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The Right to Freedom of Association of Human Rights Defenders in Cambodia

Implications of the Law on Associations and
Non-Governmental Organisations and
Law on Unions of Enterprises

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Summary

This paper is designed to examine the implications of the Law on Associations and Non-Governmental Organisations and the Law on Unions of Enterprises on the exercise of the right of human rights defenders to freedom of association in the Kingdom of Cambodia. The laws were recently adopted by the Royal Government of Cambodia in order to respond to the increasing numbers of non-governmental organisations and trade unions in Cambodia.

The right to freedom of association is recognized in various international human rights instruments in which Cambodia is a State Party, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right is also guaranteed in national legislation of Cambodia such as the Constitution, Labor Law, Civil Code and the newly adopted legislations on NGOs and unions. In addition, national human rights protection system including the national human rights bodies was established to monitor the implementation of the right to freedom of association and human rights in general.

Nonetheless, *de facto* exercise of human rights defenders' right to freedom of association is not fully guaranteed due to numerous challenges surrounding the right including administrative and judicial harassment, attack on physical integrity, ineffective national human rights safeguard system and corruption. On top of that, the recent adoption of the new laws causes a major impact on the right of human rights defenders to freedom of association. The laws are fundamentally incompatible with international human rights law including provisions on mandatory registration, criminalisation of non-registered associations, burdensome registration procedure, excessive power of administrative authority and ambiguous grounds for suspension and dissolution of associations. The laws, rather than facilitate the exercise of the right, impose excessive burden on NGOs and unions and may serve as a tool for the Government to legitimize undue restriction on the right to freedom of association and other nexus rights of human rights defenders in Cambodia.

Therefore, this thesis concludes that the adoption of the new laws is a major retrogressive measure of the Royal Government regarding the respect of the right of human rights defenders to freedom of association in Cambodia.

Preface

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Abbreviations

ACU	Anti-Corruption Unit
ADHOC	Cambodian Human Rights and Development Association
ASEAN	Association of Southeast Asian Nations
CAMFEBA	Cambodian Federation of Employers and Business Associations
CBO	Community-Based Organisation
CCC	Cooperation Committee for Cambodia
CCHR	Cambodian Centre for Human Rights
CCPR	Committee on Civil and Political Rights/Human Rights Committee
CDC	Council for the Development of Cambodia
CESCR	Committee on Economic, Social and Cultural Rights
CFA	Committee on Freedom of Association
CHRC	Cambodian Human Rights Committee
CPP	Cambodian People's Party
CRC	Convention on Rights of the Child
DHRD	Declaration on Human Rights Defenders
ECtHR	European Court of Human Rights
HRC	Human Rights Council
HRD	Human Rights Defenders
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICNL	International Centre for Not-for-Profit Law
ILO	International Labor Organisation
LANGO	Law on Associations and Non-Governmental Organisations

LICADHO	Cambodian League for the Promotion and Defense of Human Rights
MFAIC	Ministry of Foreign Affairs and Foreign Affairs
MLVT	Ministry of Labour and Vocational Training
MOI	Ministry of Interior
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
NACHR	National Assembly Commission on Human Rights
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
OHCHR	Office of High Commissioner on Human Rights
RGC	Royal Government of Cambodia
SCHR	Senate Commission on Human Rights
STT	Sahmakum Teang Tnaut
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNTAC	United Nations Transitional Authority in Cambodia

CHAPTER I: INTRODUCTION

1.1 Background

The adoption by the members of the United Nations (UN) General Assembly of the Declaration on the Right 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 affirms the significant role of human rights defenders in the promotion and protection of universally recognized human rights and fundamental freedoms as mentioned in the Charter of the United Nations.¹ Human rights defenders (HRD) play an essential role and are indispensable agents of human rights change.² The presence of human rights defenders does not only contribute to the promotion and protection of human rights and fundamental freedoms, but also the implementation of rule of law and democratic process as a whole.³

Human rights defenders refer to people who, individually or with others, act to promote and protect universally recognized human rights and fundamental freedoms. Human rights defenders are striving to promote and protect civil and political rights as well as economic, social and cultural rights at local, national, regional and international levels. Human rights defenders can be international or local non-governmental organisation (NGO), associations, trade unions, journalists, activists, students, teachers and media. HRDs, as every individuals in society, are entitled to human rights and fundamental freedoms provided by international human rights law.⁴

The right to freedom of association is of particular importance to human rights defenders. The right is enshrined under international human rights law including the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the

¹ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms [Hereinafter, “DHRD”] was adopted by the UN General Assembly Resolution (A/RES/53/144) on 9 December 1998.

² Fernández, L. E. E. & Patel, C. (2015). Towards developing a critical and ethical approach for better recognizing and protecting human rights defenders. *The International Journal of Human Rights*. 19:7. p. 897; Nah, A. M., Bennett, K., Ingleton, D. & Savage, J. (2013). A Research Agenda for the Protection of Human Rights Defenders. *Journal of Human Rights Practice*. 5:3. p. 401.

³ OHCHR (2004). *Human Rights Defenders: Protecting the Right to Defend Human Rights* (Factsheet No. 29). p. 2.

⁴ *Ibid.*

International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Declaration on Human Rights Defenders (DHRD).⁵

The right *per se* is an enabling right for HRDs in two aspects. First, the exercise of the right to freedom of association enables HRDs themselves 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. Second, the exercise of the right to freedom of association for HRDs is fundamentally a precondition for helping to guarantee others' ability to exercise their rights. The main role as well as duty of HRDs is to 'defend' the rights of others. The enjoyment of the right to freedom of association serves as a mean for HRDs to associate with others in order to pursue common interests of promotion and protection of human rights and fundamental freedoms of others in the society, in particular the marginalised and vulnerable community or those in need.

Due to the critical nature of their works, human rights defenders across the world are facing great challenges in fulfilling their mission to promote and protect human rights, particularly at the national level. The right to freedom of association as an inherent element of a democratic society is restricted and limited both in law and in practice. In addition to administrative and judicial harassment by State, the adoption of NGO law as a recent trend of restriction practiced by many States has further hindered the enjoyment of the right to freedom of association. The NGO law is used as a mean by those States to restrict the right of HRDs across the world to promote and protect human rights. Such a repressive law is indeed a potential threat to the presence of civil societies and pluralism in a democratic society.⁶

In the case of the Kingdom of Cambodia, it is not an exception in using law to restrict the right to freedom of association for HRDs. Cambodia has ratified all the core international human rights instruments regarding the right to freedom of association including the ICCPR and ICESCR. The right is also recognized in the Constitution—the supreme law of Cambodia—as well as in Labor Law and Civil Code. Moreover, it has also been addressed in recently adopted Law on Associations and Non-Governmental Organisations and Law on Unions of Enterprises—which marks a legal turning point for the exercise of the right of HRDs to freedom of association in Cambodia, as will be

⁵ Universal Declaration of Human Rights ("UDHR"), Article 20; International Covenant on Civil and Political Rights ("ICCPR"), Article 22; International Covenant on Economic, Social and Cultural Rights ("ICESCR"), Article 8; DHRD, Article 5.

⁶ Jilani, Hina (2004). *Report of the Special Representative of the Secretary-General on human rights defenders*. A/59/401.

discussed in detail below. These laws in principle aim to safeguard the right to freedom of association and facilitate the operation of associations, NGOs and trade unions who are the most active and vocal human rights defenders in Cambodia since the 1990s.

This paper therefore aims to examine the impacts of the newly adopted NGO law and trade union law on the enjoyment of the right to freedom of association of human rights defenders in Cambodia.

1.2 Research Questions and Objectives

The purpose of this paper is to examine the potential impacts of the Law on Associations and Non-Governmental Organisations and the Law on Unions of Enterprises on the enjoyment of the right to freedom of association of human rights defenders in the Kingdom of Cambodia.

This paper therefore aims to answer the following research question:

What are the implications of the Law on Associations and Non-Governmental Organisations and the Law on Unions of Enterprises on the right to freedom of association of human rights defenders in Cambodia?

In order to answer the main research question, there are three sub-research questions that have to be answered:

- (1) What is the right to freedom of association according to the international human rights law?
- (2) How is the right to freedom of association of human rights defenders guaranteed in Cambodia?
- (3) What are the challenges surrounding the right of human rights defenders to freedom of association in Cambodia?

1.3 Country Profile

In order to examine the right to freedom of association in context of Cambodia, it is necessary to understand about Cambodia and its contextual circumstances.

The Kingdom of Cambodia is located in the Southeast Asia region with a total area of 181, 035 square kilometers bordering the Gulf of Thailand, Thailand, Vietnam and Laos. The majority of the population are Khmer. The national

religion is Buddhism.⁷ Cambodia is divided into 24 provinces and 1 municipality, Phnom Penh, as the capital city. The current population as of 2015 is approximately 15 million people in which 90% are Khmers.⁸

The ancient history of Cambodia dated back to Angkor era (9th-15th century AD) which is considered as the most glorious period of all time. Angkor Empire extended across Southeast Asia region. At the heart of the empire, there was the Angkor Wat⁹ which was built in dedication of Hinduism. Internal conflicts and invasion dragged the empire down and the empire dramatically declined ever since.¹⁰

In 1863, Cambodia was put under the protectorate of France as a part of French Indochina along with Laos and Vietnam.¹¹ After the withdrawal of Japanese at the end of World War II, the late King Father—Norodom Sihanouk—led the independent movement against French. Cambodia officially gained its independence on November 9, 1953. The late King, then Prince Sihanouk, abdicated and established *Sangkum Reastr Niyum* (People's Socialist Community) which was considered as a 'golden age' in the modern history of Cambodia.¹²

Cambodia once again fell into the dark history of internal conflicts. Prince Sihanouk was ousted by General Lon Nol on March 18, 1970 to establish Khmer Republic with the support of the United States.¹³ Not long after, the Khmer Rouge came to power on April 17, 1975 and established Democratic Kampuchea which marks as the darkest period or *Year Zero* in the modern history of Cambodia. At least 1.5 million people died from starvation, torture, execution and forced labor during the regime from April 17, 1975 to January 7, 1979.¹⁴

The Kampuchean United Front for National Salvation with the support of Vietnamese troops, liberated Cambodia from the Khmer Rouge on January 7, 1979 and created the People's Republic of Kampuchea. Vietnamese troops

⁷ British Broadcasting Corporation (BBC) (2015). *Cambodia Country Profile*. Available at: <<http://www.bbc.com/news/world-asia-pacific-13006539>> (May 15, 2016).

⁸ Central Intelligence Agency (CIA) (2016). *The World Factbook: Cambodia*. Available at: <<https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>> (May 15, 2016).

⁹ Angkor Wat is considered as the pride of Cambodia which appears on every flag of Cambodia across the modern history including the flag of Democratic Kampuchea (Khmer Rouge). It is now one of the UNESCO World Heritage Site.

¹⁰ Chandler, David (2008). *A History of Cambodia*. Fourth edition. Boulder: Westview. p. 35.

¹¹ *Ibid.*, p. 141.

¹² Strangio, Sebastian (2014). *Hun Sen's Cambodia*. New Haven and London: Yale University Press. pp. 5-8.

¹³ Chandler, David (2008), p. 249.

¹⁴ *Ibid.*, pp. 255-272.

remained present in Cambodia until September 1989.¹⁵ During that period, Hun Sen was appointed as Prime Minister on January 5, 1985.¹⁶

The State of Cambodia emerged following the withdrawal of Vietnamese troops from Cambodia. Paris Peace Agreements was signed in 1991 to apparently end the decades of civil wars in Cambodia. The Paris Agreements also established the mandate of the United Nations Transitional Authority in Cambodia (UNTAC).¹⁷ UNTAC was the largest peacekeeping operation and also one of the most expensive operation in the history of the UN. The mandates of UNTAC included demobilization, administrative supervision and the organisation of ‘free and fair’ elections. The 1993 elections was the most successful story of UNTAC in which about 90% of the registered voters participated in the voting process.¹⁸

After the election, the Kingdom of Cambodia reemerged. The Constitution of the Kingdom of Cambodia was adopted. The coalition government consisted of two prime ministers—Norodom Ranariddh and Hun Sen—were formed. The monarchy was restored and the late King Father became the king and head of state. The 1998 national election maintained the legitimacy of coalition government, but with only one head of government, Prime Minister Hun Sen. Since the national election in 1998, the Cambodian People’s Party (CPP) has dominated and become the only ruling party in the politics of Cambodia. The 1993 national election was a turning point in the history of Cambodia in which the contemporary political apparatus was established.¹⁹

Cambodia today is a kingdom with constitutional monarchy with liberal democracy and pluralism.²⁰ The King reigns, but does not rule.²¹ The monarchy in Cambodia is mainly ceremonial. The King, Norodom Sihamoni—the son of the late King Father—is the current head of state.²²

The politics of Cambodia is governed by multi-party liberal democracy. The constitutional power in Cambodia is divided into three branches: legislative, executive and judiciary. The power of the legislative, executive and judiciary are separated.²³ The legislative power is under the Parliament of Cambodia. The bicameral Parliament of Cambodia consists of the National Assembly (lower house) and the Senate (upper house). The executive is governed by the

¹⁵ Chandler, David (2008), *supra* note 10, pp. 277-285.

¹⁶ Strangio, Sebastian (2014), *supra* note 12, pp. 21, 34 & 39.

¹⁷ UN Security Council (1992), S/RES/745.

¹⁸ Strangio, Sebastian (2014), *supra* note 12, pp. 43-57.

¹⁹ Chandler, David (2008), *supra* note 10, pp. 286-288.

²⁰ Constitution, Article 1.

²¹ Constitution, Article 7.

²² The late King Norodom Sihanouk abdicated in 2004 due to his poor health condition and later died of heart attack in 2012.

²³ Constitution, Article 51 (new).

Royal Government of Cambodia (RGC) with Prime Minister Hun Sen as the head of government. The executive cabinet is the Council of Ministers. The judiciary is an independent body consists of municipal and provincial courts, appellate courts, military court and Supreme Court and Constitutional Council as the highest courts.²⁴

Cambodia is a market economy with a substantial high economic growth rate since 2000s with 7 percent growth rate in 2015. Agriculture, tourism, construction and garment industry are the major contributors to the economy of Cambodia. In particular, the garment and footwear industry employs more than 700,000 people in which majority are women from provinces. The total export of garment and footwear sectors increases to \$6.3 billion in 2015 which accounts for 78 percent of the total export of Cambodia.²⁵

International cooperation through civil society organisations plays a major role in economic as well as social development of Cambodia. The arrival of UNTAC in 1992 marked the first ever international non-governmental organisation in Cambodia. The numbers of non-governmental organisation and civil society have increased exponentially ever since. There were more than 1,320 associations and 1,968 NGOs in Cambodia by July 2012.²⁶ Currently, there are more than 1,581 associations and 2,791 NGOs,²⁷ in which more than 1,700 NGOs have registered with the Government as of 2015 and more than 80 percent are local NGOs.²⁸ Civil society organisations in Cambodia work in a wide range of fields and projects including democracy, rule of law, human rights and development. These numbers reflect the significant presence of civil societies in the development of rule of law, democracy and human rights in Cambodia since 1992.

Owing in particular to the sudden boost of garment industry, the numbers of trade unions has also increased dramatically in the past decades. Unionization is the most active movement in Cambodia in advocating for labor rights and fair labor practices for workers, particularly in garment industry. The number of trade unions jumps from less than 100 in 2001 to more than 1,700 trade unions, 45 union federations, 9 confederations, and 11 workers' associations (association for informal economy workers, farmers and civil servants) in

²⁴ CIA (2016), *supra* note 8.

²⁵ Ministry of Commerce; International Labor Organisation (ILO) (March 2016). *Cambodian Garment and Footwear Sector Bulletin*. Issue 3. p. 6.

²⁶ Human Rights Committee (CCPR) (2013). *Consideration of reports submitted by States parties under article 40 of the Convention: Cambodia*. CCPR/C/KHM/2. ¶187.

²⁷ Cooperation Committee for Cambodia (CCC) (2016). *NGO Database Management System*. Available at: <http://ngodb.ccc-cambodia.org/Visitor/Summary_Reports.aspx> (May 15, 2016).

²⁸ Council for the Development of Cambodia (CDC) (2015b). *The Cambodia NGO Database*. Available at: <<http://cdc.khmer.biz/ngo/summary/summary.asp>> (May 15, 2016).

2010.²⁹ As of 2015, the data from the Ministry of Labor showed that there are more than 3,000 trade unions active in more than 200 factories in Cambodia along with 86 federations and 14 confederations.³⁰

Those numbers, however, do not reflect the reality of the right to freedom of association. The recent trend shows that the Government has less and less tolerance for criticism and presence of civil societies in Cambodia. The human rights situation in Cambodia is dire for the population and even more for human rights defenders. The use of excessive forces, administrative and judicial harassment, threats and violence by public authorities against HRDs are increasingly reported.³¹ Furthermore, the Government has adopted several controversial laws including the NGO and trade union law which are believed to be potentially misused to further curtail the right of HRDs in Cambodia.

