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International Federation
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Federación Internacional
de los Derechos Humanos

الفدرالية الدولية لحقوق الإنسان

ANALYSIS OF THE LAW ON DEMONSTRATIONS ADOPTED BY THE NATIONAL ASSEMBLY IN OCTOBER 2009¹

1. Although the law is presented as establishing a system of notification of demonstrations, the conditions set for a protest to be legal are so cumbersome and constraining that a demonstration will have to be *de facto* authorized before it can take place. This interpretation is confirmed by the use in the text of the terms « applicants » in certain provisions – meaning that there is an obligation to apply, and not simply to inform the authorities about the planned demonstration.
2. The basis for a refusal to allow a demonstration to take place go beyond the admissible restrictions under international human rights law, in particular under Article 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia. While under international law, restrictions must be fully justified in a democratic society on the basis of « public safety, public order, public health or morals », and be proportional to their objective, the text adopted mentions « harming the rights to freedom and honour of others, good customs of society and national security ». Those terms are vague and open to wide interpretation, and on this basis, a demonstration could e.g. be prohibited because it is considered as defamatory to the authorities.
3. Under the text adopted by the National Assembly, the authorities can also refuse to allow a demonstration if « there is reliable information that the demonstration may cause danger or seriously harm to the security, safety and public order » (emphasis added). It is unclear what « reliable information » means in this context, all the more so that the law does not provide for a judicial redress in case of denial to authorize a protest. This means that a court of law will not have the possibility to assess whether the information concerned is « reliable » or not, and the authorities will consequently be sovereign in assessing this element. While article 9 uses the term « reliable information », article 11 refers to « clear information », which adds further confusion.
4. The refusal to allow a protest may be challenged with the Minister of the Interior. However, the text does not mention whether the Minister's decision can be challenged before a judge and does not foresee any process of judicial scrutiny.
5. The law refers to freedom of assembly only with regards to the Khmer citizens, which may worryingly imply a restriction on this right as regards to foreigners (Article 2).
6. The notification letter of the organizers of the planned demonstration will have to include a number of elements, including the number of participants involved in the demonstration. This requirement is absurd, since it is impossible to predict, ahead of a protest, how many people will join. If the estimates of the organizers appear to be inaccurate, under a strict interpretation of the law, the protest could be considered illegal.

¹ These comments are based on an English translation of the draft law submitted to the National Assembly on 30 March 2009, and passed on 21 October 2009.

7. The text provides for a specific procedure when the demonstration is supposed to take place in a freedom park or at a place of private or collective property. The freedom parks are areas that the authorities will designate to hold protests of no more than 200 persons in each province or municipality. This provision is a cause of serious concern for two reasons: Firstly, there is no guarantee that the freedom parks will not be designated in remote areas, difficult to access for the participants in the demonstration, and making any demonstration meaningless, since the objective of a demonstration is to raise public awareness on an issue; holding it in remote or deserted areas would in itself deprive the demonstration of any effect. If Article 28 of the law provides a few elements relating to the places for freedom parks, it is not even indicated that it should be spaces in the open air, and not closed buildings. Secondly, subjecting private meetings to an official authorization is a clear breach of the right to privacy and goes against the spirit of freedom of expression and assembly. FIDH, ADHOC and LICADHO are outraged that such a restriction has been introduced: the law does not specify the minimum number of people thus any gathering constitutes an assembly, which means that three persons meeting in a private house should require a previous authorization from the authorities.
8. The text specifies that « if the peaceful demonstration turns into violence, the competent authorities shall take appropriate measures to hamper and cease the demonstration immediately. In practice, it may happen that external elements may turn violent in a protest, and in that case, the authorities should rather arrest the violent elements, and not stop the demonstration altogether. As illustrates by the example, this provision restricts in a blatantly disproportionate manner the right to freedom of assembly: everything should be done to preserve that right, while controlling the possible violent elements.
9. The text provides that « the competent authorities may take measure(s) to cease/disperse the demonstration, though it is a peaceful demonstration, if the demonstration is organized without submitting notification letter ». The law does not contain any reference to UN standards relating to the use of force (such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials), or to necessary proportionality between the methods of constraints used to contain violence and the situation at stake. It does not contain any reference to spontaneous protests, which will consequently fall under that provision, and may be stopped by the authorities without justification.
10. Article 26 of the text provides that “If the process of the peaceful demonstration turns into violence causing damages to either private or public property, the reparations for the damages shall be the responsibility of the offender(s) and the accomplices. In case they are not able to pay such damage, the competent authorities shall draw up a dossier and submit it to the court for legal action in accordance with the applicable law”. This provision is unnecessary since damage to properties is already regulated under the Civil and Penal Codes. The scope of this provision will depend on the courts of law's interpretation made of the term “accomplice”. One may only hope that the organizers of the demonstrations will not be a possible target of criminal suits under this provision.