or regulation shall not prejudice the respect of universally recognized human rights and fundamental freedoms in accordance with the international human rights law.

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47 Miana Kiai, *supra* note 45, 64.

48 *Ibid*, 63.

49 UN. *International Covenant on Civil and Political Rights*, (Geneva, 1966) article 17.

50 Margaret Sekagya, *supra* note 23, 91.

51 Miana Kiai, *supra* note 45, 18-20.

52 UN. *International Covenant on Civil and Political Rights*, (Geneva, 1966) article 19 & 21.

53 CCPR. *General Comment No. 25: The right to participate in public affairs voting rights and the right of equal access to public service (Art. 25)*, CCPR/C/21/Rev.1/Add.7, (Geneva: 1996) 8.

#### d. Termination, Suspension and Dissolution of Association

The scope of protection of the right to freedom of association extends from the establishment to the dissolution of associations.<sup>54</sup> As the European Court of Human Rights (ECtHR) reaffirms, the protection of the right to freedom of association applies to the entire life of an association.<sup>55</sup> The protection under international human rights law does not end when associations are terminated, suspended or dissolved unless it is a voluntary dissolution of associations.

Involuntary termination, suspension or dissolution of associations by administrative authorities are considered as the most severe type of restriction on the right to freedom of association.<sup>56</sup> Suspension and dissolution of associations shall be determined by judicial decisions.<sup>57</sup> Suspension and dissolution shall be the “method of last resort in dealing with associations when softer measures are insufficient.”<sup>58</sup> Such decisions must be proportionate in relation to the legitimate aim of protection of national security or public safety, public order, public health or morals, or the rights and freedoms of others as stipulated in Article 22 paragraph 2. Grounds or justifications for the termination, suspension and dissolution of associations, as in the case of denial of registration, must be provided and communicated to associations in timely manner.<sup>59</sup> The failure to provide legitimate grounds and to implement legal procedures for dissolution is considered an administrative and judicial harassment on associations which may constitute a violation of the right to freedom of association. Associations accordingly have the right to appeal and request a judicial review before an independent and impartial court regarding a dissolution decision.<sup>60</sup>

## 2. Limitation of the Right to Freedom of Association

The right to freedom of association is not absolute and therefore the ICCPR allows certain permissible limitations or restrictions. Nevertheless, international human rights law sets a high threshold for permissible restrictions under Article 22. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, has affirmed that, “freedom should be the rule and restrictions the exception.”<sup>61</sup> The DHRD reaffirms the limitations shall be determined by law for the purposes of recognition for the rights and freedoms of others and of meeting just requirements of public order and general welfare in a democratic society.<sup>62</sup> The ICCPR, Article 22

54 Miana Kiai, *supra* note 8, 75.

55 *Ibid.*; see also *United Communist Party of Turkey and Others v. Turkey*, [1998] 19392/92, 33 (ECtHR).

56 ILO. *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, 5th (revised) ed (Geneva, 2006) 683.

57 *Ibid.*, 699.

58 Manfred Nowak, *supra* note 25, 506.

59 Hina Jilani, *supra* note 10, 82.

60 *Ibid.*

61 Miana Kiai, *supra* note 3, 21.

62 UN, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, (Geneva, 1998) Article 17.

paragraph 2 provides threshold of permissible restriction on the right, which is similarly stipulated in other human rights instruments, as following:

“No restriction 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.”

First, the restriction shall be prescribed by law. The restriction must be authorized by domestic law through the acts of Parliament, decisions of the Court, other adjudicative bodies or an equivalent. Government decrees and administrative orders or notification are not admissible to the threshold of ‘prescribed by law’.<sup>63</sup> Such domestic law must also be in accordance with international human rights law which guarantees the respect of universally recognized human rights and fundamental freedoms on a non-discriminatory basis. The State must demonstrate beyond reasonable doubt that the requirement is satisfied. In case of failure, the restriction may constitute in a violation of the right to freedom of association without the need to further consider other requirements such as legitimate aim and proportionality test.