Cambodia has been a member of the United Nations since 1955. Cambodia has also ratified all the core international human rights instruments regarding the right to freedom of association including the ICCPR (26 August 1992), ICESCR (26 August 1992) and ILO Convention 87 (23 August 1999).³² Cambodia joined the Association of Southeast Asian Nations (ASEAN) as the last (tenth) member on 30 April 1999.³³

1.4 Methodology and Materials

In order to answer the main research question and sub-research questions, this paper is divided into three parts.

The first part of the paper seeks to answer the first sub-research question regarding the international legal standards on the right to freedom of association according to the international human rights law. A traditional legal method is used to explore and examine the legal norms and standards on the right to freedom of association. The legal norms of the right in this paper are established through a wide range of sources including international treaties and conventions and their commentaries, reports and documents from the United Nations human rights bodies and special rapporteurs, reports of

²⁹ ILO (2011). *Decent Work Country Programme: Cambodia (2011-2015)*. p. 17.

³⁰ Cambodian Federation of Employers and Business Associations (CAMFEBA) (2015). *Cambodia's Trade Union Law: A necessity*. p. 5.

³¹ Kiai, Miana (2012). *Reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*. A/HRC/20/27.

³² CESCR (2009a). *Implementation of the International Covenant on Economic, Social and Cultural Rights: Initial reports submitted by States parties under article 16 and 17 of the Covenant: Cambodia*. E/C/12/KHM/1. ¶274.

³³ ASEAN (2016). *About ASEAN: Establishment*. Available at: <http://asean.org/asean/about-asean/> (May 15, 2016).

international organizations as well as academic books, journals and articles of scholars in the field.

The second part is to answer the second sub-research question regarding the right to freedom of association in the context of Cambodia. To answer that question, the national legislations regarding the right is examined to established national legal norms corresponding to the legal norms under international human rights law. In doing so, the main source includes various relevant national instruments such as national laws, royal decree, sub-decree, and order (*prakas*) by ministries.

The newly adopted NGO law and trade union law are also thoroughly examined as a part of national legislation. This paper does not aim to examine the new laws on article by article basis. The analysis focuses on key articles which are controversial and may potentially have substantial effects on the right to freedom of association in order to establish an overall understanding of the implications of the new laws on the exercise of the right of HRDs to freedom of association in Cambodia.³⁴

Last but not least, the third part of the paper is dedicated to answer the last sub-research question regarding challenges surrounding the right to freedom of association in Cambodia. To provide an overview of the challenges, a wide range of sources is employed including documents of the UN human rights bodies (State reports and Concluding Observations), reports of national and international NGOs, news articles from local and independent newspapers and other internet sources.

1.5 Delimitations

Due to time and space constraints, this paper is strictly limited in several aspects.

First of all, the scope of this paper is limited to only the right to freedom of association. As a matter of fact, the Law on Associations and Non-Governmental Organisations and the Law on Unions of Enterprises do not only have implications on the right to freedom of association, but also the right to freedom of peaceful assembly and of expression. Notwithstanding, the new laws are deemed to have a higher correlation with the right to freedom

³⁴ Since the Law on Associations and Non-Governmental Organisations and the Law on Unions of Enterprises were recently adopted, the laws are not widely available to the public yet. The available documents are all in Khmer, the official Cambodian language and there is no official translation to English yet up to the time of writing. Therefore, the laws in Khmer version is used as the main source along with the unofficial English translation of the law as a supplement for the analysis purpose in this paper.

of association. Therefore, this paper provides analysis of the new laws on exclusively the right to freedom of association.

Furthermore, this paper in particular examines the right to freedom of association of ‘human rights defenders’. Human rights defenders generally cover a wide range of groups and individuals working to promote and protect universally recognized human rights and fundamental freedoms including State and non-state actors. States under international human rights law are duty-bearers of international human rights obligations. However, States and their organs in most cases are perpetrators of human rights violations.³⁵ The role of non-governmental defenders is therefore indispensable in maintaining a check-and-balance system against the State. For the purpose of this paper, therefore, only non-state or non-governmental human rights defenders are covered in this paper. Those actors include, but not limited to, associations, non-governmental organisations, civil society, trade unions, journalists and right activists.

The right to freedom of association *per se* is a broad and extensive right. The right encompasses numerous aspects and elements which are impossible to discuss all within the scope of this paper. This paper therefore discusses key elements of the right to freedom of association which are the most relevant in the context of Cambodia, including concept of voluntary association, operational autonomy principle and prohibition of involuntary dissolution. Those key elements are currently main concerns and issues regarding the exercise of the right to freedom of association in Cambodia. Other aspects of the right, for instance, the right to strike, the right to collective bargaining and the freedom of association of armed forces, police and civil servants, are not included within the scope of this paper.

1.6 Disposition

This paper is divided into five chapters.

Chapter I is an introductory chapter which provides a background of the issue regarding the right of human rights defenders to freedom of association. It also introduces an overview of modern history and current situation of Cambodia in general in order to establish a better understanding of Cambodia and its human rights context.

Chapter II explores the international legal norms on the right to freedom of association according to the international human rights law. In particular, several key aspects of the right are thoroughly addressed and elaborated

³⁵ OHCHR (2004), *supra* note 3, pp. 15-16.

including the right to associate and not to associate, registration, freedom to conduct activities and dissolution of associations. The limitations of the right along with state obligations under international human rights law are also discussed in this chapter.

Chapter III establishes the legal norms under Cambodian legal system regarding the right to freedom of association corresponding the legal norms under international human rights law addressed in Chapter II. This chapter also examines provisions of the Law on Associations and Non-Governmental Organisations and the Law on Unions of Enterprises on the right to freedom of association. Several key sections of the laws regarding registration, operational autonomy and dissolution are comprehensively discussed in accordance with international human rights law.

Chapter IV provides an overview of challenges surrounding the right of human rights defenders to freedom of association in Cambodia. Several main challenges to the exercise of the right are briefly addressed in order to understand the overall picture and the current situation of the right to freedom of association as well as general situation human rights for HRDs in Cambodia.

Finally, Chapter V offers the author's conclusions and answers the main research question. Future prospects on the issue of the right to freedom of association for human rights defenders after the adoption of the new laws in Cambodia are also provided.

CHAPTER II: INTERNATIONAL LEGAL STANDARDS ON THE RIGHT TO FREEDOM OF ASSOCIATION

This chapter seeks to answer the first sub-research question regarding the international standards of the right to freedom of association. This chapter thus explores the scope and content of the right to freedom of association under international human rights law with the introduction of its key elements. Limitations of the rights and corresponding State obligations are also formulated in this chapter.

As mentioned above, Cambodia has ratified all the core international human rights instruments on the right to freedom of association. Unless otherwise specified, the provisions regarding the right to freedom of association demonstrated in this chapter are applicable in the case of Cambodia.

2.1 Right to Freedom of Association in International Human Rights Law

The right to freedom of association is an inherent element of pluralism in a democratic society. The right is an essential mean for individuals or in association with others 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.³⁶ The right to freedom of association refers to the right to associate with others in order to pursue common interests.³⁷ This right is recognized and guaranteed in various international human rights instruments.

The right to freedom of association is often misconstrued with the right to freedom of peaceful assembly. The right to freedom of association is considered as a derivative or ancillary of the right to freedom of peaceful assembly. The right to freedom of association and of peaceful assembly have in fact a close nexus since both concern with the right to come together to

³⁶ HRC (2010). *The rights to freedom of peaceful assembly and of association*. A/HRC/RES/15/21. Preamble.

³⁷ Joseph, Sarah & Castan, Melissa (2013). *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*. (Third Edition). New York: Oxford University Press. p. 652.

pursue common interests. The difference is that the right to freedom of peaceful assembly is more of an *ad hoc* nature while the right to freedom of association focuses on the permanent nature of association or organization. The right to freedom of association is nevertheless an independent right under international human rights law.³⁸

The right to freedom of association is a civil right to associate with others without arbitrary interference by the State. Also, it is a political right to come together in community to pursue common interests. The exercise of the right to freedom of association is an inherent part of a democratic society where there is a direct relationship between freedom of association, pluralism and democracy.³⁹

As a civil and political right, the right to freedom of association refers to the right to associate with others to pursue common interests. The right to freedom of association, under international human rights law, is not just a civil and political right. The right is also recognized as an economic right. As an economic right, or labor right, the right refers to the right to form or join trade unions.

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.⁴⁰

The right to freedom of association was first 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 freedom to associate with others.

³⁸ Partsch, Karl Joseph. ‘Freedom of Conscience and Expression, and Political Freedoms’, in Henkin, Louis (ed.) (1981). *The International Bill of Rights: The Covenant on Civil and Political Rights*. New York: Columbia University Press. pp. 230-231.

³⁹ Sekaggya, Margaret (2009). *Report of the Special Rapporteur on the situation of human rights defenders*. A/64/226, ¶12; 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 [hereinafter, “Commentary to DHRD”] (2011), p. 35.

⁴⁰ Nowak, Manfred (2005). *UN Covenant on Civil and Political Rights, CCPR Commentary*. 2nd revised edition. Kehl: N. P. Engel. p. 496.

As a civil and political right, the right to freedom of association is recognized under Article 22 of the International Covenant on Civil and Political Rights (ICCPR). Article 22 is the main and key provision to the right to freedom of association which builds upon the principles in the UDHR. Article 22 provides legal norms and minimum standards of the right under international human rights law.

- “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 (*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 authorize States Parties to the International Labor 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.” (Article 22, ICCPR)

It is important to note that Article 22 of the ICCPR not only recognize the right to associate as a civil and political right, but also the right to form and join trade unions which is a traditional economic dimension of the right. The recognition is first to recognize the economic aspect of the right and also to reaffirm that the right to form or join trade union is not just an economic or labor aspect of the right, but also a civil and political right recognized under international human rights law.⁴¹

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 Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize, also known as ILO Convention 87 which guarantees freedom of association as a fundamental labor right.⁴²

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.

- “1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

⁴¹ Manfred, Nowak (2005), p. 497.

⁴² *Ibid.*, pp. 510-512.

- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.” (Article 8, ICESCR)

Article 8 guarantees the right to form and join trade unions, and also other derivative rights such as right to form union federation and confederation and right of union to function freely. The ICESCR also recognizes the right to freedom of association in the context of labor rights in the ILO Convention 87.

The International Labor Organisation (ILO) is the most prominent institution in promoting and protecting labor rights. The respect of freedom of association is one of the core objectives of the ILO. As referenced in Article 22 paragraph 3 of the ICCPR and Article 8 paragraph 3 of the ICESCR, the International Labor Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize (ILO Convention 87) is one of the core conventions of the ILO and of international human rights instruments concerning the right to freedom of association in the context of labor rights.

Article 2 guarantees, “the right to establish and [...] to join organisations of their own choosing without previous authorisation.” The right under ILO is further protected by another core convention, the ILO Convention of 1949 concerning Right to Organize and Collective Bargaining (ILO Convention 98) which ensures the right of workers to freedom of association in context of collective bargaining.

In the particular case of human rights defenders, the right to freedom of association is recognized under the 1998 Declaration on the Right 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).⁴³ The Declaration *per se* is not a binding instrument. However, the Declaration

⁴³ The Declaration on Human Rights Defenders was adopted by a consensus of member States of the UN General Assembly (53rd Session), including Cambodia.

contains the principles of other legally binding international human rights law including the ICCPR. The Declaration was also adopted by a consensus of States which affirms their commitment of implementation.⁴⁴

The Declaration in Article 5 § b stipulates that, “everyone has the right, individually and in association with others, at the national and international levels [...] to form, join and participate in non-governmental organizations, associations or groups.”

The right to freedom of association under the Declaration builds upon the standard of norms under previous international human rights law.⁴⁵ The Declaration 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.⁴⁶

Rather than a general organisation, the Declaration emphasizes on the ‘non-governmental organisation’ as a collective dimension of the right to freedom of association for HRDs to pursue their common interests

Non-governmental organisations (NGO) are probably the most well-known form of association for human right defenders. Human rights NGOs nowadays assume a central role in between the vertical relationship of the State and the people. NGOs are primarily watchdogs which closely monitor the respect of human rights of the government via reporting on transparency and accountability. NGOs provide ‘shadow reports’ to the UN human rights bodies and address the issue of human rights violations through ‘mobilization of shame’ on the government.⁴⁷

They also provide necessary, legal and non-legal assistance for the people, in particular, the victims of human rights violations. Another essential role of NGOs is to provide necessary consultation and recommendations regarding human rights standards of implementation to the government.⁴⁸ On top of that, they contribute to human rights education and awareness-raising.⁴⁹

⁴⁴ Sekaggya, Margaret (2010). *Report of the Special Rapporteur on the situation of human rights defenders*. A/65/223, ¶31.

⁴⁵ *Ibid.*, Commentary to DHRD, *supra* note 39, p. 8.

⁴⁶ A/64/226, *supra* note 39, ¶25.

⁴⁷ Baehr, Peter R (2009). *Non-Governmental Human Rights Organizations in International Relations*. Basingstoke: Palgrave Macmillan. pp. 80, 88-89.

⁴⁸ *Ibid.*, p. 26

⁴⁹ UN General Assembly (1993). *Vienna Declaration and Programme of Action*. A/CONF./157/23. Part I. ¶38.

Therefore, the right of HRDs to form, join or participate in non-governmental organisation, association or group is of great essence in the promotion and protection of human rights and must be recognized and respected by the public authorities.

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,⁵⁰ Article 27(2).

2.2 General Interpretation of the Right to Freedom of Association

As stated earlier, the right to freedom of association is an extensive right. In addition to the general concept, it is essential to discern fundamental elements of the right to freedom of association. The exercise of the right to freedom of association is deficient unless all elements are fully guaranteed. All fundamental elements must be guaranteed in order to ensure enjoyment of the right to the fullest extent and effective implementation of the right to freedom of association.

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 relatively received 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. To fill in the gap, the mandate of the UN's Special Rapporteur on the right to freedom of peaceful assembly and of association and Special Rapporteur on the situation

⁵⁰ 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.

of human rights defenders offer a comprehensive interpretation of the right though annual and thematic reports.

The right to freedom of association contains various aspects encompassing numerous elements. However, this paper aims to discuss only some key elements of the right including the concept of voluntary association, legal personality of association, operational autonomy principle and dissolution of associations.

2.2.1 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. As a positive right, the right to ‘associate’ is a fundamental element of the right to freedom of association. The right to ‘*associate*’ refers to the right to form, join and participate in associations in order to pursue common interests.⁵¹ 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 ones wish to belong.⁵² 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.⁵³

The term ‘association’ under Article 22 of the ICCPR refers to “any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests.”⁵⁴ 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.⁵⁵ According to the European Court of Human Rights (ECtHR), associations, to be protected under Article 11, must possess three characteristics: high level of institutional structure, voluntary association and pursuance of common interests.⁵⁶

⁵¹ Joseph, Sarah & Castan, Melissa (2013), *supra* note 37, p. 652.

⁵² Manfred, Nowak (2005), *supra* note 40, p. 499.

⁵³ A/64/266, *supra* note 39, ¶23.

⁵⁴ A/59/401, *supra* note 6, ¶46; A/HRC/20/27, *supra* note 31, ¶51. The term ‘association(s)’ in this paper refers to all groups or entities under the scope of Article 22, unless otherwise specified.

⁵⁵ Partsch, Karl Joseph (1981), *supra* note 38, p. 235; A/HRC/20/27, *supra* note 31, ¶51; A/59/401, *supra* note 6, ¶46.

⁵⁶ *Young, James, Webster v. the United Kingdom*, ECtHR, Application no. 7601/76; 7806/77, judgment of 13 August 1981.

An important element of the right is the ‘common interest’ requirement. The American Convention on Human Rights under Article 16, for instance, provides a non-exhaustive list of purposes of associations such as ideological, religious, political, economic, labor, social, cultural, sports or any other purposes. Article 22 of the ICCPR on the other hand does not stipulate specific purpose or interest of associations. The implication is that Article 22 has a broad scope of application on associations regardless of the purposes considering it is lawful. Religious societies, cultural groups, political parties, trade unions and human rights organisations are all under the scope of Article 22.⁵⁷ The common purpose under Article 22 however is limited to such associations with ‘public’ purpose or interests whereas those with ‘private’ interests are regulated under the scope of Article 17 of the ICCPR regarding the right to privacy.⁵⁸

The association of human rights defenders is in conformity with the legitimate purpose required by international human rights law. Promotion and protection of universally recognized human rights and fundamental freedoms is recognized as a legitimate purpose of human rights organisations as stipulated in Article 1 of the Declaration on Human Rights Defenders.

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. The exercise of this right shall be voluntary in nature. No one shall be compelled to join an association or organization. Compulsory membership of associations, organizations and unions or so-called closed-shop agreement 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 restriction. The negative freedom also includes the right to withdraw from associations at any time.⁵⁹

The right to form and join trade unions is an extensive right within the right to freedom of association. Trade unions simply refer to “all organisations of employees for representing their common interests.” Freedoms vis-à-vis trade unions under Article 22 of the ICCPR include the right to join and not to join trade unions of one’s choice and the right to found a new trade union. Trade unions under the ICCPR, in comparison with the ICESCR, are not limited to those with the purpose of promoting and protecting economic and social interests, but also those who are defending civil and political rights.⁶⁰

⁵⁷ A/64/266, *supra* note 39, ¶20.

