

# DRAFT LAW ON ASSOCIATION & NGOS CAMBODIAN CIVIL SOCIETY UNDER THREAT

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A LICADHO Briefing Paper

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**LICADHO**

CAMBODIAN LEAGUE FOR THE PROMOTION  
AND DEFENSE OF HUMAN RIGHTS

## **Cambodian League for the Promotion and Defense of Human Rights (LICADHO)**

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 12 provincial offices.

LICADHO pursues its activities through two programs:

### **Monitoring and Protection Program:**

- **Monitoring of State Violations and Women's and Children's Rights:** monitors collect and investigate human rights violations perpetrated by the State and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials.
- **Paralegal and Legal Representation:** victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.
- **Prison Monitoring:** researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- **Medical Assistance:** a medical team provides assistance to prisoners and prison officials in 12 prisons, victims of human rights violations and families in resettlement sites.
- **Social Work:** staff conduct needs assessments of victims and their families and provide short-term material and food.

### **Promotion and Advocacy Program:**

- **Training and Information:** advocates raise awareness to specific target groups, support protection networks at the grassroots level and advocate for social and legal changes with women, youths and children.
- **Public Advocacy and Outreach:** human rights cases are compiled into a central electronic database, so that accurate information can be easily accessed and analyzed, and produced into periodic public reports (written, audio and visual).

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## OVERVIEW

The recently-released draft Law on Associations and Non-Governmental Organizations<sup>1</sup> confirms long-standing fears that the government's desire for such a law is in order to control, rather than promote and strengthen, civil society. The draft law – which falls far short of meeting international standards for laws on the non-profit sector – constitutes the most serious threat to civil society in Cambodia in years. While this threat may appear to be most acute for human rights defenders, it has serious negative implications for community development and democratic participation on a broader scale.

Upon cursory examination, the draft law might appear to be positive in that it omits some draconian provisions which had been mooted by the government in the past. However, the law remains – in letter and in spirit – extremely pernicious to civil society.

Among the draft law's major problems are:

- significant restrictions to freedom of association;
- burdensome requirements and a difficult and intimidating process for organizations to lawfully register as NGOs and associations;
- excessive powers granted to government officials which will favor arbitrary decision-making;
- intrusive requirements for organizations to report to the government, violating their independence;
- and unreasonable restraints placed on foreign NGOs which will likely lead to greater politicization of aid to Cambodia.

In this draft law, the devil is not in the details but in the lack thereof. The law's ambiguous wording in many areas, and the lack of safeguards in it, creates ample scope for government officials to arbitrarily and selectively use the law to restrict and control the work of civil society groups, and in particular to intimidate and obstruct those which are not in favor with the government.

Most worryingly, the law imposes unprecedented restrictions on freedom of association, including by requiring mandatory registration of all associations and NGOs, and by banning “any activity” by groups which are not registered.

Furthermore, for a law which claims one of its objectives (Art. 2) is to promote the rights and freedoms of Cambodians to form associations and NGOs, it actually imposes a series of obstacles to their creation. Rather than a simple, transparent and easily accessible registration system, the law envisages a burdensome process which many organizations – especially smaller, community-based ones working at the grassroots level – will struggle to cope with.

The law gives government officials broad, exclusive powers – without any right of appeal against their decisions. This includes the power to decide which associations and NGOs can and cannot be registered and lawfully exist<sup>2</sup>, and to suspend registered organizations for 1-3 months (or even permanently, for foreign NGOs)<sup>3</sup>. Even more ominously, the law alludes to

1 This briefing paper is based on the *Law on Associations and Non-Governmental Organizations, First Draft*, released by the Ministry of Interior on December 15, 2010.

