



International
Commission
of Jurists



H.E. Mr. Thongloun Sisoulith

Prime Minister

Prime Minister's Office, Vientiane
Lao People's Democratic Republic

H.E. Mr. Bounnhang Vorachith
President

President's Office, Vientiane
Lao People's Democratic Republic

H.E. Mr. Xaysi Santivong
Minister of Justice

Ministry of Justice, Vientiane
Lao People's Democratic Republic

13 December 2017

Dear H.E. Mr. Thongloun Sisoulith,
H.E. Mr. Bounnhang Vorachith and
H.E. Mr. Xaysi Santivong,

RE: REPEAL OF DECREE ON ASSOCIATIONS No. 238 of 2017

The International Commission of Jurists (ICJ), Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), the Asian Forum for Human Rights and Development (Forum-Asia), ASEAN Parliamentarians for Human Rights (APHR), the International Service for Human Rights (ISHR), The Centre for Civil and Political Rights (CCPR-Centre) and World Organisation Against Torture (OMCT) express deep alarm about the issuing and coming into force of the Decree on Associations (No. 238 of 2017) ('the Decree') in the Lao People's Democratic Republic (Lao PDR).

We call on the Government of Lao PDR to repeal or significantly amend the Decree to bring it into line with international human rights law and standards. We also call on the government to fundamentally reform the legal framework for the regulation of associations in Lao PDR and bring it into accord with international human rights law and standards. Repeal or amendment of the Decree must come as part of this fundamental reform of the framework of regulation of associations.

The Decree on Associations, dated 11 August 2017, came into force on 15 November 2017.¹ Pursuant to its article 81, this law supersedes the Decree on Associations (No. 115 of 2009) dated 29 April 2009 ('2009 Decree').² The 2009 Decree had already included imprecise and overly broad terms that led to arbitrary restrictions on the rights to freedom of association, freedom of opinion and expression and the right to privacy in Lao PDR. The new Decree appears to make things even worse.

The current Decree gives government authorities in Lao PDR sweeping powers that enable arbitrary restriction or denial of fundamental rights, including the power to unreasonably control and/or prohibit the formation of associations; arbitrarily broad powers to inspect, monitor and curtail the activities and finances of associations; the power to order the dissolution of associations on arbitrary grounds and without right of appeal; and powers to discipline associations and individual members on arbitrary grounds. The Decree also includes measures to criminalize unregistered associations and allow for prosecution of their members.

As a party to the International Covenant on Civil and Political Rights (ICCPR), Lao PDR has a legal obligation to respect, protect and guarantee, among others, the rights to privacy (article 17), freedom of opinion and expression (article 19) and freedom of association (article 22). Rights to form and to join associations are inherent components of the right to freedom of association.³ Only restrictions that meet the requirements⁴ of the ICCPR are permitted: restrictions must recognize the purposes of the ICCPR and "conform to the strict tests of necessity and proportionality."⁵

The UN Declaration on Human Rights Defenders also affirms the rights of persons to freely form and join associations – non-governmental or otherwise – and asserts States' duties to implement necessary legislative, administrative or other measures for effective promotion and protection of these freedoms.

New Provisions of Particular Concern

The current Decree imposes on associations and individual members more explicitly restrictive limitations than had been imposed under the 2009 Decree.

Under the current Decree, government authorities have wider arbitrary powers to prohibit activities by associations, dissolve and suspend associations, and "discipline" or criminally prosecute associations or their individual members who violate the law⁶. Restrictions on associations' activities have also been expanded under article 31 of the current Decree, and key terms in the law delineating restrictions are not defined, allowing for arbitrary decision-making by government authorities.

¹ This Decree only applies to local non-profit associations (NPAs) and does not govern international non-governmental organizations (INGOs) in Lao PDR, which are instead regulated by the Decree on International Non-Governmental Organizations (INGO) (No. 013 of 2010).

² Reference was made to the unofficial English translations of the 2017 Decree, published by the Ministry of Home Affairs, available on the Lao Civil Society Knowledge and Information System at <http://laocs-kis.org/resources/decree-association-2017-unofficial-english-translation/> and the 2009 Decree, made available by the International Center for Not-for-Profit Law (ICNL) at <http://www.icnl.org/research/library/files/Laos/associationsdecree.pdf>.