⁵⁸ Joseph, Sarah & Castan, Melissa (2013), *supra* note 37, p. 652.

⁵⁹ *Ibid.*, pp. 661-664.

⁶⁰ Manfred, Nowak (2005), *supra* note 40, p. 501.

2.2.2 Legal Personality of Associations

In association with the voluntary nature of the right to freedom of association, international human rights law does not require associations to obtain legal personality in order to exercise their right to pursue common interests. 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 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.⁶¹

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.”⁶² ‘*Registration*’ on the other hand requires associations to fulfil the registration requirements and seek approval from the authority before they are able to operate. The registration system is considered as a requirement of previous or prior authorisation on the exercise of the right to freedom of association. The notification or declaration regime is regarded by the Special Rapporteur on the right to freedom of peaceful assembly and of association as being in greater compliance with the international human rights law on the right to freedom of association and suggested as good practice for States with regards to the legal status of associations.⁶³

Registration regime is not necessarily a violation of the right to freedom of association. In order to conform with international human rights law, however, the registration regime must not be compulsory for associations. It should be done in voluntary nature. The rights and freedoms under international human rights law are not exclusively limited to registered associations. Unregistered or *de facto* associations are also entitled to equal legal protection. Unregistered or informal associations must yet demonstrate some kinds of institutional structure as an association to be entitled to the rights provided by the law.⁶⁴

Furthermore, unregistered associations should be able to operate and exercise their rights and freedoms without legal consequences such as criminalisation.

⁶¹ A/64/226, *supra* note 39, ¶21 & 59.

⁶² *Ibid.*, ¶59; A/59/401, *supra* note 6, ¶51.

⁶³ A/HRC/20/27, *supra* note 31, ¶58; A/59/401, *supra* note 6, ¶82.

⁶⁴ CM Monitor (2005). *Freedom of association, Thematic monitoring report presented by the Secretary General and decisions on follow-up action taken by the Committee of Ministers*, volume I final revised, para. 1.a.5; A/64/226, *supra* note 37, ¶19.

It is the legitimate freedom of associations to decide whether to register in order to obtain rights and benefits provided by the national law. No criminal sanctions shall be imposed on unregistered associations.⁶⁵ Criminalisation may undermine the essence of the right and is incompatible with the principles of Article 22 of the ICCPR and international human rights law in general.

With regard to registration, registration procedures for association should be simple, non-onerous, expeditious and non-discriminatory. Lengthy and burdensome registration procedure are considered as one of the factors encouraging the frequency of unregistered associations. Procedural formalities should not be excessively onerous on associations such as to amount to a substantive restriction of the right.⁶⁶ Burdensome registration procedures may discourage or effectively prohibit associations from obtaining their legal status which provides them with rights and benefits. The procedure of foreign associations should also not be significantly differentiated from that of domestic ones, or otherwise it may prejudice the exercise of the right of foreign associations which are protected by the principle of non-discrimination.⁶⁷

This standard is also applicable for re-registration of associations. It should not be compulsory for associations to re-register when new law or regulation regarding associations are adopted. Even where associations are legitimately required to re-register, the procedure should be simple and expeditious in order to prevent arbitrary restriction of the right of associations to freedom of association.⁶⁸

Denial of registration is considered as an extreme measure taken by State against the exercise of the right to freedom of association.⁶⁹ In case of denial of registration, grounds or justifications of denial must be provided and communicated within reasonable time. Ill-defined grounds for denial or failure to communicate the reasons may amount to a violation of the right. The right of associations to appeal before an independent and impartial court is also granted for associations to file complaints regarding the decision of administrative authority to reject the registration.⁷⁰

⁶⁵ ICCPR, Article 2; A/64/226, *supra* note 39, ¶65; A/HRC/20/27, *supra* note 31, ¶56.

⁶⁶ Joseph, Sarah & Castan, Melissa (2013), *supra* note 37, p. 654.

⁶⁷ A/HRC/20/27, *supra* note 31, ¶57; Kiai, Miana (2013). *Reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*. A/HRC/23/39, ¶17.

⁶⁸ A/64/226, *supra* note 39, ¶74; A/59/401, *supra* note 6, ¶61; A/HRC/20/27, *supra* note 31, ¶62.

⁶⁹ A/64/226, *supra* note 39, ¶67.

⁷⁰ A/HRC/20/27, *supra* note 31, ¶61.

2.2.3 Operational Autonomy of Associations

Another core element of the right to freedom of association is the right to function freely which guarantees independence and autonomy of associations. The independence and autonomy of associations are of great significance for their operation in order to enable them to effectively pursue the common interests of their members. Associations should be able to operate and function freely without interference or restriction to achieve their legitimate interests.

The right to freedom of association under international human rights law guarantees independence and autonomy of associations as an inherent part of the right to freedom of association. 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.

2.2.3.1 Freedom to Conduct Activities

Freedom to conduct administration and activities is an 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 this right without undue interference and restriction by State. Freedom to conduct activities includes the right to determine objectives, statutes, structure and activities.⁷¹ Associations should be able to make decisions without interference of the State. Likewise, associations should be respected in regards with the creation of networks with other domestic and foreign associations and organizations. In the case of human rights defenders, there should be no restriction or retaliation for cooperation with international human rights partners and other non-governmental organizations.⁷²

Furthermore, a safe and enabling environment is a precondition for associations to operate freely in order to pursue their common interests. Associations—in particular, human rights defenders—should be able to operate and function freely without fear of threats, intimidation, violence, or any act of retaliation by State as well as by private individuals. Therefore, State shall take necessary measures to establish and maintain enabling environment for associations to exercise their right.⁷³

⁷¹ A/HRC/20/27, *supra* note 31, ¶64.

⁷² A/59/401, *supra* note 6, ¶79.

⁷³ A/HRC/20/27, *supra* note 31, ¶63.

The right to privacy is a component of the freedom to conduct activities in upholding independence of associations. The right to privacy of associations shall be respected by State as stipulated in Article 17 of the ICCPR. Indeed, the right of independent bodies and competent authorities to examine records of associations to ensure transparency and accountability must be fully respected. Nevertheless, supervision and monitoring must be balanced with non-discrimination principle and the right to privacy of associations. Auditing and reporting requirements should not be intrusive, or otherwise hamper the activities and interests of associations. The use of national security law or counter-terrorism law to supervise the activities of association should be legitimately justified so that the independence of associations is not undermined by the public authorities.⁷⁴

2.2.3.2 Right to Solicit, Receive and Utilize Resources

Resources play a significant role in ensuring the effective operation of associations. They strengthen effectiveness and facilitates the sustainability of associations. Resources include human, material and financial resources. Necessary resources for the operation of associations may include, for instance, financial transfers, loan guarantees and other forms of financial assistance from natural and legal persons, in-kind donations, material resources, human resources and access to international assistance.⁷⁵

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 including the ICCPR and ICESCR.⁷⁶ The right of associations to access funding shall be respected. 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.⁷⁷

The Declaration on Human Rights Defenders 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 Declaration guarantees the right to ‘solicit’, ‘receive’ and ‘utilize’ resources.

“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, in accordance with article 3 of the present Declaration.” (Article 13, DHRD)

⁷⁴ A/HRC/20/27, *supra* note 31, ¶65.

⁷⁵ A/HRC/23/39, *supra* note 67, ¶10.

⁷⁶ A/64/226, *supra* note 39, ¶91.

⁷⁷ A/HRC/23/39, *supra* note 67, ¶18-20.

The right to access funding and resources under Article 13 signifies three phases of access to funding. Regardless of the legality, both registered and unregistered associations have the right to, first of all, *solicit* or seek funding from different sources such as domestic, foreign and international entities which may include individuals, businesses, foundations, civil society organizations, governments and international organizations (for example, United Nations).⁷⁸

Ability to *receive* funding is the second phase of funding. Associations have the right to receive funding from different sources including foreign and international funding. In most cases, domestic funding is often very limited for associations. The main source of funding is thus from foreign funding. Access to foreign funding nonetheless is often restricted by State in light of so-called anti-money-laundering and counter-terrorism financing policy. The operation and effectiveness of associations are seriously undermined in such cases. Access to foreign funding and funding in general should be facilitated and not be restricted unless strictly for the interest of transparency and accountability.⁷⁹

Last but not least, associations should be able to *utilize* the resources and funding to pursue common interests in accordance with their objectives and intended purposes. In the case of human right defenders, the exercise of the right to solicit, receive and utilize resources immensely contributes to the effective operation of human rights organizations as such. Undue restriction of foreign funding or funding in general impacts significantly on the ability of operation of human rights organizations and also on the enjoyment of human rights and fundamental freedoms by those benefitting from the works of those organizations such as marginalised community. Since foreign funding is considered as a part of international cooperation in realisation of universal human rights, the restriction may also constitute a violation of State's obligation to respect, protect and fulfill—obligation to maximize available resources for the realization of human rights through international assistance and cooperation.⁸⁰

2.2.3.3 Right to Take Part in the Conduct of Public Affairs

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. The exercise of the right of association in the conduct of

⁷⁸ A/HRC/23/39, *supra* note 67, ¶11.

⁷⁹ HRC (2006). *Promotion and Protection of Human Rights: Human Rights Defenders*. E/CN.4/2006/95, ¶31.

⁸⁰ ICESCR, Article 2 § 1; A/HRC/23/39, *supra* note 67, ¶9 & 31.

public affairs is an inherent element of the right to freedom of association and the practice of pluralism in a democratic society.⁸¹ The right to participate in public affairs enhances social dialogue and effective consultation between State, human rights organisations and other relevant actors toward the promotion and protection of human rights and fundamental freedoms at national level.⁸² 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.⁸³

In case of the adoption of new national law or regulation concerning HRDs or human rights in general, they should be able to exercise their right to participate in such public affairs including engaging in drafting process and providing consultation and comments to the State. This right allows HRDs to engage in genuine dialogue and inclusive consultation with the government in terms of newly adopted law and regulation in which they are beneficiaries or stakeholders of the law. Also, it is necessary for HRDs 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.

2.2.4 Termination, Suspension and Dissolution

The scope of protection of the right to freedom of association extends from the establishment to the dissolution of associations. 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.⁸⁴ 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.⁸⁵ Suspension and dissolution of associations shall be determined by judicial decisions.⁸⁶ Involuntary termination, suspension and dissolution of associations are impermissible

⁸¹ CCPR (1996). *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. ¶26; A/HRC/20/27, *supra* note 31, ¶73.

⁸² CCPR (1996), *General Comment No. 25*, ¶8, 12 & 26.

⁸³ ICCPR, Articles 19 & 21.

⁸⁴ *United Communist Party of Turkey and Others v. Turkey*, ECtHR, 30 January 1998, No. 19392/92, ¶33; A/HRC/20/27, *supra* note 31, ¶75.

⁸⁵ A/HRC/20/27, *supra* note 31, ¶75; ILO (2006). *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* ("Digest of CFA/ILO"), Fifth (revised) edition, ¶683.

⁸⁶ Digest of CFA/ILO, ¶699.

unless there is a “clear and imminent, not hypothetical, risk resulting in a flagrant violation of national and international human rights law.” Suspension and dissolution shall be the “method of last resort in dealing with associations when softer measures are insufficient.”⁸⁷ Such decision must be proportionate in relation to the legitimate aim pursued, the protection of national security or public safety, public order, public health or morals, or the rights and freedoms of others as stipulated in paragraph 2 of Article 22.⁸⁸

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. 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 to judicial review before an independent and impartial court regarding dissolution decision.⁸⁹

2.3 Limitations on the Right to Freedom of Association

The right to freedom of association is not absolute and can be derogable in case of emergency situations.⁹⁰ International human rights law allows certain permissible limitation or restriction on the right to freedom of association.⁹¹ Not all restriction on the right necessarily constitutes a violation of the right to freedom of association. Nevertheless, international human rights law sets a high threshold standard for permissible restriction of the right to freedom of association. The ICCPR, Article 22 § 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.”

The high threshold standards under international human rights law is to ensure that the restriction does not undermine the essence of the right to freedom of association or prejudice any particular individuals or groups in

⁸⁷ Manfred, Nowak (2005), *supra* note 40, p. 506.

⁸⁸ A/HRC/20/27, *supra* note 31, ¶73; A/59/401, *supra* note 6, ¶82(r), A/64/266, *supra* note 39, ¶114.

⁸⁹ A/59/401, *supra* note 6, ¶82(s).

⁹⁰ ICCPR, Article 4 § 2.

⁹¹ UDHR, Article 29 § 2; ICCPR, Article 22 § 2; ICESCR, Article 8 § 1(a); DHRD, Article 17.

society. 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.”⁹²

Any limitation or restriction on the right to freedom of association must meet all the requirements under Article 22 § 2. The restriction must be: prescribed by law, necessary in a democratic society and in accordance with the purposes under paragraph (2).

2.3.1 Prescribed by Law

First of all, 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’.⁹³ 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.

Take repressive laws as an example. A repressive law may be introduced by the act of Parliament and therefore *prima facie* fulfills the ‘prescribed by law’ requirement. However, such repressive law is fundamentally not in conformity with the principles of international human rights law. The restriction shall be procedurally in compliance with the ‘prescribed by law’ requirement taking into account the substantial examination of the law.

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.

2.3.2 Necessary in a Democratic Society

Moreover, the restriction of the right must be ‘necessary in a democratic society’. There is a direct relation between freedom of association, pluralism, and democracy.⁹⁴ The right to freedom of association stimulates the existence

⁹² A/HRC/23/39, *supra* note 67, ¶18; Kiai, Miana (2014). *Reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*. A/HRC/26/29, ¶21.

⁹³ A/64/226, *supra* note 39, ¶27; Commentary to DHRD, *supra* note 39, p. 44.

⁹⁴ A/64/266, *supra* note 39, ¶7.

and proper functioning of plurality of associations which is the essence of a democratic society.⁹⁵

The Human Rights Committee (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.⁹⁶ States must prove that the limitation and the measures taken are necessary to avert real, not hypothetical, risk to national security and democratic order.⁹⁷

The objective of the necessity test, affirmed by the ECtHR, is to consider whether the authorities have struck “a fair balance between the competing interests of the individual and of society as a whole”.⁹⁸ According to the ECtHR, two criteria must be met under the necessity requirement. The limitation must “respond to pressing social needs and be proportionate to the legitimate aim pursued”.⁹⁹

The notion of proportionality is incorporated in this necessity requirement.¹⁰⁰ The proportionality test is a threshold to determine the ‘necessary in a democratic society’ standard. To determine the proportionality of the restriction on the right, the nature and intensity of the measures must be considered and further balanced with the legitimate aim.¹⁰¹ 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.¹⁰² The measure taken “must be oriented along the basic democratic values of pluralism, tolerance, broadmindedness and people’s sovereignty.”¹⁰³

The ‘necessary in a democratic society’ requirement is the highest threshold for the permissible restriction of the right under the international human rights

⁹⁵ A/64/266, *supra* note 39, ¶7; see *Gorzelik and others v. Poland*, ECtHR, Judgement, 14 February 2004, no. 44158/98. ¶88.

⁹⁶ CCPR (2004). *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. ¶6; A/HRC/26/29, s *supra* note 92, ¶21.

⁹⁷ A/64/226, *supra* note 39, ¶28; Commentary to DHRD, *supra* note 39, p. 44.

⁹⁸ *Keegan v. Ireland*, ECtHR, 26 May 1994, no. 290, ¶49.

⁹⁹ Golubovic, Dragan (2013). Freedom of association in the case law of the European Court of Human Rights. *The International Journal of Human Rights*. 17:7-8, p.765.

¹⁰⁰ Joseph, Sarah & Castan, Melissa (2013), *supra* note 37, p. 652.

¹⁰¹ A/64/226, *supra* note 39, ¶29; Commentary to DHRD, *supra* note 39, p. 45; see *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, ECtHR, 8 October 2009, no 37083/-3. ¶82; *Jehovah's Witnesses of Moscow v. Russia*, ECtHR, 10 June 2010, no 302/02. ¶154.

¹⁰² A/64/226, *supra* note 39, ¶28; Commentary to DHRD, *supra* note 39, p. 44; see *Schwabe and M.G. v. Germany*, ECtHR, 1 December 2011, nos 8080/08 and 8577/8. ¶118.

¹⁰³ Manfred, Nowak (2005), *supra* note 40, p. 505.

law in which States have often failed to demonstrate the necessity and proportionality of the measures taken to restrict the right.