Second, the restriction of the right must be ‘necessary in a democratic society’. The CCPR requires States to demonstrate their necessity and proportionality to the pursuance of legitimate aims in order to ensure continuous and effective protection of the right under the Covenant.<sup>64</sup> States must prove that the limitation and the measures taken are necessary to avert real, not hypothetical, risk to national security and democratic order.<sup>65</sup> The State must demonstrate that the interference is a ‘minimum level of interference’ to pursue the legitimate aims. Also, it is necessary to assess whether other less intrusive measures are insufficient or ineffective to achieve the legitimate aim of the State.<sup>66</sup> The measures taken “must be oriented along the basic democratic values of pluralism, tolerance, broadmindedness and people’s sovereignty.”<sup>67</sup> The necessary in a democratic society requirement is the highest threshold for the permissible restriction of the right in which States have often failed to demonstrate the necessity and proportionality of the measures taken to restrict the right.

Third, the restriction must be imposed to pursue legitimate aims or purposes stipulated in Article 22 paragraph 2. Paragraph 2 provides an exhaustive list of legitimate purposes of restriction. The restriction, prescribed by law, must serve one of the purposes of “the protection of national security or public safety, the protection public order (*ordre public*), the protection of public health or morals, and the protection of the rights and freedom of others.” Any other grounds for restriction on

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63 Margaret Sekagya, *supra* note 23, 27.

64 CCPR. *General comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, (Geneva, 2004) 6.

65 Margaret Sekagya, *supra* note 23, 28.

66 *Ibid.*; see also *Schwabe and M.G. v. Germany*, [2011] 8080/08 and 8577/8, 118 (ECtHR).

67 Manfred Nowak, *supra* note 25, 505.

the right may not be considered permissible under international human rights law.<sup>68</sup> However, the State may restrict or prohibit certain associations which are explicitly not in compliance with the principle of international human rights law, i.e. criminal association.<sup>69</sup>

### 3. State Obligations Regarding the Right to Freedom of Association

Under international human rights law, *stricto sensu*, there are no human rights of right-holders without obligation of duty-bearers. In general, State has both positive and negative obligations with regards to the international human rights obligations. States have immediate obligation to protect, promote and implement the freedom of association for human rights defenders.<sup>70</sup> State obligations vis-à-vis the right to freedom of association likewise entails negative and positive obligations.<sup>71</sup> The notion of a positive or negative obligation corresponds with the idea of tripartite typology of State obligation: that is the obligation to respect, protect and fulfill.<sup>72</sup>

The negative obligation, obligation to respect, is the duty not to undue interfere with the right to freedom of association unless it is an absolute necessary in a democratic society to protect national security, public order, public health or morals and the rights and freedoms of others.<sup>73</sup> In other words, the obligation to respect is the duty of the State not to unduly obstruct the exercise of the right to freedom of association.<sup>74</sup> The obligation to refrain from undue interference in the right of associations includes duty not to interfere in the right to freedom of association in general as well as its subsidiary rights.<sup>75</sup>

The obligation to protect mainly requires the State and its agents to prevent any acts of violation of the rights and freedoms by other non-State actors.<sup>76</sup> States have an obligation to ensure that the rights of individuals in society are protected from any

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68 Dragan Golubovic (2013). 'Freedom of association in the case law of the European Court of Human Rights' (2013) 17:7-8 *The International Journal of Human Rights* 675.

69 Manfred Nowak, *supra* note 25, 506-8.

70 UN, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, (Geneva, 1998) article 2; UN. *International Covenant on Civil and Political Rights*, (Geneva, 1966) article 2.

71 CCPR, *supra* note 64, 6; see also *Cantoral-Huamani and Garcia-Santa Cruz v. Peru*, [2007] Preliminary Objection, Merits, Reparation and Costs, IACtHR, 144.

72 Ida Elisabeth Koch. *Human Rights as Indivisible Rights: The protection of socio-economic demands under the European Convention on Human Rights*. (Leiden: Martinus Nijhoff Publishers, 2009) 20.

73 Dragan Golubovic, *supra* note 68, 760; Manfred Nowak. 'Freedom of Expression, Assembly, and Association', in Manfred Nowak, Januszewski, K. M. & Hofstätter, T. (eds). *All Human Rights for All: Vienna Manual on Human Rights*. (Mortsel: Intersentia, 2012) 382-3.