³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (2012) UN Doc. A/HRC/20/27 ('A/HRC/20/27'), §53.

⁴ Articles 17(1), 19(3) and 22(2) of ICCPR.

⁵ See e.g. UN Human Rights Committee (HRC), General Comment No. 34: Article 9 (Freedoms of Opinion and Expression) (2011) UN Doc. CCPR/C/GC/34, §22.

⁶ Articles 31, 48, 77 and section 12 of the Decree.

Violation of prohibitions listed under article 31 of the current Decree now makes an association explicitly subject to dissolution under article 48. Article 48.1.4 also explicitly allows for dissolution if an association “does not apply for registration”. This further expands the grounds for dissolution that were set out in the 2009 Decree – “expiry of operating terms”, “failure of associations to operate over 12 months” or “attainment of objectives stipulated in an association’s charter” – which had already allowed for arbitrary restrictions on the right to freedom of association. These restrictions are retained in article 48 of the current Decree.

The current Decree also maintains other restrictions on fundamental rights which had been codified in the 2009 Decree, namely,

- Requiring prior approval by government agencies, at various stages of establishment, for the formation of any association;
- Apparently disallowing formation of groups on grounds such as “political or other opinion”, “religion” or “social origin”, which violates article 2(1) of the ICCPR and article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Lao PDR has ratified;
- Imposing an extensive and time-consuming process of government scrutiny of all members, functions and funds of associations prior to registration and renewal of registration of an association, requiring individuals to submit unjustifiably intrusive personal information to government authorities for approval, which could amount to “arbitrary interference” on the right to privacy under article 17 of the ICCPR;
- Maintaining stringent monitoring and inspection at village, provincial and central levels of almost all operations of associations, including their organizational structure, activities and use of resources.

In the attached legal brief, these limitations have been detailed with reference to relevant provisions of the law.

Recommendations

We call upon the Government of Lao PDR to immediately repeal or significantly amend the Decree on Associations, to respect its obligations under international law, and to conduct a fundamental reform of the framework of regulation of associations. Arbitrary, overbroad and discriminatory elements of the current framework must be entirely removed.

In particular:

- The law should make clear that individuals are free to form private unincorporated associations without needing to notify or register the association with the State.
- For those individuals who wish to incorporate an association so that it acquires separate legal personality, we recommend that the law provide for automatic registration upon notification by individuals where simple administrative requirements are met, rather than a system requiring prior permission of State officials. This is pertinent given that legal provisions are likely, in the context of Lao PDR, to be applied in practice in a discriminatory manner to prevent the formation or operations of associations perceived by the authorities as inconsistent with the ideology or political policies of the Lao People’s Revolutionary Party.
- Discretion of authorities to refuse to register an association should be eliminated or at least be very narrowly defined, and applicants should have the right to appeal or review, by an independent and impartial court, of any refusal or other measures that could negatively impact the association. If authorities retain any authority to dissolve registered associations, the grounds for such dissolution

should be explicitly and narrowly defined. This is to preclude dissolution based on discrimination on grounds of political opinion or other grounds protected by international human rights law and standards: for example, grounds for dissolution could be limited to situations where the association has been directly used to commit acts properly characterized as criminal in accordance with international human rights law and standards. The law should also provide that dissolution may only be ordered by an independent and impartial court, after a fair hearing for affected persons and associations.⁷

Please do not hesitate to contact us if you have any comments or questions. We stand by to provide any assistance required.

We appreciate your urgent attention to this matter.

Yours faithfully,

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International Commission of Jurists

Phil Robertson
Deputy Director, Asia Division
Human Rights Watch

James Gomez
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Patrick Mutzenberg
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The Centre for Civil and Political Rights
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Secretary-General
World Organisation Against Torture
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⁷ Although beyond the scope of the current letter and memorandum, courts in Lao PDR are not currently independent or impartial and broader institutional and other reforms are urgently required in that regard. See for reference: Joint Submission to UN Human Rights Committee 121st session by FIDH and Lao Movement for Human Rights (LMHR) for adoption of the List of Issues.