2.3.3 Legitimate Aim

Last but not least, the restriction must be imposed to pursue legitimate aims or purposes stipulated in Article 22 § 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 of restriction on the right may not be considered permissible under international human rights law.¹⁰⁴

However, State may restrict or prohibit certain associations which explicitly not in compliance with the principle of international human rights law. State-threatening organization—association which disseminate propaganda for war or represent political and military threat to the nation—and associations which advocate for national, racial or religious hatred are examples.¹⁰⁵

2.4 State Obligations Regarding the Right to Freedom of Association

Under international human rights law, *stricto sensu*, there is no human rights for right-holders without obligation on duty-bearers. International human rights law imposes an obligation on States to ensure enjoyment of human rights and fundamental freedoms to the fullest extent without undue interference or discrimination of any kind. Everyone is entitled to the right to freedom of association regardless of his or her race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.¹⁰⁶ In particular, human rights defenders shall be able to exercise their right without any discrimination, in particular on the basis of their work or belief in the promotion and protection of universally recognized human rights and fundamental freedoms.¹⁰⁷

State obligations under international human rights law may differ based on the international human rights instruments. The International Covenant on Civil and Political Rights (Article 2) requires State to ‘respect’ and to ‘ensure’ the rights in the Covenant. The International Covenant on Economic, Social,

¹⁰⁴ Golubovic, Dragan (2013), *supra* note 99, p. 765.

¹⁰⁵ Manfred, Nowak (2005), *supra* note 40, pp. 506-508.

¹⁰⁶ ICCPR, Article 2; ICESCR, Article 2; DHRD, Article 2.

¹⁰⁷ DHRD, Article 12.

and Cultural Rights (Article 2) on the other hand impose obligation on States to take necessary steps to achieve the rights in the Covenant. State obligation under the Declaration on Human Rights Defenders (Article 2) includes the duty to “protect, promote and implement all human rights and fundamental freedoms guaranteed in the Declaration.”

In general, State has both positive and negative obligation with regards to the international human rights obligation. State’s obligation vis-à-vis the right to freedom of association likewise entails negative and positive obligations.¹⁰⁸ The notion of positive and negative obligation corresponds with the idea of tripartite typology of State obligation: obligation to *respect, protect* and *fulfill*. The tripartite typology of State obligation is not delimited to economic, social and cultural rights. It is an integrated approach to human rights obligation in general.¹⁰⁹ Therefore, the obligation to respect, protect and fulfill is applicable in the case of the right to freedom of association.

2.4.1 Obligation to Respect

The primary human rights obligation of State is the obligation to *respect*. The obligation to respect is a negative obligation of State regarding human rights protection. Generally, obligation to respect is a cost-free and passive duty of State to refrain from interference. The obligation to respect requires State and its organs and agents to abstain from any acts that violate the integrity of the individual or infringe on his or her freedoms.¹¹⁰

In the case of the right to freedom of association, the negative obligation or obligation to respect is the duty not to undue interfere with the right to freedom of association unless it is absolute necessary in a democratic society to protect national security, public order, public health or morals and the rights and freedoms of others.¹¹¹

In other words, the obligation to respect is the duty of State not to unduly obstruct the exercise of the right to freedom of association.¹¹² The obligation to refrain from undue interference in the right of associations includes duty

¹⁰⁸ General Comment 31, ¶6; See Case of *Cantoral-Huamani and Garcia-Santa Cruz v. Peru*, Inter-American Court of Human Rights, Preliminary objection, merits, reparation and costs, 10 July 2007, ¶144.

¹⁰⁹ Koch, Ida Elisabeth (2009). *Human Rights as Indivisible Rights: The protection of socio-economic demands under the European Convention on Human Rights*. Leiden: Martinus Nijhoff Publishers. p. 20.

¹¹⁰ Eide, Asbjørn (1989). Realization of Social and Economic Rights and the Minimum Threshold Approach. *Human Rights Law Journal*, 10:1–2, pp. 36–51.

¹¹¹ Golubovic, Dragan (2013), *supra* note 99, p. 760; Nowak, Manfred, Januszewski, Karolina M & Hofstätter, Tina (eds), (2012). *All Human Rights for All: Vienna Manual on Human Rights*. Morsel: Intersentia, pp. 382-383

¹¹² A/HRC/20/27, *supra* note 31, ¶64

not to interfere in the right to freedom of association in general as well as its subsidiary rights including the right to form or join associations of own choosing, right to function freely, right to access funding and right to privacy of associations as mentioned earlier.¹¹³

2.4.2 Obligation to Protect

Furthermore, State under international human rights law has positive obligation since the negative obligation alone is insufficient to ensure full enjoyment of the right to freedom of association. Besides refraining from interfering, States are obliged to take additional positive measures necessary to ensure the enjoyment of the right. This positive obligation is considered resource-intensive and active duty of State and includes an obligation to *protect*.

The obligation to *protect* mainly requires State and its agents to prevent any acts of violation of the rights and freedoms by other non-State actors.¹¹⁴ The obligation to *protect* is in between the obligation to *respect* and obligation to *fulfill*. The obligation to *protect* is seen as less negative than the obligation to *respect* and less positive than the obligation to *fulfill*.¹¹⁵ The obligation to *protect* slightly departs from the traditional vertical effects of human rights protection in which individuals are protected from State action. It involves tripartite relationship of State, other non-State actors and individuals. States have obligation to ensure that the right of individuals in society is protected from any acts of violations committed by other individuals or entities.

The obligation to *protect* under the right to freedom of association requires States to take necessary measures to ensure that the right is not interfered or violated by other private actors. HRDs are considered as one of groups whose rights are most at risk for being violated by State and private individuals as a result of their works and belief in human rights.¹¹⁶ State therefore has obligation to take further necessary measures to protect HRDs from the acts of violations by its agents as well as by other private individuals.

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 conduct a thorough investigation of the alleged violations of the

¹¹³ Commentary to DHRD, *supra* note 39, p. 36; Nowak, Manfred (2005), *supra* note 40, p. 498.

¹¹⁴ Eide, Asbjørn (1989), *supra* note 110, p. 37; Koch, Ida Elisabeth (2005). Dichotomies, Trichotomies or Wave of Duties?. *Human Rights Law Review*. 5:1. p. 82.

¹¹⁵ Koch, Ida Elisabeth (2009), *supra* note 109, p. 19.

¹¹⁶ A/HRC/26/29, *supra* note 92, ¶11.

right of associations to freedom of association in light of the right to effective remedy.¹¹⁷

2.4.3 Obligation to Fulfill

The obligation to *fulfill* is another positive obligation of State to take all necessary measures including legislative, administrative and other measures to ensure the enjoyment of the right.¹¹⁸ The European Court of Human Rights, for instance, affirms that in addition to their negative obligation, States are required to “take positive measures to allow an association to be granted legal entity status, to afford necessary legal protection during its life cycle, and to ensure that members of an association which pursues legitimate goals are not exposed to any legal sanctions because of their membership.”¹¹⁹

For individuals and associations to fully and freely enjoy the right to freedom of association, 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.¹²⁰ In addition to the constitutionalisation and institutionalisation of the right to freedom of association, enabling environment in law and in practice is a necessary prerequisite for associations, in particular, for human rights defenders to pursue their legitimate interests of promoting and protecting human rights and fundamental freedoms.

2.5 Concluding Remarks

Under this chapter, it has been demonstrated that the legal norms regarding the right to freedom of association are established comprehensively under the international human rights law regime. The right to freedom of association is widely recognized under core international human rights instruments including the UDHR, ICCPR and ICESCR as well as other documents such as the DHRD and ILO Convention 87. The mandates of the Special Rapporteur on the right to freedom of association and on the situation of human rights defenders offer further interpretation and implementation guidelines on the right to freedom of association, more importantly in the case of human rights defenders.

¹¹⁷ See Case of *Kawas Fernández v. Honduras*, Judgment of 3 April 2009, of the Inter-American Court of Human Rights, ¶145 (original available only in Spanish); A/64/226, ¶43.

¹¹⁸ General Comment 31, ¶7; Koch, Ida Elisabeth (2009), *supra* note 109, p. 19.

¹¹⁹ Golubovic, Dragan (2013), *supra* note 99, p. 760.

¹²⁰ A/HRC/20/27, *supra* note 31, ¶63.

It is also well-established that the realization of the right to freedom of association relies upon the exercise of its subsidiary or derivative rights including the right to associate and not to associate and the right of associations to function freely without undue interference by the public authorities. Although the right to freedom of association is a derogable right in which certain restriction is permissible, *stricto sensu*, there is no right without obligation. Corresponding the right recognized, State, as duty-bearer in human rights regime, has international human rights obligation—obligation to respect, protect and fulfill.

As mentioned earlier, Cambodia is a State Party to the ICCPR and ICESCR. The human rights obligations of Cambodia are incorporated into domestic law and policy through the Constitution of the Kingdom of Cambodia which stipulates that, “the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.”¹²¹ Therefore, the international human rights law is directly applicable to domestic law of Cambodia.

¹²¹ Constitution, Article 31.

CHAPTER III: THE RIGHT TO FREEDOM OF ASSOCIATION IN CAMBODIA

This chapter aims to answer the second sub-research question regarding the right to freedom of association in the context of Cambodian legal system. It establishes a national legal standard on the right to freedom of association by exploring various domestic legislation adopted by the RGC to guarantee the right in Cambodia, in particular, for human rights defenders including human rights organisations and trade unions.

3.1 Overview

The presence of UNTAC marked the first ever international non-governmental organisation in Cambodia. The numbers of associations, NGOs, civil societies and trade unions increase exponentially ever since. Civil society organisations have since become the main human rights defenders who are the most active and most vocal in the promotion and protection of human rights in Cambodia.

Aforementioned, human rights defenders refer to those who individually or in association with others working to promote and protect universally recognized human rights and fundamental freedoms at local, national, regional and international levels. HRDs in Cambodia works in various fields across the country advocating for specific rights (civil and political rights, labor rights, and/or land rights) or for specific groups of people (children, women, workers and/or indigenous community). Human rights defenders in Cambodia include, but are not limited to, local and international non-governmental organizations (NGOs), community-based organizations (CBOs), civil societies, trade unions, right activists and journalists.¹²²

By 2015, it is estimated that there are more than 4,000 NGOs and associations among which more than 80 percent are local.¹²³ Local NGOs are recognized for their crucial advocacy for the respect, protection and promotion of human rights in Cambodia.

¹²² LICADHO (2015). *Attack and Threats against Human Rights Defenders 2013-2014*.

p.1.

¹²³ CCC (2016), *supra* note 27.

In terms of the labor movement, as of 2015, the data from the Ministry of Labor shows that there are more than 3,000 trade unions active in more than 200 factories in Cambodia along with 86 federations and 14 confederations.¹²⁴ Majority of them are in garment and footwear industry.

Other human rights defenders such as activists and journalists are also working closely with these associations and organisations as well as with the RGC, or sometimes against the RGC to promote and protect human rights in Cambodia. The main focus of this paper, therefore, is the right to freedom of association of NGOs, associations and trade unions in Cambodia, in particular, vis-à-vis the newly adopted laws on NGOs and trade unions.

Corresponding to the principles of international human rights law, the right to freedom of association is constitutionally recognized as a basic human right and is incorporated into national legislations including the Constitution of 1993, Labor Law of 1997, and Civil Code of 2007. Two new laws regarding unions and NGOs have also recently been adopted in response to the rapid civil society movement.

3.2 Constitution of 1993

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.¹²⁵ 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.¹²⁶

The international standards on the right to freedom of association in the ICCPR and ICESCR are automatically incorporated into the national legislation of Cambodia upon ratification of those instruments.¹²⁷ The right to freedom of association is also separately guaranteed in the Cambodian legal system under Article 36 and Article 42 of the Constitution.

Article 36 guarantees the right to freedom of association as a labor right which stipulates that, “Khmer citizens of either sex shall have the right to form and to be member of trade unions. The organization and conduct of trade unions shall be determined by law.”

¹²⁴ CAMFEBA (2015), *supra* note 30, p. 5.

¹²⁵ Constitution, Article 150.

¹²⁶ *Ibid.*, Article 136.

¹²⁷ *Ibid.*, Article 31.

The right to form and join trade unions recognized in international human rights law is explicitly protected under the Constitution of Cambodia.¹²⁸ The Constitution of Cambodia recognizes the right to form and join trade unions as more than a derivative of the right to freedom of association, but an independent human right guaranteed by the supreme law of Cambodia.

Furthermore, the right to freedom of association in a broader or civil and political sense is also recognized in Article 42 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.”

Article 42 first of all recognizes the right to ‘establish’ association. There is however no explicit reference to the right to ‘join’ association. Yet in accordance with the direct application of international human rights law in domestic law, this section shall be interpreted and understood to include the right to ‘join’ associations.¹²⁹ Also, the Constitution specifically guarantees the right to establish political parties which is considered as a prominent form of associations in Cambodia while other forms of associations including human rights organisations as such are covered under ‘associations’ in general.

Both the right to form or join trade unions (Article 36) and the right to establish associations (Article 42) under the Constitution shall be ‘determined by law’. Since the Constitution is a supreme law which contains broad provisions, the exercise of the right to freedom of association under the Constitution must be determined in accordance with specific laws. The law concerning the right to freedom of association in Cambodia includes the Law on Political Parties of 1997,¹³⁰ Labor Law of 1997, Civil Code of 2007, Law on Associations and Non-Governmental Organizations of 2015 and Law on Unions of Enterprises of 2016. These laws share a *lex generalis* and *lex specialis* relationship with the Constitution in the context of Cambodia. In case of implementation of the right, the provisions of *lex specialis* laws are applicable thereof.

The last section of Article 42 recognizes the right to take part in mass organisations. Mass organisations are permissible under the Constitution only if they are established for the purposes of ‘mutually protecting national achievements and social order’. Such delimitation of purposes of organization

¹²⁸ ICCPR, Article 22; ICESCR, Article 8; ILO Convention 87, Article 2.

¹²⁹ Constitution, Article 31.

¹³⁰ For the purpose of this paper, the right to establish political parties and the Law on Political Parties of 1997 are not discussed since political parties are more of political entities, not under the scope of human rights defenders.

may contravene the principles of the right to freedom of association which allows the pursuance of any common purposes considering it is lawful.¹³¹

3.3 Legal Framework on the Right to Form and Join Trade Unions

3.3.1 Trade Unions under the Labor Law of 1997

The right to form or join trade unions provided by the Constitution is later recognized in the Labor Law. The Labor Law of the Kingdom of Cambodia was enacted on March 13, 1997 by the National Assembly. It is the first law in Cambodia to recognize the right to freedom of association of workers to form and join trade unions and to regulate the exercise of the right in labor context in terms of organization and conduct of trade union as a professional as well as a human rights organisation.

The right is guaranteed under Article 266 of the Labor Law which stipulates that,

“Workers and employers have, without distinction whatsoever and prior authorization, the right to form professional organizations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes.”

The Labor Law guarantees the right of workers and employers to establish professional organizations including workers’ and employers’ associations. This paper however does not aim to discuss the right of employers to form their professional organization under the Labor Law of Cambodia. Only workers and workers’ associations or known as trade unions are included within the scope of this paper.

Both the positive and negative freedom of association are recognized under the Labor Law. Workers in Cambodia have individual and collective right to ‘form’ and to ‘join’ professional organisations—trade unions—of their own choosing.¹³² The right ‘not’ to join trade unions and the right to ‘withdraw’ from associations at any time are also equally guaranteed.¹³³ Trade unions’ rights under the Labor Law include the right to draw up statutes and

¹³¹ ICCPR, Article 22; Joseph, Sarah & Castan, Melissa (2013), *supra* note 37, p. 652.

¹³² *Ibid.*, Articles 266 & 271.

¹³³ Labor Law, Article 273.

administrative regulations, the right to freely elect their representatives and the right to formulate their working program.¹³⁴

Under the Labor Law, it is compulsory for trade unions to register with the Ministry of Labor and Vocational Training (MLVT) in order to enjoy the right and benefits provided by the law.¹³⁵ Trade unions must meet all criteria provided in the law and by the Ministry.¹³⁶ First of all, to be eligible for the union representative or management, certain requirements must be fulfilled. For Cambodian nationals, he or she must: “(1) be at least 25 years of age; (2) be able to read and write Khmer; (3) not have been convicted of any crime; and (4) have engaged in the profession or the job for at least one year.”¹³⁷

Minimum age, literacy and working experience requirements under this law may prejudice the exercise of the right to freedom of association of workers in Cambodia. Minimum age of 25 first of all prejudices the right of children and young people under the age of 25 to freedom of association.¹³⁸ The Labor Law itself allows the minimum age of 15 in the wage employment.¹³⁹ The minimum age requirement undermines the right to freedom of association, in particular, trade union rights of children and young people who are legitimately protected under the Labor Law in Cambodia.¹⁴⁰

Majority of garment workers in Cambodia are women from rural provinces where poverty rate is high and basic education is not widely available and affordable.¹⁴¹ Poverty rate was at 17.7 percent (2012) with 3 million poor people and over 8.1 million near-poor people,¹⁴² and in terms of education, Cambodia is one of the lowest in Asia accompanying by high dropout rate and lack of quality education.¹⁴³ Working experience requirement is not a legitimate restriction of the right provided under the second paragraph of Article 22 and therefore is also not in conformity with the ILO Convention 87 and the general principles of freedom of association.¹⁴⁴

¹³⁴ Labor Law, Article 267.

¹³⁵ *Ibid.*, Article 268.

¹³⁶ *Prakas 21* on Registration of Professional Organisations (15 February 2006).

¹³⁷ Labor Law, Article 269.

¹³⁸ Convention on the Rights of the Child (“CRC”), Article 15.

¹³⁹ Labor Law, Article 177.