2 Art. 16-19 of the draft law

3 Art. 53

(without any specifics) the possibility of legal action against NGOs or associations that are deemed to have violated their charters or memorandums with the government<sup>4</sup>, and to the courts being able to forcibly dissolve or terminate local or foreign organizations.<sup>5</sup>

These (and other) provisions in the draft law must be viewed in the Cambodian context, which includes a lack of an independent judiciary and other credible checks and balances on executive power, and a long track record of government persecution – through misuse of laws as well as other means – of human rights defenders and other civil society members.

It's also important to recognize that the law is likely to be used selectively – against certain organizations which the government dislikes for one reason or other – rather than, for example, to shut down hundreds of organizations. This does not minimize the insidious nature of the law; its arbitrary use to harass and intimidate certain organizations (such as those which express views critical of the government) will have a far-reaching impact on civil society as a whole. The end result will be greater fear, and therefore greater self-censorship and voluntary restriction of activities by NGO, associations and others in society.

Those at direct risk under this law will include:

- Associations or NGOs which conduct advocacy and/or act as watchdogs of the government – a key role of civil society in any country.
- Smaller NGOs and associations which are unable to meet the arduous requirements entailed in registering under the law, and therefore be unable to lawfully exist.
- Informal or semi-formal groups and networks at the grassroots level (of farmers, fishermen or ethnic minorities, for example), which are not and do not want to be NGOs or associations; these groups may be instructed to cease their activities by local authorities, citing the law's mandatory registration requirement for associations and NGOs (both of which are very loosely defined in the law) and its ban on “any activity” by unregistered ones.

The law will undermine community development and democratic participation on a broad level, including having a potentially grave impact on the ability of grassroots communities to participate in their own development. There is a high risk that local officials will seek to use the law to suppress “unwanted” activities by community-based groups or networks and individual community members themselves. A group of villagers might be accused of acting unlawfully, as an unregistered association, if they were to meet together to discuss or advocate on an issue of mutual importance – whether that be the distribution of World Food Programme aid, the development plans drawn up by their local commune council, or a private company's encroachment on their land.

Similarly, the law could impact other types of people who join together to represent their collective interests, for example university students, moto or tuk-tuk drivers, survivors of rape or domestic violence, or persons affected by HIV-AIDS. If they meet to discuss their problems, try to help each other, and advocate for needed services, they could be ordered to either disband and cease their activities or go through the (onerous) process of registering as an association or NGO. Again, this would be done selectively: such harassment would be unlikely against those whom the government considers to be of no threat, but would be targeted at others – those who criticize the lack of government services for them, for example.

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4 Art. 54

5 Art. 49-50 & 52

The danger of this law being misused in such ways is high, given the already tightly-restricted space available for people, especially at the village level, to join together to advocate for their interests. Individuals and groups who try to have a voice on issues affecting their lives – particularly if they oppose the grabbing of their land by powerful businesspeople, government officials or others – often face intimidation, harassment, arrest and detention. For examples of how laws are manipulated in order to do this, one needs to look no further than the 37 community activists who are currently in prison (as of November 30, 2010) because of their non-violent efforts to help their communities to try to protect their land or other natural resources.

Also revealing is the manner in which the draft law was publicly released, which is indicative of the government's intent. The Ministry of Interior (MOI), which drafted the law, released it on December 15, a mere nine working days before the MOI originally intended to hold a so-called “national consultation” meeting in Phnom Penh about the draft.<sup>6</sup> The extremely short time that the MOI planned to give civil society and the public to review the draft, as well as its intent to hold a “national consultation” by way of a one-day meeting in the capital, shows little desire to have meaningful consultation over the law.

## THE DRAFT LAW'S MAJOR PROBLEMS

This document does not aim to provide an article-by-article critique of the draft law, but nevertheless there are a number of substantial flaws in the law which should ring alarm bells for anyone concerned with the independence of civil society in Cambodia. These overlapping areas of concern include:

***Significant restrictions on freedom of association:*** Cambodians' internationally-protected right to freedom of association is unduly limited by the law in various ways, including the mandatory registration requirement noted above. As one specialist international organization has noted, “That associations and NGOs may be formed as legal entities does not mean that individuals can be *required* to form legal entities in order to exercise the freedom of association.”<sup>7</sup> (In many developed countries, NGOs, associations or other groups voluntarily chose to register and become legal entities because it is in their interests to do so – they will qualify for benefits such as tax incentives, for example, or it will be easier for them raise funds.)