Cc.

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Legal Brief on Decree on Associations (No. 238 of 2017)
as of 13 December 2017

Background

The Decree on Associations (No. 238 of 2017) ('the Decree') came into force on 15 November 2017. Pursuant to its article 81, this most recent legislation supersedes the Decree on Associations (No. 115 of 2009) dated 29 April 2009.

Applicable international human rights law and standards

As a party to the International Covenant on Civil and Political Rights (ICCPR) since 2009, Lao PDR has a legal obligation to respect, protect and guarantee, among others, the rights to privacy (article 17), freedom of expression and opinion (article 19), and the right to freedom of association (article 22). Rights to form and to join associations are inherent components of the right to freedom of association.⁸ Only restrictions that meet the requirements of the relevant provisions (i.e. article 17, article 19(3) and article 22(2)) are permitted: the requirements include that the restrictions are only for the purposes recognized by the ICCPR and "conform to the strict tests of necessity and proportionality".⁹ The Human Rights Committee, the body mandated by the ICCPR to interpret and apply its provisions, has stated that when a State party imposes restrictions on such freedoms, "these may not put in jeopardy the right itself" and that "the relation between right and restriction and between norm and exception must not be reversed".¹⁰

The UN Declaration on Human Rights Defenders reaffirms the rights of persons to freely form and join organizations – non-governmental or otherwise – and asserts States' duties to implement necessary legislative, administrative or other measures for effective promotion and protection of these freedoms.

This legal brief highlights and analyses the following provisions of the Decree which impose severe restrictions on the formation, operation and activities of associations, in contravention of fundamental rights and freedoms.

Need for State's prior approval

Article 4 of the Decree outlines the 'Government's policy on associations', which requires all associations to obtain prior approval by the State before establishment, "where *only* the Government's agencies have the right (to) approve the establishment of Association(s)" (article 4.1). Associations must seek approval for any funds or donations that they receive (article 4.3) and seek State permission before they can "interact or cooperate" with international organizations (article 4.4). Articles 4.5 and 4.6 further state that the government can "provide advice and assistance" and "issue references" to associations to ensure their operations are "*in line with Party's policy, laws and government's regulations*" (referring to the Lao People's Revolutionary Party).

This need for prior approval by the State for the formation of all associations, without regard to the character, purposes, or intended activities of the association and including unincorporated associations, violates the essence of the right to freedom of association by curbing the freedom of individuals to associate with one another and to decide the arrangement of their relationship including as regards its structure, functions or

⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (2012) UN Doc. A/HRC/20/27 ('A/HRC/20/27'), §53.

⁹ See e.g. UN Human Rights Committee (HRC), General Comment No. 34: Article 9 (Freedoms of Opinion and Expression) (2011) UN Doc. CCPR/C/GC/34, §22.

¹⁰ UN Human Rights Committee (HRC), *General Comment No. 34: Article 9 (Freedoms of Opinion and Expression)* (2011) UN Doc. CCPR/C/GC/34, §21; See also A/HRC/20/27, §16.

funding.¹¹ The freedom of associations to choose their own members is also infringed by articles 7, 41, 46 and 47. Article 7.7 dictates minimum membership of associations operating at different territorial levels – village, municipality or district; provincial or capital; and national – to be 10, 15 and 25 members respectively. Article 41 requires associations to inform government authorities seven days in advance if they wish to expand the number of their members. Articles 46 and 47 under section 9 clarifies that State approval is required if associations wish to merge or separate.

The scope of activities which associations are allowed to be engaged in is very narrow in the Decree. Associations' activities are confined to "economic, professional, technical and creative and social welfare and development" purposes (section 2). We are concerned at the high risk that these restrictive provisions will be invoked to effectively prevent the formation of associations working on many, if not all, aspects of human rights work.