¹⁴⁰ Detrick, Sharon (1999). *A Commentary on the United Nations Convention on the Rights of the Child*. The Hague: Martinus Nijhoff Publishers. p. 262.

¹⁴¹ ADB (2016). *Asian Development Bank Member Fact Sheet: Cambodia*. Available at: <<http://www.adb.org/sites/default/files/publication/27757/cam-2015.pdf>> (May 15, 2016).

¹⁴² World Bank (2016). *Cambodia: Overview*. Available at: <<http://www.worldbank.org/en/country/cambodia/overview#1>> (May 15, 2016).

¹⁴³ UNICEF (2013). *UNICEF Annual Report 2014: Cambodia*. Available at: <http://www.unicef.org/about/annualreport/files/Cambodia_Annual_Report_2014.pdf> (May 15, 2016).

¹⁴⁴ ILO Convention 87, Article 3 § 1; Digest of CFA/ILO, *supra* note 85, ¶410.

Furthermore, the requirement of ‘not have been convicted of any crime’ is considered too onerous for union representatives in several respects. Union representatives must request a ‘certificate of criminal record’ to be issued by the Ministry of Justice (MOJ). The procedure to obtain the certificate is burdensome, lengthy, expensive and sometimes arbitrary.¹⁴⁵ In addition, a number of politically motivated criminal cases were brought against unionists and union representatives by the Government to restrict the right of trade unions to freedom of associations for the alleged acts of participating in labor strikes and of endangering national security and public order.¹⁴⁶

Furthermore, in February 2014, the MLVT intended to make revisions to *Order 21 (Prakas 21)* regarding registration procedures for unions in Cambodia. While that revision process was ongoing, the Ministry decided to suspend the union registration procedure and refused to review applications or provide license to unions until the controversial draft law on trade unions, which then remained in discussion, came into force.¹⁴⁷ The RGC asserted that the large numbers of trade unions in Cambodia, estimated to be more than 4,000, was a concern underlying the temporary suspension of union registrations.¹⁴⁸ It is noteworthy, however, that the decision to impose the temporary registration suspension was made after mass demonstrations by workers and unions to demand increase in minimum wage at the end of 2013 and early 2014, to which the Government responded with excessive use of force resulting in several casualties.¹⁴⁹

Burdensome and lengthy registration procedures to a certain extent discourages unions from registering with the authority. In turn, the absence of legal status under the law handicaps the ability of unions to exercise their rights against unfair labor practices by employers such as anti-union discrimination and strike-related punishments. The exercise of the right to freedom of association, in particular, the right to form and join trade unions is restricted by such procedural requirements and unions therefore are exposed to greater risk of anti-union discrimination by their employers and harassment by public authorities.

Such requirements are *per se* incompatible with the right of unions to freely elect their representatives guaranteed under the Labor Law and the Constitution.¹⁵⁰ The procedural restriction undermines the principles of

¹⁴⁵ CCHR (2014). *CCHR Briefing Note: Freedom of Association for Unions*. p. 3.

¹⁴⁶ Digest of CFA/ILO, *supra* note 85, ¶410, 421-424.

¹⁴⁷ Human Rights Watch (HRW) (29 April 2014). *Cambodia: Stop Stalling Union Registrations*; CCHR (2014), *supra* note 145, p. 6.

¹⁴⁸ Aun, Pheap (February 27, 2014). Gov’t Suspends Freedom of Association for Unions. *Cambodia Daily*.

¹⁴⁹ HRW (2015). *Work Faster or Get Out*. p. 81.

¹⁵⁰ Labor Law, Article 267; Constitution, Article 36.

international human rights law in which Cambodia is a State Party such as the ICCPR, ICESCR and ILO Convention.¹⁵¹

It must be noted that, since the Law on Unions of Enterprises has not been officially promulgated at the time of writing, the provisions under the Labor Law regarding trade unions remains applicable thereof.

3.3.2 Trade Union under the Law on Unions of Enterprises of 2016

The Law on Unions of Enterprises, also known as Trade Union Law was first introduced in May 2010. The draft law was revised several times during 2011 in response to the comments from unions, employers and international organisations like the ILO. There was no progress on the law until May 2014 (sixth draft) in which it showed no sign of improvement, but rather regression. The law was adopted in March 2016 by the Council of Ministers without significant positive changes from the previous draft and was sent to the National Assembly for approval.

Following demonstration against the adoption of the law by human rights defenders (unions and rights organisations) and a violent clash between HRDs and security guards near the National Assembly, the law was passed by the National Assembly on April 4, 2016.¹⁵² The Senate also passed the law in the following week.¹⁵³ The remaining procedure is to seek approval from the Constitutional Council and signature of King to officially promulgate the law.

The aims of the law is to provide rights and freedoms and to determine the organisation and functioning of professional organisations in Cambodia. This law covers all enterprises, establishments and all persons under the provisions of the Labor Law.¹⁵⁴ Under the Trade Union Law, a ‘*professional organization*’ refers to “a voluntarily and jointly established team or group of workers or employers aiming to cooperate with one another to carry out activities or to develop their own procedural rules for achieving specific professional objectives or goals.”¹⁵⁵ The professional organization of workers is called a ‘*union*’.¹⁵⁶

¹⁵¹ ILO Convention 87, Article 7 & 8(2); ICCPR, Article 22; ICESCR, Article 8.

¹⁵² Baliga, Ananth & Pech, Sotheary (April 5, 2016). Trade union law passes. *Phnom Penh Post*.

¹⁵³ Sek, Odom (April 13, 2016). Senate Passes Union Law While Opposition Abstains. *Cambodia Daily*.

¹⁵⁴ Trade Union Law, Articles 1, 2 & 3.

¹⁵⁵ For the purpose of this paper, the right of employers to establish professional organisations is excluded from the scope of this paper.

¹⁵⁶ Trade Union Law, Article 4.

3.3.2.1 Right to Form or Join Trade Unions

The right of workers to form or join unions is guaranteed under the law which stipulates that without any distinction whatsoever, all workers both collectively and individually have “the right to form a union of their own choice for the exclusive purpose of study, research, training, promotion of interests, and protection of the rights and the moral and material interests.”¹⁵⁷ The term ‘for the exclusive purpose of’ may constitute a limitation on the freedom of unions to determine their own activities provided by the international human rights law. The list of purposes shall not be exhaustive or exclusive vis-à-vis the purposes of unions for workers and unions to freely exercise their rights.¹⁵⁸

Under the new law, workers have the right to form and join a union, right to participate in the activities of union, right to seek and hold an office, right to elect or be elected as union representative and other rights provided in the law.¹⁵⁹ Moreover, the right ‘not’ to join unions and the right to ‘withdraw’ from unions at any time are also guaranteed for workers.¹⁶⁰ All the rights under the law shall be enjoyed on a non-discriminatory basis.¹⁶¹

Unions also have the collective rights to formulate their own statutes, administrative regulations, organization and functioning and work program and to freely elect their representatives.¹⁶² Notably, other rights guaranteed under the ICESCR are absent under this law, including the right of unions to establish or join federations and confederations, the right to function freely and the right to strike.¹⁶³ The law however determines the minimum requirement for the establishment of union (ten workers), federation (seven local unions) and confederation (five federations).¹⁶⁴ The minimum requirement is not too burdensome, but it is not considered as best practice since it may discourage the right to form and join trade unions and impede the rights of unions to unionize given the definitions and limitations of federations and confederations.¹⁶⁵

3.3.2.2 Establishment of Unions

The new trade union law adopts similar procedure as that of the Labor Law. It is mandatory for unions to register with the Ministry of Labor and

¹⁵⁷ Trade Union Law, Article 5.

¹⁵⁸ A/64/226, *supra* note 39, ¶23.

¹⁵⁹ Trade Union Law, Articles 5 & 8.

¹⁶⁰ *Ibid.*, Article 7.

¹⁶¹ *Ibid.*, Article 6.

¹⁶² *Ibid.*, Article 9.

¹⁶³ ICESCR, Article 8; ILO Convention 87, Article 5.

¹⁶⁴ Trade Union Law, Article 10.

¹⁶⁵ A/HRC/20/27, *supra* note 31, ¶54; Digest of CFA/ILO, *supra* note 85, ¶292.

Vocational Training (MLVT) in order to enjoy the rights and benefits provided by the law.¹⁶⁶ Unregistered unions are considered illegal and can be fined up to five millions riels (approximately USD 1,250).¹⁶⁷ The mandatory registration regime is incompatible with the principle of ‘without previous authorisation’ under the international human rights law and the criminalisation of unregistered union as mentioned earlier is a severe restriction of the right to form and join trade unions.¹⁶⁸

Unions are required to submit a list of documents including statutes, administrative regulations, lists of management and representative, address of financial books and records, pledge letters and minutes of election.¹⁶⁹ The registration procedures and requirements are too burdensome for unions in Cambodia. Financial information and pledge letter as such are considered too intricate and intrusive on the operation of unions and may undermine the independence of unions.¹⁷⁰

The qualification of union leader or representative is also stipulated under the law. In order to become a union leader, he or she must: “(1) be at least 18 years of age; (2) declare a specific residential address; (3) declare that they have an educational level, with the minimum ability to read and write Khmer; and (4) declare that they have never been convicted of any criminal offense.” Foreigners are required to, in addition to (1), (3) and (4), work in Cambodia for a minimum of two years and have the right to reside and to permanent residence in Cambodia.¹⁷¹

The requirements are barely different from that of the Labor Law. The minimum age is reduced from 25 to 18. There is no more working experience requirement, but residential address is required. Once again, minimum age, literacy, and criminal record, as mentioned earlier, shall not be grounds for restriction on the right for form or join trade unions.

The limitation of minimum age of 18 remains prejudicial to the exercise of the right of children to freedom of association and considered as one of the severest restrictions on the right to form or join trade unions.¹⁷² Literacy is also extraneous to the exercise of the right considering the low literacy rate for Cambodian workers in the provinces across the country. Criminal record

¹⁶⁶ Trade Union Law, Article 11.

¹⁶⁷ Trade Union Law, Articles 14 & 80.

¹⁶⁸ ICESCR, Article 8; ILO Convention 87, Article 2; Digest of CFA/ILO, *supra* note 85, ¶273; A/HRC/20/27, *supra* note 31, ¶56.

¹⁶⁹ Trade Union Law, Articles 12 & 13.

¹⁷⁰ OHCHR (2015). *A Human Rights Analysis of the Draft Law on Trade Unions*. pp. 11-13.

¹⁷¹ Trade Union Law, Article 20.

¹⁷² CRC, Article 15.

shall not be a factor to determine the eligibility of union representative.¹⁷³ Certificate of criminal record is the greatest hindrance due to its complicated and lengthy procedure and the fact that Government has used it as a susceptible mean to curb union leaders and unionists from exercising their rights. Such requirements are inconsistent with international human rights law and the provisions of the trade union law itself which provide the right of unions to freely elect union representatives.¹⁷⁴

The registration of unions may be denied based on the grounds of, for example, failing to uphold the stated purpose in the Statute or not being independent.¹⁷⁵ The registration can also be revoked if unions fails to submit annual and financial reports, to provide bank account information and to provide update information regarding changes thereof.¹⁷⁶ The independence and effectiveness of unions shall be determined by the unions. State authorities shall not unduly interfere in such matter as required in the obligation to *respect*. Grounds for denial and revocation of registration under the new law are therefore arbitrary which severely restrict the right of workers to form and join trade unions. The rights of trade unions to appeal before an independent and impartial court is also silent under the law.

3.3.2.3 Limited Freedom to Freely Function

Under international human rights law, unions have the right to function freely without undue interference from public authorities in order to ensure independence of unions.¹⁷⁷ Unions are required to submit annual and financial reports, to provide details of bank account information and to provide updates information required by the law.¹⁷⁸ Such requirements hinder the ability of unions to function freely in order to pursue their common interests which is to defend the labor rights of workers. The Government oversight and control is considered too intrusive in the works and independence of unions.

The right to function freely also includes the right to solicit, receive and utilize resources—material, human and financial—from domestic, foreign and international sources.¹⁷⁹ The trade union law authorizes sources of funding from “membership dues, income earned from income-generating activities in accordance with the law and donations or financial resources assistance legally received from union members to serve legitimate activities.”¹⁸⁰ An

¹⁷³ Digest of CFA/ILO, *supra* note 85, ¶421-422.

¹⁷⁴ ILO Convention 87, Article 3 § 1; Trade Union Law, Article 9.

¹⁷⁵ Trade Union Law, Article 16.

¹⁷⁶ *Ibid.*, Article 17.

¹⁷⁷ ICESCR, Article 8; ILO Convention 87, Article 3.

¹⁷⁸ Trade Union Law, Article 17.

¹⁷⁹ DHRD, Article 13.

¹⁸⁰ Trade Union Law, Article 22.

independent audit as per this new law can be requested by “parties concerned” in case of irregularities in financial management.¹⁸¹ The law does not define the lawfulness of funding sources as such and thus is ambiguous in nature regarding interpretation and application of such provision. The term ‘party concerned’ in requesting for audit is also unclear whether it refers to authority, union, or single member of union.

The Trade Union Law also stipulates a list of practices which is deemed unlawful for union or its representative. One of the practice is the act “to agitate for purely political purpose”.¹⁸² The term itself contains serious ambiguity which is widely open for misinterpretation by public authorities. Unions in Cambodia are critical to the Government due to the recent rapid growth in unionization as a form of social or human rights movement. The differentiation between ‘political’ and ‘non-political’ purpose in such case may be subjective to the authorities. Such vague provision can potentially be abused for political interests against thousands of unions defending labor rights in Cambodia.

3.3.2.4 Dissolution of Unions

A union can be dissolved by the Labor Court if: “(1) the establishment or activities contravenes the law or the objectives of the union; (2) the union is not independent; and (3) the leaders were found to have committed serious misconduct or an offense in the capacity of the union.”¹⁸³ The grounds for dissolution under Article 29 may not be in compliance with international human rights standards. The law gives the power to the Labor Court to decide.¹⁸⁴ The compliance of the objectives of the union and its independence are completely internal affairs of the union which shall be respected by the public authorities in relation to operational autonomy and the right to privacy of unions. The issue of serious misconduct or offenses of union leaders shall also not be the ground for dissolution of a union. It is a matter of personal affairs and shall be investigated or prosecuted at personal level without affecting the existence of the whole organization unless otherwise proved.¹⁸⁵

Involuntary dissolution of unions is considered as one of the most severe restrictions on the right to freedom of association. The dissolution of a trade union shall be a measure of last resort after exhausting all available remedies. The justification for dissolution must be provided and communicated to unions. Unions shall also have the right to appeal the decision of

¹⁸¹ Trade Union Law, Article 24.

¹⁸² *Ibid.*, Article 65.

¹⁸³ *Ibid.*, Article 29.

¹⁸⁴ The Labor Court is not yet established at the time of writing.

¹⁸⁵ Digest of CFA/ILO, *supra* note 85, ¶692.

dissolution.¹⁸⁶ The ground for dissolution of unions under this law can be arbitrary for the interests of the public authorities and the Trade Union Law in this regard does not provide the right to appeal against the dissolution of unions.

It has to be noted that the Law on Unions of Enterprises has not been officially promulgated by the King at the time of writing. Accordingly, there is no concrete case study yet regarding the implementation of the new law on unions in Cambodia and trade unions in Cambodia are governed under the Labor Law of 1997.

3.4 Legal Frameworks on the Right to Form and Join Associations

3.4.1 Associations under the Civil Code of 2007

The legal formalities regarding the establishment of NGOs and associations corresponding to the right under the Constitution are stipulated in the Civil Code of Cambodia which was adopted in 2007. The Civil Code of 2007 governs all juristic persons in Cambodia including non-profit juristic persons. A non-profit juristic person refers to “juristic person that does not have profit among their objects.”¹⁸⁷ Human rights defenders such as NGOs or associations fall into the category of ‘non-profit juristic persons’ and therefore under the scope of the Civil Code. The Civil Code contains 1,305 articles of which only a few are applicable to NGOs and associations. Articles 46-118 provides details regarding registration, management and dissolution of non-profit juristic persons. In addition to the Civil Code, NGOs in Cambodia are also governed by other regulations such as administrative orders (*prakas*) of Ministry of Interior (MOI).¹⁸⁸

The legal requirements and procedures under the Civil Code and other regulations are often considered as onerous and lengthy for local and foreign NGOs to register with the Government. NGOs are often required to pay unofficial fees in order to expedite the procedure or to obtain registration. Foreign NGOs are subject to more burdensome requirements and procedures. Foreign legal entities are required to sign memorandum of understanding (MOU) with the Government which is valid for maximum of three years.¹⁸⁹

¹⁸⁶ Digest of CFA/ILO, *supra* note 85, ¶678; A/HRC/20/27, *supra* note 31, ¶75.

¹⁸⁷ Civil Code, Article 46 § 2.

¹⁸⁸ CCC (2013). *Assessment of Enabling Environment for Civil Society*. p. 17.

¹⁸⁹ *Ibid.*

Foreign entities therefore have to re-register with the authorities in order to extend their registration and maintain their legal status in Cambodia.