In addition, as discussed in more detail below, the burdensome registration process and the excessive powers granted to officials (including to deny registration without right of appeal) also directly infringe upon freedom of association. So too does the draft law's stipulation of how many people must be involved in forming NGOs or associations – it states that at least three people must agree to form an NGO, while creating an association necessitates a minimum of 21 founding members.<sup>8</sup> (By way of comparison, a company can be formed and registered in Cambodia by just one person.<sup>9</sup>)

6 The MOI later agreed to postpone the “national consultation” from December 28 until January 10, 2011, which is still a short time-frame for civil society to review and prepare comments on the law.

7 International Center for Not-for-Profit Law (ICNL), *Comments on the Draft Law on Associations and Non-Governmental Organizations of the Kingdom of Cambodia*, December 22, 2010, page 7. The ICNL also quotes the UN Special Representative for Human Rights Defenders, Hina Jilani, as stating that: “registration should not be compulsory. NGOs should be allowed to exist and carry out activities without having to register if they so wish.”

8 Art. 8 & 9

9 Law on Commercial Rules & Register, 1995 (Art. 17); and Law on Commercial Enterprises, 2005 (Art. 86)

***Burdensome registration requirements & process:*** As well as making heavy demands on organizations wanting to register, the law provides for a protracted registration process. Registering an organization could take 45 working days (a minimum of nine weeks without any national holidays), or longer if the government officials responsible for the process challenge the legality of the application.<sup>10</sup>

The detailed requirements demanded of applicants will be a major impediment to many organizations, especially smaller ones with membership constituencies and those based in rural areas.<sup>11</sup> As well as meeting the rules on how many people must form an organization (as noted above), applicants must file a host of documents with the government<sup>12</sup>, including: an extensive charter for the organization<sup>13</sup>; names and home addresses of all founding members; a commune chief's letter certifying the address of the organization's "central office"<sup>14</sup>; two copies of the biographical "profiles" for each of the organization's leaders (at least seven people, in the case of associations) and 4x6 photo(s) of each of them; and (for NGOs only) a bank statement. In the Cambodia context, some of these requirements – disclosure of home addresses, provision of photos, letters from a commune or district chief – will induce fear in applicants. (Additionally, the requirement for "profiles" of leaders implies that the government may vet applicants in some way – a violation of freedom of association, which applies to everyone, not only those whom the government deems suitable.)

A further layer of bureaucracy, and a greater burden on organizations, is provided by the law's requirement that "alliances" (of registered domestic NGOs or associations which "gather together for a common purpose") must also go through a similar registration process.

(The law's provisions on alliances are ambiguous, intrusive and violate freedom of association. The law is unclear about when such an alliance must be registered. Furthermore, while it permits organizations to "collaborate to implement a lawful project" without forming an official alliance, it requires they notify the MOI of this. It does not define what constitutes a "project".<sup>15</sup> These provisions raise the possibility that two or more organizations which cooperate in any number of ways – holding a workshop, or issuing joint reports or press statements, for example – could be accused of failing to meet the notification or registration requirements of the law.<sup>16</sup>)

10 Art. 17 of the draft law states that the MOI has up to 45 working days to decide whether or not to register a local association or NGO. If it deems that the application is "not consistent with the Constitution or other laws in force", it can return it and ask the applicant to rectify and resubmit it, upon which the MOI has a further 15 days to make a final decision on the application. (Meanwhile, Art. 32 of the law also allows the Ministry of Foreign Affairs and International Cooperation up to 45 days to decide on foreign NGOs' applications for memorandums with the government to operate in Cambodia.)