It is also concerning that the Decree enforces conditions which provide an alarmingly wide scope for potential abuse by government authorities. For instance, in article 7, associations' activities are prevented from being "in conflict with fine national, local and ethnic traditions" and article 65.4 empowers the Lao Front for National Construction to guide associations to "uphold patriotism, culture and fine traditions of Lao people".¹² Under section 5 of the Decree which specifies the 'rights, duties and prohibition of associations', article 28 is clear that associations must "educate and enhance national solidarity" and "assist the society in compliance with laws and government's regulations" and article 29 emphasizes that associations are obliged to "operate in accordance with Party's policy". As a result, the Decree imposes discrimination on grounds such as "political or other opinion", "religion" or "national or social origin", in the enjoyment of the rights to freedoms of association and expression, in a manner clearly prohibited by article 2(1) of the ICCPR and article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Lao PDR has ratified. Such provisions also constitute forced association, a situation in which private associations are unquestionably wholly subservient to State discretion and control.

Articles 31, 48 and 77 confer on government authorities overbroad and sweeping powers to prohibit associations' activities, dissolve associations and potentially prosecute individuals or associations who violate the Decree. "Disciplinary measures" are also permitted to be used by some "supervising agencies" in exercising their duties in enforcing the Decree under section 12. This is particularly pertinent when considering unduly demanding and restrictive registration requirements in the Decree which increase the risk of non-compliance by associations. These requirements also allow for criminalization of non-registered associations or associations which have been rejected for registration by government authorities.

The UN Special Rapporteur on Freedom of Peaceful Assembly and Association has frequently emphasized that national laws should make clear that individuals are free to form private unincorporated associations without a requirement to notify or register the association with the State. For those individuals who wish to incorporate an association so that it acquires separate legal personality, the Special Rapporteur has recommended that national laws provide for automatic registration upon notification by the individuals where simple administrative requirements are met, rather than a system requiring prior permission of State officials on the basis of discriminatory, arbitrary, or otherwise unjustifiable grounds.

Registration

¹¹ See A/HRC/20/27, §53, §64.

¹² Article 7(1) on conflict with the law will also be of concern in practice, since the large number of laws in Lao PDR that themselves are inconsistent with constitutional and international human rights mean that article 7(1) opens the door to sweeping and arbitrary actions against associations.

The Decree imposes onerous obligations on individuals to comply with before they can associate privately with one another in Lao PDR. Section 3 of the Decree details an extensive and time-consuming process of government scrutiny not only prior to inception of an association but also for the continuation of its existence and functions.

Under section 3 of the Decree, an association can only be established after government agencies have approved

- the nominees for the association's Mobilizing Committee after obtaining relevant identification documents (articles 16.1, 17);
- a request to convene the association's inaugural assembly based on a draft charter and plan of activities, a list of candidates for membership and a proposed location (articles 16.2, 18);
- the association's charter and board members based on relevant identification documents and lists of the association's members (articles 16.3, 19);
- a request to register the association only after the inaugural assembly has been held and the association's charter and board members have been selected (articles 16.4, 18 to 20).

Registration must be done *within 7 days* from the approval of the association's charter and board members with the Ministry of Home Affairs, and *lasts for one year* before it must be renewed (article 20). For renewal, an annual report on the association's activities must be submitted along with "comments from the authorizing authority approving the establishment" and relevant documents proving that the association's charter and board members have been approved (article 21). Associations established before entry into force of the current Decree are given a strict timeline to re-register with the Ministry of Home Affairs within 15 days from 15 November 2017 (article 81).

These measures not only involve an invasion of privacy of individuals for simply exercising their right to freely associate, but also violate this right by requiring that members of associations only exercise the right in compliance with State policy or face "disciplinary measures" and prosecution. The Decree also sets out extremely tight timelines within which associations are forced to submit registration and renewal requests. Unregistered organizations are potentially subject to criminalization and the Decree does not set out any procedure for re-consideration of applications or appeal in instances when registration is denied. Notably, article 48.1.4 allows for dissolution on the basis that an association "does not apply for registration".