The maximum of three-years MOU is an additional ground for public authorities to curb the work of foreign entities. Human rights NGOs, in particular, are exposed to greater challenges in registration with the Government due to the nature of their works. The public authorities in Cambodia enjoy full discretion in determining the legal status of NGOs. Procedural safeguards for foreign entities are almost absent in this case.¹⁹⁰

Prior to the adoption of the Law on Associations and Non-Governmental Organisations, NGOs (and possibly associations) have fallen under the scope of the Civil Code. However, the provisions of Civil Code are no longer applicable on NGOs and associations now that the new NGO law has been officially promulgated. The new NGO law now serves as a *lex specialis* law regulating the right to freedom of association of NGOs and associations in Cambodia.

3.4.2 Associations under the Law on Associations and Non-Governmental Organisations of 2015

The Law on Associations and Non-Governmental Organisations (LANGO), also known as NGO Law was adopted by the Council of Ministers in January 2014. LANGO was later passed by the National Assembly on July 13, 2015 and by the Senate the following month. The Constitutional Council also approved and declared the law as constitutional. The King finally signed and promulgated LANGO on August 12, 2015.

The aim of the NGO law is to safeguard the right to freedom of establishing associations¹⁹¹ and NGOs in Cambodia by determining the legal formalities for the recognition of associations and NGOs operating in Cambodia.¹⁹² Both domestic and foreign associations and NGOs which operate in Cambodia fall under the scope of LANGO.¹⁹³

‘*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 non-governmental organization*’ refers to “non-

¹⁹⁰ CCC (2013), *supra* note 188, p. 18.

¹⁹¹ The term ‘association(s)’ under this section adopts the literal meaning of the term which is not equivalent to the one under the scope of Article 22 of ICCPR.

¹⁹² LANGO, Articles 1 & 2.

¹⁹³ *Ibid.*, Article 3.

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 non-governmental organization*’ refers to “a legal organization established outside the country aiming at conducting activities to serve the public interest without generating profits.”¹⁹⁴

Apparently, unlike in its previous drafts, community-based organisations (CBOs)—local organisations which are formed to pursue common interests of community and its members—are excluded in the latest draft of the law.¹⁹⁵ The Government also insisted that CBOs are excluded from LANGO.¹⁹⁶ There is a legitimate concern, however, that the new law will be misinterpreted to include CBOs who are working with people at grassroots level by imposing the new mandatory regulation on those grassroots groups which may hamper their works in defending the interests of community.¹⁹⁷

The law contains legal formalities concerning the operation of associations and NGOs in Cambodia. Thus, this paper examines key provisions regarding the establishment, operation and dissolution of associations and NGOs which are key elements of the right to freedom of association.

3.4.2.1 Establishment of Associations and Non-Governmental Organizations

It is compulsory for all associations and NGOs to register and obtain legal personality status before operating in Cambodia. Domestic association and NGO are required to register with the Ministry of Interior (MOI) whereas foreign associations and NGOs are required to register by signing a Memorandum of Understanding (MOU) with the Ministry of Foreign Affairs and International Cooperation (MFAIC).¹⁹⁸ Any association or NGO operating without registration with relevant ministries is considered illegal and 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 association or NGO.¹⁹⁹

¹⁹⁴ LANGO, Article 4.

¹⁹⁵ *Ibid.*, Article 4.

¹⁹⁶ Kuch, Naren (September 24, 2015). Minister Insists Community Groups Are Exempt from NGO Law. *Cambodia Daily*.

¹⁹⁷ ICNL (2016). *NGO Law Monitor: Cambodia*. Available at:

<<http://www.icnl.org/research/monitor/cambodia.html>>; CDC (2015b), *supra* note 26.

¹⁹⁸ LANGO, Articles 6 & 12.

¹⁹⁹ *Ibid.*, Articles 9, 32 & 34.

The mandatory registration regime may contravene the principles of international human rights law regarding the right to freedom of association in which registered and non-registered associations are equally protected. Criminalisation and severe punishment of non-registered associations further undermines the essence of the right to freedom of association under Article 22 of the ICCPR. It shall be the freedom of associations and NGOs to register with the Government to obtain rights and benefits provided by the law and no criminal sanctions shall be imposed thereof.²⁰⁰

Furthermore, the registration procedure for domestic associations and NGOs is burdensome, onerous and lengthy. To establish a domestic association or NGO, the law requires three founding members who are at least 18 years of age and have Khmer nationality.²⁰¹ In the case of local associations or NGOs operating at grassroots level, the requirement of three founding members may be burdensome considering their small organizations. It is considered under international human rights law as not too burdensome, but not as a best practice as well since it may discourage the exercise of the right to freedom of association in cases of small organizations.²⁰²

The minimum age requirement prejudices the right of children to freedom of association guaranteed under the Convention on the Rights of the Child in which Cambodia is a State Party since 1992.²⁰³ The restriction on foreigners from establishing domestic associations or NGOs is inconsistent with the principle of international human rights law which guarantees the enjoyment of the right without any discrimination, in particular, on the basis of nationality.²⁰⁴ The right of children and foreigners in this regard remains ambiguous although the law authorizes the MOI to determine conditions, formalities, and procedures for children and foreigners by an administrative order (*Prakas*).²⁰⁵

Domestic associations and NGOs are also required to submit necessary documents including application forms, address, profiles of founding members and statutes.²⁰⁶ 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

²⁰⁰ A/HRC/20/27, *supra* note 31, ¶56; A/64/226, *supra* note 39, ¶65.

²⁰¹ LANGO, Article 5.

²⁰² A/HRC/20/27, *supra* note 31, ¶54; ICNL (2015). *Comments on the Fifth Draft Law on Associations and Non-Governmental Organizations of the Kingdom of Cambodia*. p. 5.

²⁰³ CRC, Article 15.

²⁰⁴ ICCPR, Article 2 § 1.

²⁰⁵ LANGO, Article 11.

²⁰⁶ *Ibid.*, Article 6.

Cambodian national society.”²⁰⁷ The law fails to elaborate on what kinds of activities constitute endangering national security as such. Such grounds for denial of registration is ambiguous and susceptible to arbitrary interpretation by the administrative authorities with immense administrative power. The law guarantees the right to appeal to the courts,²⁰⁸ yet the following procedure is relatively silent. The right to appeal before an independent and impartial courts within a reasonable time shall be guaranteed for NGOs and associations in this regard.

The procedure for foreign associations and NGOs is even more burdensome, multi-staged and bureaucratic. Foreign NGOs and associations need to provide numbers of documents to the MFAIC for registration including letter of representative appointment with profiles, address, letter of authorisation, supporting letter of project, budget statement and pledge letter.²⁰⁹

As in the case of the MOI, the MFAIC has discretionary power to sign or deny an MOU with a foreign entity.²¹⁰ Furthermore, the approved MOU has limited timeframe of maximum three years and foreign associations and NGOs therefore have to file request for extension with the Ministry which is once again an onerous and unnecessary procedure.²¹¹ The right to appeal before an independent and impartial court is not guaranteed for foreign entities under LANGO. Such limitation and lack of procedural safeguard puts foreign entities, in particular, foreign human rights organisations, in greater danger of administrative and judicial harassment by public authorities.

3.4.2.2 Limited Operational Autonomy

LANGO requires associations and NGOs, after being registered with the ministries, to submit bank account information and its changes, amendments of statutes, relocation of office and replacement of management to the Ministry.²¹² Thus, domestic and foreign NGOs must submit annual activity and financial reports to the Ministry.²¹³ In cases where it is deemed ‘necessary’, the Ministry of Economy and Finance or the National Audit Authority can audit an association and non-governmental organization.²¹⁴

These reporting obligation are too burdensome and intrusive in the operation of associations and non-governmental organizations and as beyond

²⁰⁷ LANGO, Article 8.

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*, Article 13.

²¹⁰ *Ibid.*, Article 14.

²¹¹ *Ibid.*, Article 16.

²¹² *Ibid.*, Articles 10 & 17.

²¹³ Domestic and foreign association are exempted from this reporting obligation.

²¹⁴ LANGO, Article 25.

permissible restrictions under international human rights law. Reporting obligation are permissible to the extent that they do not impede the operation of associations and the right to privacy of associations is respected.²¹⁵ The term ‘if necessary’ is not clearly defined and once again open to misinterpretation and misapplication by the authorities against associations and NGOs. Anti-money-laundering and counter-terrorism financing policy may be similarly used by the public authorities to impose intrusive reporting and monitoring obligation on domestic and foreign NGOs and associations without valid justification for the interests of accountability nor transparency.

The most exceptional requirement of LANGO is political neutrality of all NGOs and associations in Cambodia. All domestic and foreign associations and NGOs (except domestic NGOs) are required to maintain their so-called ‘neutrality’ toward political parties in Cambodia.²¹⁶ The term ‘political neutrality’ is ambiguous and without further definition in the law. The standard of ‘neutrality’ is therefore completely subjective.

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, including political affairs. 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. The term ‘political’ or ‘political neutrality’ as such is often manipulated to curb and to silence civil societies from expressing their legitimate concerns which is deemed to undermine the Government.²¹⁷

As stated earlier, human rights defenders are often perceived by the Government as dissent or in another word, anti-government or pro-opposition. Hence, the threshold of neutral and non-neutral activities of human rights associations and NGOs is inclined to be arbitrarily interpreted by the authorities. This political neutrality requirement is apparently not in compliance with the principles of the right of human rights defenders to freedom of association and of expression.²¹⁸

Provisions under LANGO also regulates 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

²¹⁵ ICCPR, Article 17.

²¹⁶ LANGO, Article 24.

²¹⁷ ICCPR, Articles 19 & 25; A/64/226, *supra* note 37, ¶44.

²¹⁸ ICNL (2015), *supra* note 202, p. 8.

sources.”²¹⁹ The funding of foreign entities must be obtained from lawful sources.²²⁰ It is unclear what may constitute ‘lawful’ sources of funding for associations and NGOs. Ambiguities in the law regarding lawful sources of funding unnecessarily persist. Justification of national security, money laundering and terrorist financing could be rationales purported by some politically motivated opportunists to restrict the right of NGOs and association to access funding and ultimately restricting their works in the promotion and protection of human rights.²²¹

Foreign funding is the most important source of funding for associations and NGOs in Cambodia. 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.²²² 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 Declaration on Human Rights Defenders.²²³

3.4.2.3 Suspension, Dissolution and Termination

Domestic and foreign associations and NGOs may voluntarily suspend their operation by providing written notification to the relevant ministries.²²⁴ On the other hand, they may be involuntarily suspended, terminated or dissolved by the ministries or by the court in cases of: “(1) failing to provide information regarding their operation bank accounts; (2) failing to maintain their political neutrality; (3) failing to submit their annual activity and financial reports; and (4) failing to properly comply with their statute.” Any activities which are considered “endangering the security, stability and public order, or jeopardizing the national security, culture, tradition, and custom of Cambodian national society” may also result in suspension or dissolution.²²⁵

Involuntary suspension or dissolution of associations as mentioned earlier is considered as one of the most severe restrictions on the right to freedom of association and shall be used as a method of last resort only when less severe

²¹⁹ LANGO, Article 18.

²²⁰ *Ibid.*, Article 19.

²²¹ *Ibid.*, Article 36.

²²² CCC (2013), *supra* note 188, p. 27; CDC (2015a). *NGO Source of Funding 2014-2018*. Available at:

<http://cdc.khmer.biz/DCR_Report/list%20of%20ngo%20project%20by%20donor.asp> (May 15, 2016).

²²³ DHRD, Article 13.

²²⁴ LANGO, Articles 26 & 27.

²²⁵ *Ibid.*, Articles 30, 33 & 35.

measures are ineffective and when there is a real imminent danger to the national security and public order.²²⁶

Suspension based on failure to comply with internal statute, 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 shall respect such private sphere under the right of associations to privacy.²²⁷ Once again, the standard of endangering national security as such is ambiguous and is more or less subjective to the interpretation of the authorities. The right to appeal against the decision of the authorities is exclusively for domestic associations and NGOs, not foreign ones.²²⁸

Case Studies

Following the release of the third draft of LANGO in July 2011, Sahmakum Teang Tnaut (STT), a local NGO advocating for land and housing rights for urban poor communities, was suspended for a period of five months from August to December 2011. STT, established in 2005, is a local urban NGO with the aims of promoting housing rights for urban communities, raising awareness regarding urban issues and providing technical assistance to those in need.²²⁹ The Government asserted that the grounds for suspension was due to STT's failure to complete the procedural formalities required by the Ministry of Interior, in particular, modification of leadership structure and revision of its statute.²³⁰

The critical nature of the work of STT was mainly believed to be the justification in reality. The work of STT involves advocating for land and housing rights for poor urban communities. Before the suspension, STT criticized 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.²³¹ The appeal of STT was joined by other local NGOs such as the NGO Forum—another well-known local

²²⁶ A/HRC/20/27, *supra* note 31, ¶75.

²²⁷ ICCPR, Article 17.

²²⁸ LANGO, Article 31.

²²⁹ STT (2016). *Who We Are*. Available at: <<http://teangtnaut.org/about-stt/?lang=en>> (May 15, 2016).

²³⁰ RGC (2011). *Directive for the Temporary Suspension of the Activities of Theang Thnoat Association*, No. 1151 Sor.Cho.Nor.

²³¹ LICADHO (2011). "We Are All STT": *Civil Society and Private Sectors Groups Condemn Government's Arbitrary Suspension of Local NGO*; Thin, Lei Win (August 23, 2011). *Cambodian govt warns NGOS over letter to donors—paper*. *Thomson Reuters Foundation News*.

NGO—which was also awarded with warning letter from the Ministry of Interior.²³²

The suspension of STT fails to meet the threshold of international human rights law which requires the suspension to be a method of last resort when there is a real and imminent danger to national security or public order. Failure to fulfill an administrative requirement was absolutely not a legitimate basis for suspension of NGO and it constitutes a violation of the right to freedom of association of STT. However, safeguard mechanism was almost absent for STT in such case for arbitrary suspension.

In addition, shortly after the adoption of LANGO, a small community-based group in Snuol district, Kratie province was banned by local officials from conducting their activities and was required to register under the new law. The small community-based group in Snoul consists of 71 families who were involved in a local land dispute. The order of local officials was inconsistent with the statement of the Government earlier. The Government insisted that the required registration raised by the local officials was rather for the purpose of obtaining legal land title for indigenous community. Those families however claimed that they in fact were not in indigenous community.

Despite the official statement by the Government regarding the exclusion of CBOs from LANGO, this case highlights the legitimate concern of arbitrary interpretation and application of LANGO by local officials to curb the small community-based groups and civil society organisations in general who are critical to the Government.²³³ The Government shall take necessary measures to raise awareness and education regarding the new law and its scope of application to the sub-national and local authorities in order to ensure uniform implementation of the law and to avoid ill-execution of the law as in this case.

3.5 Concluding Remarks

It has been explicit that the right to freedom of association is recognized and guaranteed under Cambodian legal system. The Constitution—supreme law of Cambodia—guarantees the right to freedom of association of all Cambodians following by various *lex specialis* legislation including the Civil Code of 2007 and Labor Law of 1997. The constitutionalisation of the right to freedom of association in Cambodia is a legal milestone for the promotion and protection of human rights in Cambodia as a whole.

²³² Cheang, Sokha (August 22, 2011). NGO Forum breaks silence on ‘warning’. *Phnom Penh Post*.

²³³ Aun, Chhengpor (August 17, 2015). Kratie Families Feel Effects of NGO Law. *Cambodia Daily*; Kuch, Naren (September 24, 2015). Minister Insists Community Groups Are Exempt from NGO Law. *Cambodia Daily*.

However, the adoption of the two new laws regarding NGOs and trade unions is another side of the coin. Disregarding their stated purposes, the two new laws are believed to play a more controversial role in the promotion and protection of the right to freedom of association in Cambodia, in particular, vis-à-vis NGOs and trade unions as the active and powerful national human rights defenders. The main issue of the new laws is not that of too much details in regulating the exercise of the right to freedom of associations of NGOs and trade unions, but the lack thereof.

Ambiguities in substantial provisions regarding the exercise of the right to freedom of association is a major issue considering interpretation and application of the new legislation. Administrative requirements are also moving to the intrusive threshold which may be incompatible with the standards of the international human rights law. Excessive delegation of power to the administrative bodies cannot be disregarded as well in the case where the right and interests of numbers of NGOs, associations and trade unions in Cambodia are at stake.

LANGO and Trade Union Law are not merely another law contributing a part of Cambodian legislation, but a significant legal phenomenon at this point of time where NGOs, associations and trade unions are increasingly playing major role in the promotion and protection of human rights in Cambodia. The discussion and debates on these newly adopted law are therefore critical in the development of the rule of law and the protection of human rights. In addition, relevant *de facto* restriction of the right of HRDs to freedom of association should also never be overlooked in the context of human rights discourse in Cambodia which will be discussed in the following chapter.

CHAPTER IV: CHALLENGES SURROUNDING THE RIGHT TO FREEDOM OF ASSOCIATION IN CAMBODIA

This chapter is dedicated to answer the third sub-research question regarding challenges surrounding the exercise of the right to freedom of association of human rights defenders in Cambodia. The main challenges for HRDs in Cambodia are addressed to establish an overall understanding of the current situation of the right to freedom of association and of human rights in Cambodia in general.

