

Consolidated Report on Issues and Recommendations on Draft Law on Associations and NGOs in Cambodia

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1. SCOPE OF REVIEW

- 1.1 The scope of the review covers only the above-mentioned draft Law on Associations and Non-governmental Organizations (draft “NGO Law”) released by the Ministry of the Interior to the public on 15 December 2010, the 1993 Constitution of Cambodia; the Labor Law of Cambodia; the Civil Code of Cambodia; as well as International Documents and Protocols such as, the Universal Declaration on Human Rights; the International Covenant for Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR).ⁱ
- 1.2 The review is based on the analysis of the draft NGO Law by international and domestic NGOs operating in Cambodia, International NGOs operating outside the country; local and international associations and development partners namely Cambodian Defenders Project (CDP), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Community Legal Education Center (CLEC), East-West Management Institute (EWMI), The International Center for Not-for-Profit Law (ICNL), FS Partners, Gender and Development for Cambodia (GADC), Japanese NGOsⁱⁱ, Working Group from Dec 23 meeting (WG), and the Cambodian Center for Human Rights (CCHR), Japan Overseas Christian Medical Cooperative Service (MEDiCAM), NGO Forum, Star Kampuchea, NGO Education Partnership (NEP), NGO Alliance in Battambang, NGO Alliance in Svay Rieng and NGO Alliance in Siem Reap.

2. EXECUTIVE SUMMARY

2.1 National Context

The draft law is one of the activities (Activity 1.4.1) outlined under Strategy 1, “Improve the protection of personal rights and freedoms” by the Royal Government of Cambodia’s (RGC) Cambodian Legal and Judicial Reform Strategyⁱⁱⁱ. This strategy derives directly from the four basic principles enshrined in the Cambodian Constitution:

1. The rights of the individual.
2. The liberal democracy.
3. The separation of state powers.
4. The rule of law.

The rights of the individual, under principle 1, provides guidance,

A restriction of the freedoms and rights of the individual by any branch of the government only takes place in accordance with the law and when this is deemed necessary in a democratic society. In any such interference with the freedoms and rights of the individual, the branches of government will be strictly guided by the principle by which the interference must be proportional to the desired purpose.^{iv}

It should also be noted that the Cambodia Constitution recognizes and respects human rights as stipulated in the UN Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women’s rights and children’s rights (Article 31), as well as provides the foundation for freedom of association (Article 42).

Article 2 of the draft reflects this idea, as it states that the purpose of the law is, “to promote the practice of rights and the freedoms of Khmer citizens in forming associations and domestic non-governmental organizations in order to jointly and lawfully protect personal and public interest.” Within the time provided, more than 500 organizations have conducted consultations on the draft and prepared an initial response.

2.2 Summary Response of Issues and Recommendations

Civil Society actors in Cambodia understand the government’s need for a legal framework to ensure the stability and security of the country, as well as to ensure that development and humanitarian aid is delivered effectively. However such a framework needs to ensure the freedom of citizens to engage in law-abiding activities without undue restrictions or burdens.

Chapter 2 of the draft NGO Law outlines the procedures for registration of associations and domestic NGOs. While the right to obtain legal entity status is well preserved in this chapter, “employing a registration system must ensure that it is truly accessible, with clear, speedy, apolitical, and inexpensive procedures in place.”^v However, the requirements for registration are excessive (e.g., documentation and membership) and will place an undue burden on organizations wishing to legally operate in Cambodia. The registration of associations and alliances should be optional. In addition, the draft NGO Law’s requirements for registration of NGOs are in excess of the requirements set forth in the Cambodian Civil Code (Article 50). The draft NGO Law also lacks a clear and transparent process for evaluation and denial of applications or opportunity to appeal to a competent, independent and impartial tribunal.

In Chapter 8, Article 49 addresses voluntary and involuntary suspension of activities and dissolution of domestic NGOs and domestic associations, while Article 50 addresses postponement or dissolution of a foreign NGO’s MoU. These articles lack clear and concise guidelines for the government’s determination of involuntary suspension or termination. There is also no requirement for the governmental authorities to provide notice to organizations under threat of involuntary suspension or termination. This notice must include a clearly stated opportunity to appeal the suspension or termination both before and after the act.

Article 52 states that an association or NGO or alliance of associations or domestic NGO that is involuntarily dissolved will have its assets distributed at the discretion of the court, with no requirement that the court be guided by the organization’s charter or memorandum of decisions or the donor contractual agreement.

The draft NGO Law also addresses the obligation of an organization to report on activities, status of the budget and action plan. While a system of reporting is vital to a healthy civil society, the provisions for monitoring and supervision must be not be so arduous as to hinder the activities of those that they regulate. The reporting requirements outlined in Articles 44, 46 and 48 will be burdensome at best and impossible at worst for small, provincial, community-based development organizations and alliances. Simplifying the systems will therefore also have the advantage of reducing the administrative on these smaller, provincially-based domestic NGOs and CBOs, who are arguably the agents of sustainable development in Cambodia.