From section 4 of the Decree, it is clear that government authorities can approve or reject establishment and registration requests at any stage arbitrarily, and have between 15 to 60 days to make such decisions. These measures and possession by government authorities of significant personal information regarding members of associations allow for potential intimidation or harassment of individuals who are deemed by the State to be acting against the interests of the Party.

State monitoring and inspection of associations

In addition to onerous registration requirements, the Decree also enshrines in law stringent monitoring and inspection measures which will result in serious infringements by the State on almost all functions of associations. These measures effectively remove from the members of associations any opportunity to legitimately exercise their right to freedom of association independent of government control.

Section 6 of the Decree sets out conditions for the operational and staffing structures of each association and provides rules which should be complied with in electing an association's board members and directors, while section 8 clarifies how often associations should hold their general assembly and board meetings. Pursuant to articles 30 and 44, associations are obliged to report on the "status of the

implementation of activities and revenue expenditures" annually to government authorities before 15 December every year.

Crucially, sections 7 and 8 of the Decree list the duties of "supervising agencies"¹³ and "inspection agencies"¹⁴ – which include key government ministries and the State's audit organization – to "monitor and inspect" the activities of associations, "supervise and advise" associations and "monitor and inspect the use of associations' funds and assets"¹⁵, including funds from "foreign donators, INGOs, foreign legal entities, associations, foundations, funds, institutes and clubs".¹⁶ As noted earlier, disciplinary measures are permitted to be used by some "supervising agencies" in exercising their duties in enforcing the Decree.

Article 35 under section 6 also dictates that *within each association*, there must be at least three "inspectors", who are members of the association, whose role will be to "monitor all activities of the associations and administration of the board members" towards "ensuring compliance with the Government's regulations".

It is deeply concerning that the Decree enforces rigid controls on the movement and use of funds within associations. Sections 5 and 6 of the Decree controls state monitoring and inspection of all sources of revenue of associations. Under article 55, it is clear that funds or assets which are received by associations must be notified in writing to the relevant authorities *within seven days* of receipt and approval must be sought from the Ministry of Foreign Affairs before funds can be accepted from foreign sources.

The Human Rights Committee has established that the right to freedom of association not only refers to the right to form an association but also extends to the freedom of the individuals within an association to conduct its activities without undue interference.¹⁷ This freedom includes the right of an association to raise funds and control its own resources.¹⁸ Article 13 of the UN Declaration of Human Rights Defenders also protects this right to free solicitation and utilization of resources towards the peaceful exercise of fundamental freedoms. Disproportionately intrusive, arbitrary or discriminatory interference with an association's finances, as contained within this Decree, constitute violations of the right to freedom of association.

Prohibitions and Dissolution and other punitive measures

Article 31 of the Decree prohibits associations from conducting activities that the state considers to be "abusing the right to freedom to establish an association" (article 31.1) by, *inter alia*,

- operating "in conflict with Government's regulations" (article 31.1);
- engaging in activities that "threaten social order and fine national, local and ethnic traditions" or "divide national, local solidarity" (articles 31.2, 31.3);
- acting to "destroy national interests" (article 31.4);
- engaging "foreign experts and volunteers to have permanent work in the association". (article 31.7)

¹³ Article 59 denotes as "supervising agencies" – "Ministries, relevant sectors"; Ministry of Home Affairs; Ministry of Finance; Ministry of Public Security; Ministry of Foreign Affairs; Lao Front for National Construction; Provincial and Vientiane capital authorities, departments and internal agencies; district, municipality and city authorities, departments and internal agencies; and village authorities.

¹⁴ Article 74 denotes as "inspection agencies" – Supervising agencies under article 59 of the Decree, the State's Audit Organization and Independent Audit.

¹⁵ By the Ministry of Finance under article 62.2

¹⁶ By the Ministry of Foreign Affairs under article 64.1

¹⁷ See reference to Human Rights Committee, Communication No. 1274/2004, *Korneenko et al. v. Belarus*, in Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (2013) UN Doc. A/HRC/23/39 (A/HRC/23/39'), §16.

¹⁸ See A/HRC/23/39, §8, §16.