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.

The growing trend of targeting human rights defenders is becoming more common in the past recent years. *De jure* and *de facto* restriction by the RGC on the right of HRDs are more evident than ever. Such restrictions severely interfere with their individual rights and freedoms and also with their works in the promotion and protection of human rights and freedoms in Cambodia. The challenges faced by HRDs in Cambodia occur in various forms including administrative and judicial harassment, attack on physical integrity, ineffective human rights safeguard system and rampant corruption.

4.1 Administrative and Judicial Harassment

The right of human rights defenders, in particular, trade unions and human rights organisations, is severely restricted by administration and judicial harassment by the Government. Harassment is believed to be a sign of warning used to silence and defer the works of HRDs.²³⁴

First, compulsory registration regime is employed as a mean of administrative harassment on HRDs. Burdensome registration procedure, criminalisation of non-registered associations and arbitrary denial of registration are

²³⁴ A/59/401, *supra* note 6, ¶23.

increasingly witnessed against HRDs.²³⁵ Suspension and dissolution of associations in absence of legitimate grounds are also examples of administrative harassment in Cambodia.²³⁶

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.²³⁷ The interruption of the authorities followed by warning, threats, acts of intimidations and harassment on HRDs and their respective institutions.²³⁸

Another mean to curb human rights defenders in Cambodia is the abuse of judicial power by the Government. Human rights defenders in many cases were slapped with lawsuits, arrest, detention and imprisonment without due process and respect of fair trial rights.²³⁹ The numbers of cases involving the arrest and detentions of HRDs in 2014 increased from 1 to 21 including politically motivated charges related to demonstration, defamation, incitement and interference in the discharge of public function.²⁴⁰ The trend continues in 2015 when four human rights defenders were beaten and arrested by State security forces, lawsuits were filed against six union leaders for incitement and the imprisonment of seven housing rights defenders.²⁴¹

The most prominent case of 2016 so far is the arbitrary arrest and detention of local NGO staff for the alleged bribery of witness by the Anti-Corruption Unit (ACU). Four senior staff members of one of Cambodia's highest profile human rights NGOs, Cambodian Human Rights and Development Association (ADHOC) and another former ADHOC staffer who is now a member of the National Election Committee (NEC), along with a national staff member of OHCHR's country office in Cambodia are involved in this highly politically motivated case. Those human rights defenders were charged with bribery and with being accomplices of bribery whereas the national

²³⁵ HRW (2015), *supra* note 149, p. 83; A/HRC/20/27, *supra* note 31, ¶56.

²³⁶ LICADHO (2011), *supra* note 231.

²³⁷ Subedi, Surya P. (2013). *Report of the Special Rapporteur on the situation of human rights in Cambodia*. A/HRC/24/36. ¶9.

²³⁸ Subedi, Surya P. (2014). *Report of the Special Rapporteur on the situation of human rights in Cambodia*. A/HRC/27/70. ¶24.

²³⁹ *Ibid.*, ¶8 & 10; HRW (2016). *World Report: Events of 2015*. pp. 151-153.

²⁴⁰ LICADHO (2015), *supra* note 122, p. 7.

²⁴¹ Amnesty International (2015). *Amnesty International Report 2014/15: The State of the World Human Rights*. pp. 93-94.

staffer of OHCHR was charged in absentia. The current and former ADHOC staffers were sent to pre-trial detention at the time of writing.²⁴²

Prime Minister Hun Sen called for the arrest of the national OHCHR's staff member by asserting that the diplomatic immunity of the UN was not applicable in this case.²⁴³ Notwithstanding, the MFAIC had publicly and uncommonly disagreed with the statement of the Prime Minister and declared that the national staff member of OHCHR was protected by the immunity of the United Nations.²⁴⁴

Other HRDs from other NGOs such as Cambodian League for the Promotion and Defence of Human Rights (LICADHO) and Sahmakum Teang Tnaut (STT) who protested against the arrest in the 'Black Monday' campaign were also arrested by the authorities, but were later released after hours of detention.²⁴⁵ This highly political case demonstrates a new wave in curbing civil societies and defenders and it reflects the pattern of current human rights situation in Cambodia.

4.2 Attack on Physical Integrity

To a more serious extent, HRDs have been facing attack on their physical integrity. The existence as well as the works of human rights defenders in Cambodia are often critical towards the policies of the Government. Accordingly, the Government often considers HRDs as dissidents who are anti-Government or pro-Western agents. In turns, human rights defenders are exposed to great danger of attack on their physical integrity. Cases of threats, intimidations, violence and even assassination of HRDs have been documented throughout the years.²⁴⁶

One of the prominent cases is the killing of the former president of the Free Trade Union of Workers in the Kingdom of Cambodia (FTUWKC)—one of Cambodian oldest and most active labor union, in 2004,²⁴⁷ as well as two

²⁴² ADHOC (April 26, 2016). *Joint Statement: CSOs call upon authorities to immediately cease harassment of human rights defenders*; Front Line Defenders (May 4, 2016). *Human rights defenders detained and charged*.

²⁴³ Lay, Samean, Meas, Sokchea & Turton, Shaun (May 2, 2016). ACU keeps the heat on as PM dismisses UN's claims to immunity. *Phnom Penh Post*.

²⁴⁴ Turton, Shaun & Mech, Dara (May 9, 2016). Foreign Ministry says UN worker has immunity. *Phnom Penh Post*.

²⁴⁵ International Federation of Human Rights (FIDH) (May 09, 2016). *Cambodia: New wave of arrests targeting human rights defenders threatens to destroy vibrant human rights community*.

²⁴⁶ CCPR (2015). *Concluding observations on the second periodic report of Cambodia*. CCPR/C/KHM/CO/2. ¶21.

²⁴⁷ Strangio, Sebastian (2014), *supra* note 12, p. 204.

similar cases of other trade union leaders.²⁴⁸ Another prominent case is the killing of the President of Cambodia's Natural Resources Conservation Group and a widely renowned environmental activist in April 2012 who advocated against deforestation and illegal logging which was a serious threat to economic and environmental rights of local communities.²⁴⁹

HRDs are often targeted while carrying out their work to promote and protect human rights of marginalised communities such as those who are advocating for workers' rights and land rights. Acts of threats, intimidations and violence are serious concerns for personal safety and integrity of HRDs in Cambodia.²⁵⁰

In the past few years, there has been a growing trend of state-sponsored violence against HRDs in Cambodia. Between 2013 and 2014, it has been reported that there were at least 19 cases of excessive use of force on HRDs by police, para-police and security guards,²⁵¹ including the beating of four HRDs in the peaceful demonstration with workers in early 2014.²⁵² Defenders were also attacked by private individuals with at least 13 cases documented in 2014 without thorough investigation by the public authorities on such cases.²⁵³

4.3 Ineffective Safeguard System

In fulfilling its international human rights obligations, Cambodia has established the national human rights protection mechanisms to safeguard human rights. The mechanism includes the national human rights bodies, the judiciary, civil society, partnership with the OHCHR in Cambodia and ASEAN cooperation on human rights.²⁵⁴

4.3.1 National Human Rights Bodies

Constitutionalisation of the right to freedom of association must be accompanied by the institutionalisation of the right in order to create an enabling environment for human rights defenders to safely and fully exercise their rights in Cambodia. The establishment of a national human rights protection system is a pragmatic approach to institutionalisation of human

²⁴⁸ CCHR (2014), *supra* note 145, p. 4.

²⁴⁹ May, Titthara & Boyle, David (April 26, 2012). Environmental activist Chut Wutty shot dead. *Phnom Penh Post*; ADHOC (May 4, 2012). *Killing of Chut Wutty*.

²⁵⁰ Subedi, Surya P. (2014), *supra* note 238, ¶24 & 32.

²⁵¹ LICADHO (2015), *supra* note 122, p. 5.

²⁵² Amnesty International (2015), *supra* note 241, p. 93.

²⁵³ *Ibid.*

²⁵⁴ HRC (2013). *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Cambodia*. A/HRC/WG.6/18/KHM/1. ¶38.

rights. The human rights protection system in Cambodia is enforced by national human rights bodies. The national human rights bodies are in charge of implementing and monitoring the promotion and protection of human rights and fundamental freedoms. The National Human Rights Bodies of Cambodia consist of the National Assembly Commission on Human Rights, the Senate Commission on Human Rights and the Cambodian Human Rights Committee.²⁵⁵

4.3.1.1 National Assembly Commission on Human Rights

The National Assembly Commission on Human Rights (NACHR) is one of the nine specialised commissions under the National Assembly, the lower chamber of Cambodia's bicameral parliament. The Commission consists of nine members of the National Assembly and the majority is from the Cambodian People's Party (CPP), the ruling party in Cambodia.

The Commission's main duties are to monitor the respect of human rights in Cambodia in accordance with the Constitution, UDHR and other international human rights instruments ratified by Cambodia; to receive complaints from individuals and representatives of organizations and associations regarding violation of human rights; and to investigate the alleged violations. The Commission also has the mandate to examine draft laws regarding human rights submitted by the Government before sending to the Senate. Human rights education and awareness-raising are also under the mandate of the Commission.²⁵⁶

Between 2006 and 2010, the Commission received more than 1,100 complaints from the public which are mostly concerned with land disputes. However, around 250 complaints were responded by the Commission. Despite a minimal number in relation to the numbers of complaints, the Special Rapporteur on the situation of human rights in Cambodia considered it to be a 'good number'.²⁵⁷

4.3.1.2 Senate Commission on Human Rights

The Senate, the upper chamber of Cambodia's bicameral parliament, consists of ten commissions. The Senate Commission on Human Rights (SCHR) is one of them. The Commission consists of five members of the Senate. The

²⁵⁵ CCHR (March 2012). National Human Rights Bodies in Cambodia. *Institutional Series*. Volume 3; ADHOC (2015). *Cambodia: Symbolic Institutions Are No Substitute*.

²⁵⁶ National Assembly (January 09, 2014). *Decision on the Role and Duty of the Commission on Human Rights, Complaints, Investigation, and Communication between the National Assembly and the Senate of the National Assembly of the Kingdom of Cambodia*.

²⁵⁷ Subedi, Surya P. (2011). *Report of the Special Rapporteur on the situation of human rights in Cambodia*. A/HRC/18/46. ¶39.

SCHR has similar mandate to the NACHR including monitoring the respect of human rights, examining draft laws regarding human rights, receiving and investigating complaints and human rights education and awareness-raising.²⁵⁸

The SCHR however is considered more proactive and effective than the NACHR. Between 2006 and 2010, among 300 human rights complaints from the public received by the SCHR, around 100 cases are responded which is a higher response rate in comparison to that of the NACHR. It also conducted investigation on more than 40 cases. The SCHR, with its more advanced structure, has initiated the ‘fact-finding’ mission on its own accords in more than 24 missions per year.²⁵⁹

4.3.1.3 Cambodian Human Rights Committee

The Cambodian Human Rights Committee (CHRC) was established in 1998 by a Royal Decree. The CHRC is under the mandate of the RGC to monitor the promotion and protection of human rights in Cambodia. The official duties of CHRC include promoting and protecting human rights and drafting human rights reports for UN human rights bodies. The CHRC is divided into two departments, the General Department of Administration and Complaints and the General Department of Human Rights Investigation and Education.²⁶⁰

The mandate of CHRC was reformed in 2013 to include the duties of receiving complaints of human rights violations and undertaking investigations, following up the implementation of human rights and organizing human rights training and awareness-raising.²⁶¹ The former president of CHRC, His Excellency, Om Yentieng—the current head of the Anti-Corruption Unit (ACU), senior advisor to Prime Minister Hun Sen, and a high-ranking member of CPP—was later succeeded by his vice-president, H.E. Mak Sambath in 2015.²⁶²

CHRC is the main national human rights institution to monitor the promotion and protection of human rights in Cambodia. However, the Paris Principles were not properly observed in the establishment of this institution. The Paris Principles are a key guideline established by the United Nations in 1993 to

²⁵⁸ Permanent Commission of the Senate (September 06, 2012). *Decision on Role, Duty, and Competence of the Commission on Human Rights, Complaints, and Investigation*.

²⁵⁹ Subedi, Surya P. (2011), *supra* note 257, ¶39 and 41.

²⁶⁰ Sub-Decree No. 570 (December 23, 2013). *Sub-Decree on the Organization and Proceeding of Cambodian Human Rights Committee*.

²⁶¹ *Ibid.*

²⁶² CHRC (January 12, 2015). *Decision 002 on Works and Responsibilities of Leaders of Cambodian Human Rights Committee*.

assess the credibility of national human rights institutions (NHRI).²⁶³ An NHRI must satisfy certain criteria under the Paris Principles in order to be recognized and accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The criteria include possessing a broad-based mandate, independence, transparency, pluralist structure and adequate resources.²⁶⁴

Pluralism is absent in the structure and composition of the CHRC in terms of female representation and people from various backgrounds, including political backgrounds. In particular, the majority of the members are male and from the Government, in particular, the ruling Cambodian People's Party (CPP). Independence and transparency of the institution are also seriously questioned. CHRC was established by a simple Royal Decree, instead of an act of parliament and without discussion or consultation with civil societies.

CHRC is under the mandate to report to the Council of Ministers, the cabinet of the RGC. Moreover, since majority of the members are from the CPP, the Committee is more or less under the influence of the executive as in the cases of the NACHR and SCHR. The lack of independence and transparency seriously undermines the effectiveness of these human rights institutions in the promotion and protection of human rights in Cambodia, especially in the case of involving the State and its organs.²⁶⁵ The Special Rapporteur on Cambodia has also expressed concern for the national human right bodies for being 'governmental rather than independent bodies.'²⁶⁶

The efforts since 2006 to establish a national human rights institution in line with the Paris Principles have been ongoing for a decade without any concrete outcomes as yet. The draft law on national human rights institution was adopted in February 2010 and was once reviewed in January 2014. Any further progress on the draft law has been absent since then.²⁶⁷

Overall, the national human rights bodies including the NACHR, SCHR and CHRC are under influence of the executive and therefore not sufficiently independent to implement and monitor human rights in Cambodia.²⁶⁸ Those institutions merely serve as symbolic institutions.

²⁶³ UN General Assembly (20 December 1993). *Principles relating to the Status of National Institutions*. A/RES/48/134.

²⁶⁴ ADHOC (2015), *supra* note 255, p. 3.

²⁶⁵ *Ibid.*, pp. 4-5.

²⁶⁶ Subedi, Surya P. (2014), *supra* note 238, ¶69.

²⁶⁷ *Ibid.*, pp. 7-8; CCPR (2015), *supra* note 246, ¶6.

²⁶⁸ CESCR (2009b). *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Cambodia*. E/C.12/KHM/CO/1. ¶13.

4.3.2 Judiciary

According to the Constitution (Article 51 new), the judiciary is an independent body which is separated from the legislative and executive. The judiciary in Cambodia consists of municipal and provincial courts, military courts, appellate court and Supreme Court and the Constitutional Council as the highest courts.

The judicial system in Cambodia is also fundamentally flawed. The independence and impartiality of the judiciary is debatable.²⁶⁹ The independence of the judiciary in Cambodia is severely affected by its close affiliation with the Government and its institutional incapacity.²⁷⁰

The Government is also believed to have strong influence on the judiciary. The vast majority of judges and prosecutors in Cambodia are widely known to be members of the CPP. Judicial power has been abused in numerous cases where HRDs were charged and convicted in politically motivated cases without observance of due process and fair trial rights as mentioned in cases above.

Besides the lack of independence, the judiciary of Cambodia are also affected by other challenging issues such as capacity shortage, lack of human, material and financial resources, corruption and lack of public trust in the ability of the judiciary to safeguard human rights in Cambodia.²⁷¹

The Government has adopted the Law on the Organisation of the Courts, the Law on the Status of Judges and Prosecutors and the Law on the Organisation and functioning of the Supreme Council of Magistracy in 2014 to endorse judicial reform in Cambodia.²⁷²

However, the adoption of the new laws *de facto* fails to guarantee the judicial independence and endorse reforms in the judicial system of Cambodia. The laws were manipulated by the Government to serve its political interests. The new laws are silent on provisions regarding permanent tenure of judges in Cambodia. The principle of permanent tenure guarantees independence of judges and prosecutors and protects them from any fear or influence. The absence of such provisions is considered as one of the loopholes of the laws. Other concerns of the laws include the remaining excessive power of the

²⁶⁹ CESCR (2009b), *supra* note 268, ¶14.

²⁷⁰ Anstis, Siena (2012). Using Law to Impair the Rights and Freedoms of Human Rights Defenders: A Case Study of Cambodia. *Journal of Human Rights Practice*. 4:3. pp. 314-315.

²⁷¹ Subedi, Surya P. (2013), *supra* note 237, ¶16

²⁷² CCPR (2015), *supra* note 246, ¶20.