11 "Many of the draft law's registration requirements impede the ability of an association or NGO to achieve legal entity status through a transparent process," noted the International Center for Not-for-Profit Law, in its *Comments on the Draft Law on Associations and Non-Governmental Organizations of the Kingdom of Cambodia*, page 5.

12 Art. 14 & 15

13 Art. 10 states that a charter must include: the organization's name and logo; purpose and objectives; methods for selecting, terminating, dismissing, transferring and removing members, staff, directors and leaders; rights and duties of members or staff; structure, mandate, role, duty, establishment and functioning of governing bodies; governing bodies including general assembly, board of directors, committee of directors, executive committee or other equivalent bodies; rules of ordinary and extraordinary meetings of the governing bodies; sources of resources and properties; rules of resource and property management; rules for changing the organization's name and logo and revising or amending the organizational charter; and rules of dissolution and distribution of resources and properties upon being dissolved.

14 Therefore, a commune or district chief could prevent or delay the registration of an organization by refusing to provide such a letter. (Coincidentally there is no such requirement for certification of office addresses for private companies which register in Cambodia, under the Commercial Rules and Register Law.)

15 Art. 20-24 cover registration of alliances; Art. 27 requires MOI notification of "collaborations" between NGOs or associations.

16 One of the reasons that individual NGOs or associations join together in alliances or coalitions is to try to afford

Finally, in what will place a huge administrative burden on both the government and civil society groups, the law requires that all existing Cambodian associations, NGOs and alliances must apply for registration within six months of the law's entry into force, or they will no longer have the right to exist. Foreign NGOs which do not have a memorandum with the Ministry of Foreign Affairs and International Cooperation will similarly have to apply for one; those who have current memorandums will be able to continue operating until they expire.<sup>17</sup>

*Excessive powers of government officials:* Compounding the law's restrictions to freedom of association, and its registration requirements, are the wide powers granted to government ministries responsible for registration. (In the case of local associations, NGOs and alliances, this is the MOI. For foreign NGOs, the Ministry of Foreign Affairs and International Cooperation, or MFAIC, is empowered to decide on their applications for memorandums with the government to operate in Cambodia.) As noted previously, the law contains no right of appeal against decisions made by these ministries, whose powers include deciding on registration applications and ordering the suspension of registered organizations.<sup>18</sup>

Most worrying is the lack of clear grounds in the law for denying registration to an association or NGO. As such, there are no safeguards in place to prevent arbitrary decision-making by the ministries. Even if an application is not outright denied, the numerous registration requirements provide scope for officials to continually rule that applicants have not fully met this or that requirement, creating delays which serve to intimidate and deter them from pursuing their applications (particularly for provincial-based ones without the means to travel repeatedly to Phnom Penh). Officials may do this not only for political reasons, targeting organizations out of favor with the government, but also to extort bribes from applicants.<sup>19</sup>

Of particular concern is that the law empowers the MOI to rule on legal and constitutional issues regarding organizations' applications.<sup>20</sup> This is open to abuse and gives de facto judicial and constitutional powers to the MOI, which is inappropriate in a State which claims to respect separation of powers.

Despite the law not giving the judiciary any oversight over registration, it does allude to the courts being able to forcibly suspend or dissolve local or foreign organizations (and to determine what happens to their assets).<sup>21</sup> It does not state on what grounds this could occur. This ambiguity raises the real danger that this provision may be used to close down an organization, upon request to the courts by the government, under the pretext of it having committing some misdeed.<sup>22</sup>

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themselves more protection, and reduce the possibility of being singled out for recriminations by the government, when conducting research or commenting publicly on controversial issues. This may explain the government's interest in monitoring alliances and other collaborations between NGOs or associations.