Article 48 of the Decree thereafter allows for the shutting down of any group of individuals who engage in any activity that the government considers unwelcome. Government agencies are authorized to dissolve any association which violates article 31 (article 48.1.1) and any association which “operates in serious violation of Party’s guidance and policy” (article 48.1.2). These arbitrary prohibitions correspond with earlier noted provisions of the Decree which expand the scope of government discretion and power to an extent that blatantly encroaches upon the right to freedom of association. As noted above, article 48.1.4 also allows for dissolution on the basis that an association “does not apply for registration”.

Articles 49 and 50 state that where an association is chosen for dissolution, it must provide a list of all its assets to government agencies which can then, as an alternative to distributing the assets according to the association’s charter, either transfer the funds to “foundations having similar objectives of activities” or “to other associations or foundations”. The management of assets of an association, even once dissolved, should be subject to the independent volition of the members of an association and not be appropriated by the State other than possibly in circumstances where the members do not wish themselves to determine the disposition of the assets or the assets were clearly proceeds of conduct that could properly be characterized as criminal (the circumstances for dissolution under the Decree go far beyond such narrow grounds).

Article 77 of the Decree provides that members of associations who violate the law can be subject to “warning, suspension, dissolution or *prosecution*”. When taken in conjunction with the overbroad, arbitrary, and discriminatory provisions of the Decree that it refers to, this article would allow for criminal sanctions to be imposed on individuals for merely exercising their inherent rights under the ICCPR. Article 77, read in coherence with all other provisions of the Decree, allows for suspension, dissolution or prosecution on instance of almost any free exercise of the right to freedom of association.

It must also be noted that “disciplinary measures” which are undefined in the Decree under section 12 are permitted to be imposed on individuals or groups of individuals by certain authorities as their “rights and duties”. Authorities tasked to supervise associations under article 59 include the Ministries of Home Affairs, Finance, Public Security and Foreign Affairs, the Lao Front for National Construction and provincial, city, district, municipality and village authorities.¹⁹

Conclusions

The Decree in its current form is incompatible with international human rights law and standards. It must be immediately repealed or significantly amended to comply with Lao PDR’s obligations under international law, as part of a fundamental reform of the framework of regulation of associations. Arbitrary, overbroad and discriminatory elements of the current framework must be entirely removed. The law should make clear that individuals are free to form private unincorporated associations without a requirement to notify or register the association with the State.

For those individuals who wish to incorporate an association so that it acquires separate legal personality, we recommend that the law provide for automatic registration upon notification by individuals where simple administrative requirements are met, rather than a system requiring prior permission of State officials. This is pertinent given that legal provisions that might otherwise appear to set out straightforward administrative procedures or decisions are likely, in the context of Lao PDR, to be applied in practice in a discriminatory manner to prevent the formation or operations of associations

¹⁹ “Disciplinary measures” can be imposed by the Ministry of Home Affairs under article 61, the Ministry of Finances under article 62, by provincial and Vientiane Capital authorities under article 66, by district, municipality and city authorities, offices and internal agencies under articles 69, 70 and 71.

perceived by the authorities as inconsistent with the ideology or political policies of the Lao People's Revolutionary Party.

Any discretion of authorities to refuse to register an association should be eliminated or at least very narrowly defined, and applicants should have the right to appeal or review, by an independent and impartial court, of any refusal or other measures that could negatively impact the association. If authorities retain any authority to dissolve registered associations, the grounds for such dissolution must be explicitly and narrowly defined so as to preclude dissolution based on discrimination on grounds of political opinion or other grounds protected by international human rights law and standards: for example, grounds for forced dissolution could be limited to situations where the association has been directly used to commit acts properly characterized as criminal in accordance with international human rights law and standards. The law should also provide that dissolution may only be ordered by an independent and impartial court, after a fair hearing for affected persons and associations.²⁰

²⁰ Although beyond the scope of the current letter and memorandum, courts in Lao PDR are not currently independent or impartial and broader institutional and other reforms are urgently required in that regard. See for reference: Joint Submission to UN Human Rights Committee 121st session by FIDH and Lao Movement for Human Rights (LMHR) for adoption of the List of Issues.