Supreme Council of Magistracy and the Ministry of Justice and the lack of check and balance system between the judiciary and the executive.²⁷³

The main characteristic of the judiciary is the principle of independence and impartiality. The absence of appropriate check-and-balance system and of *de facto* separation of power gravely compromises effectiveness and authority of the judiciary in safeguarding the protection of human rights in Cambodia in addition to the lack of effective safeguard system of the national symbolic NHRI mentioned above.

4.4 Corruption

Another prominent issue of Cambodian human rights safeguard system is the endemic and rampant corruption in the public sector.²⁷⁴ According to the Transparency International, Cambodia ranks 150 out of 168 countries as one of the highly corrupted countries in the world.²⁷⁵ Corruption affects every sectors of society including the implementation of rule of law and protection of human rights. It also seriously undermines the effectiveness of the national human rights bodies and the judiciary in implementation of human rights in Cambodia. The judiciary is considered as the most corrupted institution in the country.²⁷⁶

Cambodia is a State Party to the United Nations Convention against Corruption since 2007. Under the Convention, Cambodia has obligation to take necessary measures to combat corruption effectively including establishing an independent preventive anti-corruption body to fight corruption at national level (Article 6).

The Anti-Corruption Unit (ACU) was restructured in 2006 from its predecessor in 1999. The ACU is to report to the Council of Ministers, the executive body. The Anti-Corruption Law was correspondingly promulgated by the King in 2010.²⁷⁷ The creation of the Anti-Corruption Unit is believed to be just another flimsy institution which is strongly affiliated with the Government in which H.E. Om Yentieng—senior advisor of the Prime Minister and a high ranking member of CPP—is the President.

²⁷³ Amnesty International (2015), *supra* note 241, p. 92.

²⁷⁴ ADHOC (2015), *supra* note 255, p. 9. HRW (2016), *supra* note 239, pp. 151-153; LICADHO (2014). *Report for the Human Rights Committee's Task Force for the adoption of the list of issues on Cambodia*. p. 1.

²⁷⁵ Transparency International (2016). *Corruption Perceptions Index 2015*. Available at: <<https://www.transparency.org/cpi2015/#results-table>>.

²⁷⁶ Transparency International (2013). *Global Corruption Barometer*. p. 17.

²⁷⁷ HRC (2013), *supra* note 254, ¶39-41.

The close affiliation of this institution with the Government is not in parallel with the principle of independence and impartiality required of an anti-corruption institution. Furthermore, it severely undermines effectiveness of the institution in fighting corruption without undue interference, specifically, in cases involving government officials.²⁷⁸

Rampant corruption and a weak judicial system are the causes of a culture of impunity in Cambodia. A high level of impunity is embedded in Cambodian society where selective justice and freedom are exclusively for the powerful and wealthy.²⁷⁹ No thorough investigation has been conducted in the cases of killing of trade union leaders and activists and other HRDs who were under attack by public authorities and private individuals up until now.²⁸⁰ Justice is yet a mirage for human rights defenders in a society where the rule of law is seriously undermined by the political hegemons.

²⁷⁸ Subedi, Surya P. (2014), *supra* note 238, ¶76.

²⁷⁹ Amnesty International. (2015). *supra* note 2414, p. 92; HRW (2014). *Human Rights Watch Concerns and Recommendations on Cambodia Submitted to the UN Human Rights Committee in advance of its Pre-Sessional Review of Cambodia*. p. 8; LICADHO (2014), *supra* note 274, p.1.

²⁸⁰ CESCR (2009b), *supra* note 268, ¶24.

CHAPTER V: CONCLUSION

5.1 Conclusion

The main purpose of this paper has been to examine the implications of the newly adopted Law on Associations and Non-Governmental Organisations and Law on Unions of Enterprises on the right of human rights defenders to freedom of association in Cambodia. There are indeed serious debates on the role and significance of these newly adopted laws on the exercise of the right to freedom of association of NGOs and trade unions as prominent human rights defenders in Cambodia. This chapter is therefore devoted to examine overall situation of the right to freedom of association and to draw some conclusions as well as prospects on the way forward.

The main challenge in establishing legal norms of the right to freedom of association is the limited source of authority. International human rights law regime does not offer adequate interpretation on the right to freedom of association. There is no General Comment on the right under Article 22 of the ICCPR nor Article 8 of the ICESCR. The jurisprudence of the CCPR and of the CESCR on the right are also far from sufficient to establish the legal norms on the right. The undertakings of the ILO and jurisprudence of ILO Committee on Freedom of Association are ample sources of general interpretation of the right; yet, they are strictly applicable to the right of trade unions to freedom of association which but one aspect of the right to freedom of association.

The mandate of the Special Rapporteur on the right to freedom of peaceful assembly and of association significantly contributes to the application of the right to freedom of association. The existence of this thematic mandate provides to a certain extent interpretation of the right for a better implementation of the right. It also reinforces the relevance of the right to freedom of association in the human rights regime. However, the need of comprehensive legal interpretation of the right is irreplaceable.

When it comes to human rights, the lack of principle legal interpretation of the right is undesirable. The right to freedom of association is yet to be broadly aware as it is often misconstrued with other nexus rights such as the right to freedom of peaceful assembly. Interpretation, application and implementation of the right as reported by the Special Rapporteurs, are also more susceptible to arbitrary subjectivity of State as witnessed in the increasing undue restriction of the right to freedom of association by States.

The role of General Comments is of great importance. The existence of the General Comments affirms and reiterates the significance of the right to freedom of association as a civil and political as well as an economic right under the human rights law regime. Hence, the CCPR and/or the CESCR should issue General Comment(s) to provide interpretation of the right under Article 22 and Article 8 as well as implementation guidelines and to expand the scope of application of the right under international human rights law.

In the context of Cambodia, the adoption of relevant national legislation—LANGO and Trade Union Law—regarding the right to freedom of association is welcomed as a positive measures taken by the RGC. It is considered as a legal milestone of the RGC to guarantee and safeguard the right to freedom of association in accordance with the international human rights law. It is presumed as a part of the obligation to *fulfill* of Cambodia which requires Cambodia to adopt necessary measures to ensure the enjoyment of the right, including legislative measure. The national legislations regarding the right to freedom of association are nonetheless far from being consolidated. Ambiguities in provisions and excessive discretionary power of administrative authority remains the main issues thereof.

The main concern surrounding LANGO is the possible inclusion of CBOs under its scope. The ambiguous definition of *domestic association* can be misinterpreted to include CBOs in Cambodia which is perceived to be a mean for restriction on their works with grassroots community as demonstrated in the case studies above. There should be concrete clarification in the law or by the public authority in this regard to avoid further ill-execution of the law.

Regarding the right to form or join association, in particular, trade unions, the exclusive purpose of union determined by the Labor Law and Trade Unions Law departs from the core essence of the right to freedom of association. Trade unions should not be restricted for only the purpose provided by the law. The right to form or join trade union is a human right regardless of its economic or civil and political nature of the right. Provisions under the Labor Law and Trade Union Law therefore should not delimit the purpose of trade unions exclusively to economic interests since international human rights law allows the pursuance of both civil and political interest and economic interest of unions.

In addition, the absolute mandatory registration required by the laws is not in compliance with international human rights law. Furthermore, criminalisation of unregistered association severely prejudices the right of *de facto* associations to pursue their common interests protected by the international human rights law such as to promote and protect human rights and

fundamental freedoms. Onerous, lengthy and arbitrary registration procedure of administrative authorities (MOI, MFAIC and MLVT) is one of the biggest challenges to the right to freedom of association in Cambodia and considered as administrative harassment on HRDs. The newly adopted laws grant excessive discretion to administrative authorities to authorize the right of associations to freedom of association. More power of the authority means less freedom for the right-holders. The increasing role of the public administrative authorities is at the expense of the civic space of NGOs and trade unions to legitimately exercise their right to freedom of association.

Such undue interference of the right is incompatible with the obligation to *respect* in which the RGC shall not obstruct the exercise of the right provided by the international human rights law. The mandatory registration regime and criminalisation of unregistered associations should be eliminated and the registration procedure should also be simplified for both domestic and foreign associations in order to encourage and facilitate the establishment of associations, in particular human rights associations.

The right of NGOs and trade unions to function freely is also severely restricted by undue and intrusive monitoring and supervision regime of the administrative authorities. Human rights organisations are targeted owing to the nature of their works. The ability of human rights defenders to pursue their legitimate aim of protecting human rights in an enabling environment is sabotaged by the undue interference of the administrative authority. International human rights law does not prohibit interference of State. Such interference however must be justified and should not be too intrusive in the work of human rights defenders. Associations and NGOs in Cambodia should be able to operate freely without political pressure in the conduct of public and political affairs. The requirement of political neutrality under LANGO thus should be abandoned. The rights to determine activities and to access funding, in particular, should be respected and facilitated by authorities at national and sub-national levels.

Last but not least, grounds of suspension or dissolution of associations under the Labor Law and newly adopted laws should be amended. The lack of precision in the provisions regarding the suspension and dissolution of association is a major loophole in LANGO and Trade Union Law. Such grounds hence should be redefined in conjunction with delimitation of administrative authorities' power. The right to appeal before an independent and impartial courts should also be guaranteed for associations, NGOs and trade unions.

In this regard, the RGC should also make further efforts and expedite the process of draft law on labor court to establish Labor Court as stipulated in

the Trade Union Law for effective exercise of the right to form or join trade unions.²⁸¹

Besides *de jure* restriction of the right to freedom of association, enjoyment of the right in an enabling environment for associations is another serious issue for human rights defenders in Cambodia.

First, excessive discretionary power of the administrative authorities is the foundation of administrative harassment on HRDs in Cambodia. Administrative authorities are equipped with undue power to control the entire life of associations ranging from establishment to dissolution. As mentioned earlier, the discretionary power of administrative authorities should be strictly delimited to avoid undue interference and excessive Government's control on the right of HRD to freedom of association.

Second, with regard to the attack on physical integrity of HRDs, the standards of obligation to *respect, protect* and *fulfill* are not observed. The RGC fails to *respect* the exercise of the right by actively hampering the works of human rights defenders at individual level. The obligation of the RGC to *protect* right of HRDs from being violated by private individuals and to thoroughly investigate the alleged violations is also neglected. The obligation to *fulfill* is not satisfied due to the failure to take necessary measures to establish an enabling environment for HRDs to exercise their right without fear of threat and intimidation as such. In lieu of the recent explicit violations of its human rights obligations, the RGC should shift its policies and make further efforts by reinforcing its commitment to respect its obligations in accordance with the international human rights law.

Third, the absence of an independent NHRI in accordance with the Paris Principles is a major gap for the human rights safeguard system in Cambodia as State and its agent are the main perpetrators. The discussion and process on the law establishing an NHRI in accordance with the Paris Principles should be resumed and expedited. Further reform on the judiciary is also necessary to restore its independence and impartiality.

Finally, corruption is a systematic and intricate issue which requires efforts and time. The need of an independent institution dealing with this issue is an absolute necessity. The current institution is incapable of independently functioning to tackle this issue. Institutional reforms in public sectors and the ACU itself should be implemented and *de facto* independence should be guaranteed in those institutions.

²⁸¹ CESCR (2009a), *supra* note 32, ¶301; HRC (2013), *supra* note 254, ¶76.

Despite the restrictions and challenges faced, civil society in Cambodia is considered to be freer than in other countries in Asia. Cambodia has less political prisoners than China, Vietnam and Myanmar. It also has more tolerance for bloggers and journalists than Thailand, Vietnam and Singapore. It has ratified all the core human rights instruments and celebrates International Human Rights Day (10 December) and several other days commemorating milestones in human rights (e.g. International Women's Day, International Day of the Child and International Labor Day) as official holiday.²⁸² The comparative freedom of civil society is also evident in the dramatic increase in numbers of NGOs, associations, civil societies and trade unions working in various fields across the country.

The main purposes of LANGO and Trade Union Law are to respond to the rapid growing numbers of NGOs and unions and to facilitate the exercise of the right to freedom of association in Cambodia. In this regard, the implications of the LANGO and Trade Union Law on the right to freedom of association in Cambodia are twofold.

On the one hand, the laws enable human rights defenders to enjoy the right to a better extent. The law from a legal point of view fills in the gap of the Labor Law and Civil Code by providing separate and comprehensive provisions designed specifically for NGOs, associations and unions. Although there are some ambiguities in the law, it is not uncommon and the law can be amended later upon public and inclusive discussion with relevant stakeholders. The essence is that the existence of the laws itself is a stepping stone for a better safeguard mechanism for the right to freedom of association in Cambodia. It is also a sign of positive progress of Cambodia toward a more democratic society with the respect of rule of law and human rights.

On the other hand, the law reflects negative implications on the exercise of the right to freedom of association. First, the significance of the new laws is seriously questioned. The provisions under the Labor Law and Civil Code are sufficiently comprehensive and widely regulate NGOs, associations and unions in Cambodia in addition to other regulations and *prakas*. The new laws are almost duplicate versions of the existing provisions, but in more stringent manner.

From a human rights perspective, LANGO and Trade Union Law are fundamentally incompatible with international human rights law as well as the Constitution of Cambodia as mentioned earlier. Ambiguous provisions and excessive power to the administrative authorities can potentially impair the right of human rights defenders to freedom of association. It imposes *de*

²⁸² Strangio, Sebastian (2014), *supra* note 12, p. 193.

jure restriction in addition to the existing *de facto* restriction by administrative authorities.

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, the new laws impose undue control and oversight of the Government on civil societies. Such supervision provides little or no room for the essence of civic space which is necessary in a democratic society and may undermine the essence of the right to freedom of association itself.

Moreover, the new law exacerbates the current human rights situation in Cambodia. As a matter of fact, it is a part of the political apparatus of the RGC to curb human rights defenders in Cambodia. The current human rights situation in Cambodia is far from ideal. The fifth mandate of the RGC marks a new turning point in the human rights paradigm in Cambodia. Administrative, legislative and judicial harassment and attack by State-sponsored violence and excessive use of force against human rights defenders are more frequently documented and on a larger scale.

The current wave of harassment against human rights defenders is another warning on civil societies in order to silence their voice regarding human rights situation in Cambodia. It also reflects the level of tolerance that the RGC is now having toward dissent and criticism, or even civil societies in general.

The new law may not only affect the right to freedom of association, but also other nexus rights provided for HRDs such as the right to freedom of peaceful assembly and of expression, as well as the rights of other people who benefit from the works of HRDs in the promotion and protection of human rights and fundamental freedoms.

Overall, the RGC is now taking a major—probably intentional—retrogressive move with the respect of the right to freedom of association by adopting the controversial law on NGOs and trade unions amidst the current political climate. It can be concluded that the adoption of LANGO and Trade Union Law is a new wave of legal offensive against human rights defenders adopted by the RGC. It is also a legal apparatus employed by the RGC to legitimize the restriction of the right to freedom of association as well as other human rights and fundamental freedoms in Cambodia.

5.2 Future Prospects

The adoption of LANGO and Trade Union Law is a major part of the exercise of the right to freedom of association in Cambodia. Indeed, the new

legislation on the right to freedom of association is not ultimately futile. These laws serve as the key legislations concerning the right to freedom of association of thousands of NGOs, associations and trade unions and as a part of significant progress in constitutionalisation of human rights in Cambodia. Without a doubt, amendments are much needed on LANGO and Trade Union Law—in particular, regarding mandatory registration, operational autonomy, dissolution of associations and excessive power of administrative authorities. Amendments shall be made in accordance with the international human rights law with constructive engagement and genuine discussion with civil societies and relevant stakeholders.

However, future amendment in the laws alone, if possible, will not bring about significant change to the enjoyment of the right in accordance with the international human rights standards. *De facto* restriction on the right to freedom of association is a more challenging issue for human rights defenders in Cambodia.

It is nevertheless not a particular case of the right to freedom of association alone. It is a matter of the human rights system in Cambodia as a whole. The ability and willingness of the RGC to promote and protect human rights at national level is at the centre of the concern. The commitment of the Government to reform is a critical factor in determining the extent to which human rights defenders can effectively enjoy the right to freedom of association in Cambodia.

Along with other countries in the world, Cambodia joins the trend of adopting NGO law as such to curb human rights defenders who are increasingly crucial and powerful agents of changes in contemporary society. The fear of political insecurity of the RGC indeed influences its current behaviour toward civil societies in Cambodia.

The current trend yet shows that the willingness of the RGC to change its current attitude toward civil societies is almost absent. Such trend is not unfamiliar in the context of Cambodia. A similar trend occurred just before the 2013 election. Pre-election periods have always been a sensitive period for the RGC. As the 2017 commune election and 2018 national elections approach, political insecurity increases resulting in less tolerance for criticism or dissent. Eventually, it is all about the political will of the State to respect its human rights obligations.

The exercise of the right to freedom of association and the overall human rights situation in Cambodia is expected to proceed in a similar fashion or worse, to deteriorate to an even lower point unless there is a major transition in the policy of the RGC. Henceforth, the capacity for resilience of civil

societies in such situation is critical to maintaining their civic space and mobilizing public opinions in this regard. The presence of the international community is of particular significance to assert pressure and to influence the RGC to change its attitude toward civil societies and human rights defenders in Cambodia. More importantly, the role of international community is essential for the resilience and vibrancy of civil society as well as a greater liberal democratic progress in Cambodia.

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