17 Art. 55-56.

18 Registration decisions are covered by Art. 16-19 (for MOI) and Art 31-32 (for MFAIC). The ministries can also suspend registered local or foreign organizations if they twice fail to submit annual reports to the government (Art. 53.) Local organizations' activities can be suspended for 1-3 months, while foreign NGOs can be ordered to postpone their activities (for a period undefined in the law) or have their memorandum with the government "invalidated".

19 In a corruption-ridden country like Cambodia, the danger that officials may seek bribes from applicants is high, creating a further barrier to registration. Even without bribes being demanded, there is the possibility of excessively high official registration fees, which would also deter applicants. (The law provides for registration fees to be charged to local associations, NGOs and alliances, but does not specify their amount or that they should only cover legitimate administration costs.)

20 Art. 17 says the MOI shall examine the legality of organizations' charters; Art. 18 states that it can determine whether registration applications are consistent with the Constitution or other laws in force.

21 Art. 49-50 & 52

22 As the International Center for Not-for-Profit Law noted in its comments on the draft law (page 8), "The draft law

Also worrying, for similar reasons, is another clause which strongly suggests that the MOI or MFAIC could take action according to “the law in force” against an NGO which is deemed to have failed to comply with its charter or its memorandum with the government.<sup>23</sup> It is not clear which law is referred to, nor what would constitute a violation of a charter or a memorandum. Given the volume of information which is required in an organization's charter, there is a danger that any minor deviation from it may be used by the government to take legal action to suspend or close an organization.

***Intrusive reporting requirements:*** The law imposes excessively stringent demands on NGOs and associations to report to the government. As well as submitting annual reports to MOI or MFAIC, and opening their financial books for inspection by the Ministry of Finance or National Audit Authority, a local or foreign NGO or association must notify the government each time it changes its name, amends its charter, moves its office, or rotates or terminates any staff, members, or leaders.<sup>24</sup> It must also inform municipal or provincial authorities if it opens branch offices “or conduct[s] activities” in Phnom Penh or the provinces.<sup>25</sup> (The latter potentially opens the door for organizations to be required to report to local authorities each and every time they go anywhere to do anything.)

***Restrictions on foreign NGOs:*** Foreign NGOs face particular restraints under the law, including that they must have the support of (and an agreement with) a government institution prior to seeking a memorandum with MFAIC. Mandatory collaboration with the government is required from foreign NGOs, which “shall collaborate with relevant ministries or institutions of [the government] when preparing project plans, implementing, monitoring, aggregating and evaluating the result of implemented activities”. Foreign NGOs are also required to renew or extend their memoranda with the government every 1-3 years, effectively going through regular re-registration.<sup>26</sup> These provisions are likely to lead to greater politicization of foreign aid, and certain foreign NGOs – such as those which wish to work primarily with local civil society partners, rather than the government, in order to raise their capacity – may be denied permission to operate. As one international expert group on non-profit laws commented, “the registration of foreign NGOs could be beset by delays and subject to subjective, arbitrary and politicized decision-making”.<sup>27</sup>

## INTERNATIONAL STANDARDS

The draft law does not meet international standards. For a detailed account of how its provisions violate international norms, see the *Comments on the Draft Law on Associations and Non-Governmental Organizations of the Kingdom of Cambodia*, by the International Center for Not-for-Profit Law (ICNL), which has worked on civil society law reform projects in more than 100 countries. In particular, the draft law fails to comply with the freedom of association provisions of the International Covenant on Civil and Political Rights (ICCPR), which Cambodia has ratified.

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provides inadequate standards to guide the government's determination of suspension or termination. The draft law does not expressly limit the use of termination as a sanction of last resort. There is no requirement for the governmental authorities to provide notice and an opportunity to rectify problems prior to the suspension or termination, and there is no mention of a right to appeal after suspension or termination. Taken together, the process of suspension and/or termination is open to government manipulation and overreach.”