74 Miana Kiai, *supra* note 8, 64.

75 UN, *supra* note 23, 36; Manfred Nowak, *supra* note 25, 498.

76 Asbjørn Eide (1989). 'Realization of Social and Economic Rights and the Minimum Threshold Approach' (1989) 10:1-2 *Human Rights Law Journal*, 37; Ida Elisabeth Koch (2005). 'Dichotomies, Trichotomies or Wave of Duties?' (2005) 5:1 *Human Rights Law Review*, 82.

acts of violations committed by other individuals or entities.<sup>77</sup> Human rights defenders are considered as a group most at risk of marginalization and victimisation in society.<sup>78</sup> The obligation to protect not only includes the duty of State to prevent and protect associations from any act of violation by private individuals, but also the duty to refrain from interference and to conduct a thorough investigation of the alleged violations of the right of associations to freedom of association in line with the right to effective remedy.<sup>79</sup>

The obligation to fulfill is another positive obligation of the State to take all necessary measures including legislative, administrative and other measures to ensure the enjoyment of the right.<sup>80</sup> States are required to establish and maintain enabling environment for associations to freely operate without any fear of threats, acts of intimidation, or any forms of violence.<sup>81</sup> An enabling environment in law and in practice is a prerequisite for associations, in particular, for human rights defenders to pursue their legitimate interests of promoting and protecting human rights and fundamental freedoms.<sup>82</sup>

### III. THE RIGHT TO FREEDOM OF ASSOCIATION UNDER LANGO

Cambodia has been a member of the United Nations since 1955. Cambodia has ratified all the core international human rights instruments regarding the right to freedom of association including the ICCPR and ICESCR since 1992 after the arrival of UNTAC.<sup>83</sup>

The Constitution of the Kingdom of Cambodia was enacted by the Constitutional Assembly on September 21, 1993. The Constitution is the supreme law of Cambodia.<sup>84</sup> Any laws or legal documents must be in conformity with the Constitution or otherwise declared unconstitutional by the Constitutional Council—the supreme institution to safeguard the Constitution of Cambodia.<sup>85</sup> The Constitution of Cambodia recognized the applicability of international human rights treaties recognized and ratified by Cambodia (Article 31) and the direct application of those instruments was also reaffirmed by the Constitutional Council (CC) of Cambodia in its 2007 decision.<sup>86</sup> Article 36 guarantees the right to freedom of association as a labor right, meaning the right to form and to be member of trade

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77 Ida Elisabeth Koch. *Human Rights as Indivisible Rights: The protection of socio-economic demands under the European Convention on Human Rights*. (Leiden: Martinus Nijhoff Publishers, 2009), 19.

78 Miana Kiai, *supra* note 3, 11.

79 *Case of Kwas Fernández v. Honduras*. [2009] Judgment of Merits, Reparation and Costs. IACtHR, 145.

80 CCPR, *supra* note 64, 7; Ida Elisabeth Koch, *supra* note 77, 19.

81 Miana Kiai, *supra* note 8, 63.

82 OSCE, *supra* note 32, 51-3.

83 OHCHR. “Ratification Status for Cambodia” (2019).

84 Constitution of the Kingdom of Cambodia (1993), article 150.

85 *Ibid*, article 136.

86 CC. Decision No. 092/003/2007 (2007).

unions as an independent right. Furthermore, the right to freedom of association in a broader or civil and political sense is also recognized in Article 42 of the Constitution which reads that,

“Khmer Citizens shall have the right to establish associations and political parties. These rights shall be determined by law. Khmer citizens may take part in mass organizations for mutual benefit to protect national achievement and social order.”

The right to freedom of association, albeit in a more specific sense, is also codified in other legislation includes the Law on Political Parties (1997), Labor Law (1997), Civil Code (2007), Law on Associations and Non-Governmental Organizations (2015) and Law on Unions of Enterprises or known as Trade Union Law (2016). Particularly, LANGO was adopted in 2014 and later signed and promulgated by King Sihamoni on August 12, 2015 after several drafts and rounds of consultative comments from stakeholders, i.e. civil societies. The stated aim is to safeguard the right to freedom of establishing associations and NGOs in Cambodia by determining the legal formalities for the recognition of all domestic and foreign associations and NGOs operating in Cambodia (article 1-3).