Finally, the draft NGO Law contains many terms and phrases that remain undefined. As such, they are open to the interpretation of the enforcement agent.

Foreign NGOs bring significant resources and knowledge to the Kingdom of Cambodia. The draft NGO Law, in its current form, will restrict the work of these organizations, as it places significant barriers on registration and implementation of their work. The effect will be to reduce funding for the many important development projects currently delivered in collaboration with the government, and to reduce potential new funding sources for long-term development.

In addition to the impact on domestic and international NGOs, the law will also impact the government's own programs. The ambiguity of terms as well as complex registration and reporting requirements will create a burden for the government agencies responsible for administering the new regulations, especially the Ministry of the Interior and the Ministry of Foreign Affairs and International Cooperation. It would be to the government's advantage to define terms and simplify processes. An extension of the consultation process to include dialogue beyond the January 10, 2011 National Consultation is therefore in order.

3. TABLE: Consolidated Response from INGO and NGO Community to draft NGO Law

Original Text draft NGO Law	Recommendations
<p>Article 6: Prohibiting Provisions An association and non-governmental organization or alliance of associations or domestic non-governmental organizations which are not registered or do not have a memorandum signed in accordance with this law shall not be allowed to operate any activity in the Kingdom of Cambodia.</p>	<ul style="list-style-type: none"> - The right to register should be voluntary for associations. Registering would give the organization non-profit status that would allow it to receive benefits such as tax deductions and protection under the law. - Currently registered organizations that have submitted applications to re-register should receive provisional approval to conduct activities, which would be revoked only if their re-registration application is denied by the MoI.
<p>Article 8: Conditions of Formation of Association</p> <ul style="list-style-type: none"> - To form an association, there shall be at least twenty-one (21) Cambodian national founders as members. - These members shall choose at least seven (07) leaders for preparing formalities and fulfilling the requirements for registering. 	<ul style="list-style-type: none"> -Decrease the required members and leaders. -Amend article to eliminate the nationality requirement for founding members and to ensure that everyone (i.e., all individuals within the state’s territory and subject to its jurisdiction) is eligible to form associations.

<p>Article 9: Conditions of Formation of Domestic Non-Governmental Organization -To form a domestic non-governmental organization, there shall be at least three (03) Cambodian national initiators. -These members shall choose a person as a head (president) for preparing formalities and fulfilling the requirements for registration.</p>	<p>-Amend article to eliminate the nationality requirement for founding members and to ensure that everyone (i.e., all individuals within the state’s territory and subject to its jurisdiction) is eligible to form domestic NGOs.</p>
<p>Article 10: Charter of an Association and Domestic Non-Governmental Organization The leaders of associations or domestic non-governmental organizations shall prepare their own charters. The charters of associations and domestic non-governmental organizations shall comply with the Constitution and other laws in force of the Kingdom of Cambodia. The charters of associations and domestic non-governmental shall include the following substantial elements:</p> <ul style="list-style-type: none"> • Name written in full form and abbreviation and logo; • Purpose and objective; • 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 the 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; • Rules of dissolution and distribution of resources and properties upon being dissolved. 	<p>-Simplify the registration process in accordance with the Civil Code provisions on registration.</p>
<p>Article 14: Documents for Registering an Association The head of an association shall submit the application for registration at Ministry of Interior attaching the following documents:</p>	<p>- Reduce documentation requirements in accordance with the Civil Code. -Clarify the requirement that leaders provide a “profile.”</p>

<ul style="list-style-type: none"> • An application signed by the head of the association, two (02) copies; • A name list of at least twenty-one (21) founders with an identification of their age, sex, nationality and permanent address. Those members shall nominate the leaders of the association, which shall be comprised of at least seven (07) people, for preparing formalities and fulfilling the registration requirements; • A letter stating the address of the association’s central office, recognized by the Commune or District Chief, one (01) copy; • A charter signed by the head and all leaders of the association, two (02) copies; • Profiles of the leaders of the association, at least seven (07) people, with a recent 4x6 size photograph, two (02) copies each; • A receipt for the registration excise fee for associations, one (01) copy. 	
<p>Article 15: Documents for Registering a Domestic Non-Governmental Organization</p> <p>The head of a domestic non-governmental organization shall submit the application for registration at Ministry of Interior attaching the following documents:</p> <ul style="list-style-type: none"> • An application signed by the head of the domestic non-governmental organization, two (02) copies; • A letter stating the address of the central office of the domestic non-governmental organization, recognized by the Commune or District Chief, one (01) copy; • A charter, signed by the head of the domestic non-governmental organization, two (02) copies; • Profiles of the leaders of the domestic non-governmental organization, at least three (03) people with a recent 4x6 size photograph, two (02) copies each; • A receipt for the registration excise fee for domestic non-governmental organizations, one (01) copy; • A letter disclosing fund deposited in any bank recognized by National Bank of Cambodia, one (01) copy. 	<p>-Same suggestions as for Article 14.</p>
<p>Article 17: Examination of the Application and Response</p> <p>The Ministry of Interior shall examine the documents and the legality of the charter of the domestic association or non-governmental organization, and shall decide whether to agree or disagree to register within a maximum of forty-five (45) working days.</p>	<p>- Add clear and limited list of grounds for denial of registration.</p> <p>- Include provision that if Ministry fails to reach a determination within the required time frame, the application is deemed approved.</p>
<p>Article 18: Rectification on the Contents and Response</p>	