23 Art. 54

24 Art. 46, 48 & 44

25 Art. 43

26 Art. 30, 33, 36 & 37

27 International Center for Not-for-Profit Law, *Comments on the Draft Law on Associations and Non-Governmental Organizations of the Kingdom of Cambodia*, December 22, 2010, page 10.



In fact, the draft law contains many of the hallmarks of repressive NGO laws which have been used by undemocratic regimes around the world to control civil society. In 2004, the Special Representative of the UN Secretary-General on Human Rights Defenders, Hina Jilani, highlighted some of the common problems with such repressive laws, including:

- unnecessarily burdensome and lengthy registration procedures;
- limits on the creation of networks;
- inappropriate denial of registration;
- limited independence of registration authorities;
- State scrutiny of and interference with an organization's management, objectives and activities;
- administrative and judicial harassment.<sup>28</sup>

All of these, and other repressive measures, could well result from the passage of this draft NGO law in Cambodia. Even more so, given that the country meets all of the key factors cited by the UN Special Representative that allow violations against human rights defenders to occur:

- weaknesses in the law and legal processes;
- limitations on the competence and independence of the judiciary;
- the lack of awareness or accountability among local authorities for the respect of international human rights standards, and;
- weaknesses in civil society.

## CONCLUSIONS & RECOMMENDATIONS

The draft law seeks to take the “N” out of “NGOs”, turning them into de facto government organizations. It ignores the very concept of NGOs, associations and other civil society actors, that they are independent and should not be controlled by the government; that they cannot be compelled to collaborate with the government (rather than by choice); and that they should be protected from arbitrary harassment and restrictions to their legitimate activities.

It is evident that this law is intended to create obstacles to the registration of associations and NGOs – to make them spend significant time and resources in a complicated process open to arbitrary and non-transparent decisions by government officials – rather than to strengthen civil society.

By seeking to limit freedom of association, and to dictate that civil society groups are answerable to the government rather than to the people whom they are tasked with serving, this law will further isolate and dis-empower Cambodian communities. It will expose those who are working at the grassroots level – who are supposed to be at the forefront of community development – to bureaucratic hurdles and greater risk of harassment, intimidation or worse.

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<sup>28</sup> Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, October 1, 2004, A/59/401, page 2. For more discussion of overseas experiences with NGO laws, see also the LICADHO briefing paper, *NGO Laws & Crackdowns on Human Rights Defenders: International Lessons for Cambodia*, November 2008.

It must be remembered that the freedoms of association, expression and assembly in Cambodia are already heavily restricted, particularly at the community level. Villagers have little real voice on issues affecting their welfare and development, and NGOs and other groups which seek to work with them in this regard also have limited room to operate. Anyone who is perceived to be challenging local or government officials is open to persecution, including arrest and detention or threats and violence. The draft law must be assessed within this context.

### *Recommendations*

- In accordance with international standards, and in particular to protect the right to freedom of association, the government should ensure that any registration of NGOs and associations (under this or any other law) is voluntary and not mandatory.
- In the interests of transparency and democratic participation, the government should commit to a full and thorough public consultation process over this draft law, including on whether such a law is necessary and, if so, what protections and benefits it should contain for organizations which work in the public interest.
- This consultation should include wide distribution of the draft law to civil society groups and the general public, in rural areas as well as Phnom Penh, and adequate time and opportunity for them to discuss and comment upon it.
- As an important step towards promoting “the rights and freedoms of Khmer citizens in forming associations and domestic non-governmental organizations” (as stated in the draft law), the government should fully respect the freedoms of expression, association and assembly in accordance with the Cambodian Constitution and international law.
- In particular, the government should ensure an end to arrest, detention and criminal prosecutions against community representatives and other citizens who lawfully exercise their rights to free expression, association or assembly.
- Cambodian and foreign associations, NGOs, other civil society groups and donor organizations should adopt the position that they will boycott any Law on Associations or NGOs which does not adequately protect their independence and other rights under international and national law.