Domestic association refers to “a membership organization established under the laws of Cambodia by natural persons or legal entities aiming to represent and protect the interests of their members without generating or sharing profit.” Domestic NGO refers to “non-membership organization, including foundations, established under the laws of Cambodia by natural persons and/or legal entities aiming to provide funds and services in one or several sectors for the public interest without generating or sharing profits.” Foreign association or NGO refers to “a legal organization established outside the country aiming at conducting activities to serve the public interest without generating profits” (article 4).

In light of increasing numbers of associations and NGOs working in various fields across the country, LANGO has so far served as a legal and administrative guideline for associations and NGOs in Cambodia. The law stipulates legal formalities concerning the operation of associations and NGOs, i.e. establishment, operation and dissolution or termination of associations and NGOs. LANGO is a *lex specialis* in regulating associations and NGOs corresponding the promotion and protection of the right to freedom of association in Cambodia. There are nonetheless several flawed and ambiguous provisions which are discussed in detail below.

### 1. Compulsory Legal Personality of Associations

Domestic and foreign association/NGOs are required to register with the Ministry of Interior (MoI) or to sign a memorandum of understanding (MOU) in case of foreign NGOs with the Ministry of Foreign Affairs and International Cooperation (MoFA) (article 6 & 12). The requirements to establish a domestic association or NGO are as follows; three founding members who are at least 18 years of age and have Khmer nationality, as well as the provision of necessary operational documents (article 5). Domestic associations and NGOs are also required to submit necessary documents

including application forms, address, profiles of founding members and statutes (Article 6). The MoI has the power to accept or deny the registration of associations and NGOs if their purpose and objective are deemed to “endanger the security, stability and public order or jeopardize national security, national union, culture, traditions, and customs of Cambodian national society” (article 8). The law fails to elaborate on specific kinds of activities that constitute endangering national security as such. On the other hand, the MoFA has discretionary power to sign or deny an MOU of no more than three years with a foreign entity (article 14 & 16).

The procedure for foreign associations and NGOs is apparently more burdensome, multi-staged and bureaucratic. Foreign NGOs/associations need to provide a number of documents to the MoFA for registration including: a letter nominating representative appointments with profiles, address, a letter of authorization, a supporting letter detailing the project, a budget statement, and a pledge letter (article 13). The MoFA has discretionary power to sign or deny an MOU with a foreign entity (article 14). The approved MOU has limited timeframe for a maximum of three years. Foreign associations and NGOs therefore have to file request for extension with the Ministry after the time has elapsed, an onerous and unnecessary procedure (article 16). Such a ground for limitation/denial of registration is ambiguous and susceptible to arbitrary interpretation by the administrative authorities with immense administrative power. It may further subject the foreign association and NGO to a more cumbersome and unnecessary procedure of re-registration which would possibly hinder their operation. The right to appeal before an independent and impartial court is not guaranteed for foreign entities under LANGO. Such limitations and lack of procedural safeguards place foreign entities, in particular, foreign human rights organisations, in greater danger of administrative and judicial harassment by public authorities.

Any association/NGO which fails to register is considered illegal and is subject to a fine from 5,000,000 riels to 10,000,000 riels (approximately USD 1,250 to USD 2,500) and other criminal punishment, or a possible expulsion in case of foreign associations/NGOs (article 9, 32 & 34). A compulsory registration regime is neither advocated nor considered best practice regarding the exercise of the right to freedom of association.<sup>87</sup> The mandatory registration regime may contravene the objectives of Article 22(2) of the ICCPR in which registered and non-registered associations are equally protected against arbitrary requirement of registration. Criminalisation and punishment of non-registered or *de facto* associations further undermines the essence of the right to freedom of association under Article 22 of the ICCPR in which Cambodia is a State Party. It shall be the freedom of associations/NGOs to register with the authority to obtain rights and benefits provided by the domestic law and no criminal sanctions shall be imposed thereof.<sup>88</sup> Simple, non-onerous and expeditious procedure should be equally available for both foreign and domestic associations/NGOs when registering and re-registering.<sup>89</sup>

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87 Miana Kiai, *supra* note 8, 56; Margaret Sekaggya, *supra* note 23, 65.

