

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a draft decree on associations and foundations which would violate international law and standards related to the right to freedom of association and the right to freedom of opinion and expression, if adopted without further changes.**

According to the information received:

A decree to regulate associations and foundations in the Lao People's Democratic Republic is currently being reviewed by the Ministry of Home Affairs.

State authorities' prior approval

Article 4 provides that an authorization from the State authorities is necessary before an association and a foundation can engage in public services, social assistance, and programmes for people's poverty alleviation. According to article 4, State authorities shall authorize associations and foundations to receive funds and to cooperate with international organisations.

Articles from 12 to 19 further allow State authorities to approve or reject the establishment of an association. The procedure includes the approval of the nomination of the association's mobilizing committee, the association's establishment meeting and the association's regulations and Executive Committee. The articles do not stipulate on what ground an authorization can be denied, nor does it specify whether an appeal procedure is available to applicants.

The draft Decree does not seem to recognize the existence of unregistered associations, in contradiction with international law and standards pertaining to freedom of association.

Article 65 authorizes the inspection authority, composed of the regulatory authority, the State audit organization and independent audit organization, to inspect the biography of the organisation's founder, mobilizing committee, and Executive Committee.

Requirements to form an association or a foundation

The number of members required for registering an association is rather high. Article 7 provides that an association operating at the national level should have at least 25 members; an association operating at the provincial or capital level should have at least 15 members and an association operating at the district, municipality or village level should have at least 10 members. For associations specializing on a thematic area, sector, occupation, the number of members are to be considered case by case leaving broad discretion to the competent authority.

As far as foundations are concerned, 100,000,000 kip (around 12,000 USD) for foundations operating at the national level are necessary as initial budget to form a foundation. A significant initial amount is also required for foundations operating at the provincial or capital level (50,000,000 kip) and at the district, municipality or village level (20,000,000 kip).

The distinction of associations and foundations according to the geographic area they operate in (respectively, national, provincial and capital levels) restricts their ability to operate freely. For instance, those operating at the provincial or capital level are not entitled to operate at the national level (Article 8).

Restrictions

Article 4 stipulates that associations and foundations can provide advice and assistance to ministries, organizations, divisions, and local authorities "in accordance with the Party's policy and State's laws and regulations". In the same vein, Article 22 stipulates that associations and foundations have to "operate in accordance with the Party's policy, government's socio-economic development plan, State's laws and regulations". These articles severely limit associations and foundations' ability to operate freely without State interference.

Article 24 prohibits associations and foundations to "exploit freedom of association... to breach the Constitution and the laws and regulations; operate in a way to harm the nation's stability, security, and social orderliness, other people's freedom, and good traditions of the nation, local and ethnic groups; operate in away leading to segregate the solidarity in the nation, local, and ethnic groups; destroy the benefits of the nation, collectives and individuals; falsify, transfer, lease, lend the license of the association or the foundation in any way; support the

violence and any other movements against the laws and regulations”. Most of the restrictions stipulated by Article 24 do not constitute a legitimate interest as prescribed under Article 22, paragraph 2, of the International Covenant on civil and political rights..

Associations or foundations that violate the aforementioned Article 24 of the draft Decree are subject to dissolution (Article 45). Other grounds for dissolution include when an association or foundation operates “in serious violation of the Party’s policy and direction, or of State’s laws and regulations; did not submit yearly reports on its organization, functionality, and finance to the relevant authorities for two consecutive years; or did not attain the objectives defined in its regulations”. Article 45 does not meet the permissible restrictions under international human rights law. For instance, it is unclear when an association can be considered to have attained its objectives if it works on human rights issues and the eradication of poverty. Article 45 further does not specify whether the decision to dissolve an association may be subject to a judicial appeal.

Access to resources

Article 49 provides that associations and foundations can receive funds up to 50,000,000 kip (about 6,000 USD). If the amount received is higher, the association or foundation must report to the competent authorities, leaving them with discretion to authorize associations and foundations’ access to resources.

Serious concern is expressed that numerous provisions contained in the draft Decree do not comply with international human rights law and standards pertaining to the freedom of opinion and expression and freedom of association including the ability for associations to operate freely without State’s undue interference.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide full details on the aforementioned draft law and explain how its provisions comply with the State’s obligations under international human rights law.
3. Please indicate whether any consultation has been undertaken, including with civil society actors.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure the rights to freedom of peaceful assembly and of association are respected.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the right to privacy, freedom of expression and opinion and the right to freedom of association, as per articles 17, 19 and 22 of the International Covenant on civil and political rights, ratified by Lao PDR on 25 September 2009.

In one of his reports (A/HRC/20/27), the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that “a “notification procedure”, rather than a “prior authorization procedure” that requests the approval of the authorities, to establish an association as a legal entity, complies better with international human rights law” (para. 58). In this context, the Special Rapporteur called upon States “to adopt a regime of notification for the formation of associations, and to allow for the existence of unregistered associations” (A/HRC/23/39 para. 82 (a)).

The Special Rapporteur also indicated that “Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference” (para. 64). In the same report (A/HRC/23/39), the Special Rapporteur also “recognize[d] the right of independent bodies to examine the associations’ records as a mechanism to ensure transparency and accountability, but such a procedure should not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk.”

In the aforementioned report (A/HRC/23/39), the Special Rapporteur also called upon States “to ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities.”

In his recommendations (see above mentioned report A/HRC/20/27 para. 84 (a).), the Special Rapporteur further called upon States to “recognize that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and existence of effective democratic systems as they are a channel allowing for dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected”

We would also like to refer your Excellency's Government to the fundamental principles set forth in 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 UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and

realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. In particular, we would like to draw specific attention of your Excellency's Government to articles 5 and 13.