88 *Ibid*; see also e.g. *Korneenko et al v Belarus* [2006] 1274/2004, Human Rights Committee.

89 OSCE, *supra* note 32, 166.

## 2. Limited Operational Autonomy of Associations

All domestic and foreign NGOs must submit annual activity, financial reports and other relevant documents to the Ministry and any changes, amendments thereof (article 10 & 17).<sup>90</sup> In case of ‘necessary’, the Ministry of Economy and Finance or the National Audit Authority can audit an association/NGO (article 25). The ICCPR does not prohibit States from imposing reporting obligations on association unless it impedes the operation and intrudes the right to privacy.<sup>91</sup> The discretionary power of the administrative body was expanded in a letter issued by the MoI in October 2017 which required all NGOs and associations to inform local authorities three days prior before carrying out their activities or otherwise deemed to affect ‘public order or national security’.<sup>92</sup> The instruction can exacerbate the oversight and monitoring of the work of NGOs, for example, by the increased presence of the police and local authorities during their activities. The act of taking photos of the events or recording personal information of participants is potentially a form of administrative harassment by authorities.<sup>93</sup> The letter was later repealed by a directive of the MoI in November 2018 removing the requirement for the three-day prior notifications from registered NGOs or associations.<sup>94</sup>

Specifically, all NGOs/associations in Cambodia shall maintain so-called ‘neutrality’ toward political parties in Cambodia (Article 24). The term ‘political neutrality’ is not further defined in the provision or relevant *prakas*. The right to freedom of association itself is a civil and political right which allows individuals in society to associate with others in order to participate in public affairs and express public opinions, including political ones. Associations also have the right to freedom of expression which allows them to express their opinions including political opinions which do not necessarily favor any political parties.<sup>95</sup> Rhona Smith expressed concern about the conflation of critical work of human rights defenders with so-called ‘political’ conception.<sup>96</sup> Aforementioned, human rights defenders are often perceived as dissident that is, anti-government or pro-opposition. The threshold of (non)neutrality of NGOs/associations may be inclined to be arbitrarily interpreted by the authorities to undermine the work of human rights defenders or silence the voice

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90 Domestic and foreign association are exempted from this reporting obligation.

91 UN. *International Covenant on Civil and Political Rights* (Geneva, 1966), article 17.

92 CCHR, ADHOC, SC, and ICNL. *Cambodia Fundamental Freedoms Monitor Second Annual Report* (2018) 3-4.

93 CCHR, ADHOC, SC and ICNL. *Cambodia Fundamental Freedoms Monitor Third Annual Report* (2019) 19-20.

94 *Ibid.*, at 9-10; The original directive in Khmer can be found at: <https://www.interior.gov.kh/news/detail/558>.

95 UN. *International Covenant on Civil and Political Rights*, (Geneva, 1966) article 19 & 25; Margaret Sekaggya, *supra* note 23, 44.

96 Rhona Smith, *supra* note 15, 61.

of civil society. In such cases, the core essence of the right to freedom of association and of expression under the ICCPR may be breached.<sup>97</sup>

Provisions under LANGO also regulate sources of funding for NGOs and associations in Cambodia. The permissible sources of funding for domestic associations and NGOs include: “(a) donation or contributions or subscription fees of members; (b) own resources and assets; (c) lawful gifts from natural persons or legal entities; and (d) other incomes generated from lawful sources” (Article 18). The funding of foreign entities must be obtained from lawful sources (Article 19). It is unclear what may constitute ‘lawful’ sources of funding for associations and NGOs. Foreign funding is the most important, yet not the sole, source of funding for associations and NGOs in Cambodia.<sup>98</sup> Grants and donations from the UN, foreign governments and international NGOs have been the main source of funding for associations and NGOs in Cambodia for the last two decades.<sup>99</sup> The ambiguous limitation on the sources of funding for associations and NGOs may be incompatible with the right to solicit, receive and utilize resources as stipulated in the DHRD.<sup>100</sup> The Government alluded to prevention of foreign terrorist financing using NGOs as a cover to establish training camps or channel illicit funds within Cambodia.<sup>101</sup> Anti-money-laundering and counter-terrorism financing policy for the interest of accountability and transparency should be proportionate and exercised with caution for necessary auditing to avoid intrusive reporting and monitoring obligations and access to funding of domestic and foreign NGOs and associations in fulfilling their missions.<sup>102</sup>

### 3. Termination, Suspension and Dissolution of Associations

Associations/NGOs may voluntarily suspend their operations by providing written notification to the relevant ministries (article 26 & 27). In some cases, the authorities, i.e. MoI and MoFA, have the power to suspend, terminate or dissolve any association or NGO after a thirty-day warning in cases of failing to fulfill the reporting obligation, maintain political neutrality, comply with the statute or when it is considered as “endangering the security, stability and public order, or jeopardizing the national security, culture, tradition, and custom of Cambodian national society” (article 30, 33 & 35).

Involuntary suspension or dissolution of associations as outlined above, is considered one of the most severe restrictions on the right to freedom of association

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97 ICNL. ‘Comments on the Fifth Draft Law on Associations and Non-Governmental Organizations of the Kingdom of Cambodia’ (2015) 8.

98 Melissa Curley, *supra* note 11.

99 CCC. *Assessment of Enabling Environment for Civil Society* (2013) 27.

100 UN, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, (Geneva, 1998) article 13.

101 Melissa Curley, *supra* note 11.

102 UN, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Geneva, 1998), article 13; OSCE. *Guideline on Freedom of Association* (Warsaw, 2015) 220.

and should be used as a method of last resort, only when less severe measures are ineffective and when there is a real imminent danger to the national security and public order.<sup>103</sup> Suspension or dissolution on the basis of failure to comply with internal statutes, for instance, should not be used as a legitimate ground for suspension of associations. It is a matter of internal affairs of associations and NGOs in which the entities themselves shall decide and State should respect such private sphere under the right of associations to privacy.<sup>104</sup> Once again, the standard of endangering national security as such is ambiguous and subjective to, possibly arbitrary, interpretation of the authorities considering the critical nature of human rights NGOs in Cambodia. Furthermore, the right to appeal against the decision of the authorities is exclusively for domestic associations and NGOs, not foreign ones (Article 31).

Several human rights NGOs and associations are seemingly victims of such ambiguous provision and arbitrary interpretation as a repercussion of their human rights and/or advocacy works. Following the release of the third draft of LANGO in July 2011, Sahnakum Teang Thnaut (STT), a local NGO advocating for land and housing rights for urban poor communities,<sup>105</sup> was suspended for a period of five months from August to December 2011 on the basis of failure to complete the procedural formalities required by the MoI, in particular, modification of leadership structure and revision of its statute.<sup>106</sup> It is important to note that before the suspension, STT expressed concern on the Government's major railway project funded by Asian Development Bank (ADB) and Australian Aid which may affect a large number of poor communities in that area.<sup>107</sup> The appeal of STT was supported by other local NGOs such as the NGO Forum, another well-known local NGO. It was also awarded with warning letter from the MoI.<sup>108</sup> Several other local NGOs have also faced similar situations since the adoption of LANGO. The National Democratic Institute (NDI) was shut down within seven days cited violation of political neutrality.<sup>109</sup> Similarly, a local environmental NGO, Mother Nature Cambodia requested to be removed from the registry in 2017 due to repeated harassment of its members whilst it was alleged to receive foreign funding for a 'colour

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103 Miana Kiai, *supra* note 8, 75.

104 UN. *International Covenant on Civil and Political Rights* (Geneva, 1966) article 17.

105 STT. "Who We Are" (2016).

106 See RGC. Directive for the Temporary Suspension of the Activities of Theang Thnaut Association, No. 1151 Sor.Cho.Nor (2011); Thin Lei Win, 'Cambodian govt warns NGOS over letter to donors?' *Thomas Reuters Foundation* (2011), online: <<https://news.trust.org/item/?map=cambodian-govt-warns-ngos-over-letter-to-donors-paper>>.

107 *Ibid*; LICADHO. "We Are All STT": *Civil Society and Private Sectors Groups Condemn Government's Arbitrary Suspension of Local NGO* (2011).

108 Sokha Cheang, 'NGO Forum breaks silence on "warning"' *Phnom Penh Post* (2011), online: <<https://www.phnompenhpost.com/national/ngo-forum-breaks-silence-%E2%80%98warning%E2%80%99>>.

109 Ananth Baliga, 'Ministry shuts NDI for Lango violations as US Embassy hits back' *Phnom Penh Post* (2017), online: <<https://www.phnompenhpost.com/national/ministry-shutters-ndi-lango-violations-us-embassy-hits-back>>.

revolution' in Cambodia.<sup>110</sup> Equitable Cambodia, another local land rights organization which involved in a high profile land conflict with a sugar company, was temporarily suspended for 30 days on the basis of failing to provide requested documents.<sup>111</sup> Despite continued effort to improve relationship between the government and civil societies, in particular via the public partnership forum organized by the MoI, international and local civil societies have nonetheless underlined concerns possible undue restrictions of human rights and freedoms under LANGO.

#### IV. CONCLUSION

The year 2019 marked the 70<sup>th</sup> anniversary of the UDHR and the 20<sup>th</sup> anniversary of the DHRD. Human rights defenders around the world remain a 'most at risk' group of *de jure* and *de facto* harassment by State and private actors. The right to freedom of association is restricted in practice and increasingly by law as a tool of undue restriction. The right of human rights defenders to freedom of association is fully guaranteed under the Constitution of the Kingdom of Cambodia. In practice, nevertheless, human rights defenders are facing serious challenges at both individual and institutional levels in the exercise of their right to freedom of association as well as other rights and freedoms.

LANGO was adopted in response to the plethora of NGOs and associations working nationwide and thus marks as a *lex specialis* legislation on the right to freedom of association of the most vocal and active human rights defenders in Cambodia. It offers unprecedented regulatory guidelines on the registration procedure with respective Ministries and further facilitates the monitoring and oversight of all associations and NGOs in the interests of public governance and strengthening the rule of law in Cambodia.

The law nonetheless does not trigger concerns due to the details, but the lack thereof. It upholds critical ambiguities which could undermine the essence of the right to freedom of association of human rights defenders and in general under the ICCPR and the Constitution. The main purpose of the right to freedom of association is to allow all individuals and associations in society to exercise and maintain their civic space. Nonetheless, LANGO imposes undue control and oversight by the authority on civil societies. Such supervision provides little or no room for the exercise of civic space necessary in a democratic society and may undermine the essence of the right to freedom of association itself.

LANGO may not only affect the right to freedom of association, but also other nexus rights provided for human rights defenders such as, the right to privacy, the right to freedom of peaceful assembly and of expression, as well as the rights of other

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110 Dara Mech & Ananth Baliga, 'Environmental NGO Mother Nature dissolved' *Phnom Penh Post* (2017), online: <<https://www.phnompenhpost.com/national/environmental-ngo-mother-nature-dissolved>>.

111 Leonie Kijewski & Niem Chheng, 'Equitable Cambodia allowed to reopen' *Phnom Penh Post* (2018), online: <<https://www.phnompenhpost.com/national/equitable-cambodia-allowed-reopen>>.

people who benefit from the works of human rights defenders in the promotion and protection of human rights and fundamental freedoms. The law itself may not be a violation of the international human rights law. To ensure a safe and enabling environment for the exercise of the right and to foster individual and institutional empowerment of human rights defenders, however, genuine interpretation and implementation of LANGO the *bona fide* one, is crucial. Review of the law is also equally important to uphold legal protection of the right and strengthen the rule of law in Cambodia. Unless the legislation concerning the right to freedom of association is revisited in an inclusive and constructive manner, the maximum enjoyment of the right to freedom of association remains a concern for human rights defenders as agents of change in Cambodia.

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