<p>The Ministry of Interior shall issue a written notification letter clearly stating the reasons to any concerned association or domestic non-governmental organization whose content in the application form is not consistent with the Constitution or other laws in force, and request that it be rectified within a maximum of forty-five (45) days. If the inappropriate contents or defects in the domestic association or non-governmental organization’s application for registration are found to have been corrected, the Ministry of Interior shall register that association or domestic non-governmental organization within a maximum of fifteen (15) working days after the date of receiving the rectified documents.</p>	<p>-Specify legal criterial on which applications will be evaluated.</p> <p>-Provide for right of appeal of denial of registration application.</p>
<p>Article 21: Conditions for Formation of Alliances of Associations or Domestic Non-Governmental Organizations</p> <p>-To form an alliance of associations or domestic non-governmental organizations, there shall be at least two (2) members who are the founders of lawful associations or non-governmental organizations.</p> <p>-These members shall choose a head of the alliance for preparing formalities and fulfilling the conditions for registering.</p>	<p>-Clarify that an alliance need not be registered if two NGOs wish to work together on an issue of common concern.</p> <p>-Modify provison so that international organizations can form alliances with domestic organizations.</p>
<p>Article 23: Documents for Registering an Alliance of Associations or Domestic Non-Governmental Organizations</p> <p>The head of an alliance of associations or domestic non-governmental organizations shall submit the application for registration at the Ministry of Interior attaching with following documents:</p> <ul style="list-style-type: none"> • An application for registration signed by the head of the alliance of association or domestic non-governmental organization, two (02) copies; • A decision for registration of the associations or domestic non-governmental organizations which are the members of the alliance, one (01) copy; • A letter stating the address of the central office of the alliance of associations or domestic non-governmental organizations recognized by the Commune or District Chief, one (01) copy; • A common charter, signed by the head of the alliance of association or the domestic non-governmental organizations, two (02) copies; • Profiles of the leaders of the alliance of associations and domestic non-governmental organizations; two (02) copies each with a recent 4x6 size photograph, • A receipt for the registration excise fee for alliances of associations or domestic 	<p>-Registration of Alliances should be voluntary, as member organizations have already fulfilled the registration requirements.</p> <p>-Same comments as in Article 10 and 14.</p>

<p>non-governmental organizations, one (01) copy;</p> <ul style="list-style-type: none"> • A letter disclosing fund deposited in any bank recognized by National Bank of Cambodia, one (01) copy. 	
<p>Article 27: Collaboration Between Associations and Domestic Non-Governmental Organizations</p> <p>Lawful associations and domestic non-governmental organizations may collaborate to implement a lawful project in accordance with the decision of the associations or domestic non-governmental organizations, by merely giving notification in writing to Ministry of Interior and attaching:</p> <ul style="list-style-type: none"> • Any agreement or equivalent document or condition of cooperation; • The number and names of associations or domestic non-governmental organizations affiliated. 	<p>-Clarify that associations and NGOs that do not want to form an alliance may nonetheless still work together on issues of common concern.</p> <p>-The requirement that MoI be notified when associations or NGOs collaborate should be eliminated.</p> <p>- Clarify under what circumstances alliances must give notice of projects.</p>
<p>Article 30: Documents for Requesting a Memorandum Agreement to Be Submitted by Foreign Non-Governmental Organizations</p> <p>A foreign non-governmental organization wishing to operate aid projects or programs in the Kingdom of Cambodia shall submit a request for a memorandum agreement to the Ministry of Foreign Affairs and International Cooperation by enclosing the following documents:</p> <ul style="list-style-type: none"> • A letter of request to open a representative office in the Kingdom of Cambodia, detailing its purposes, signed by the head of the concerned foreign non-governmental organization, of which the permanent head office is located in a foreign country, one (01) copy; • A letter from the head of foreign non-governmental organization, enclosing the profile of the nominated individual to be appointed as the representative of the organization in the Kingdom of Cambodia, one (01) copy; • A letter mentioning the budget equivalent for implementing the aid projects or programs of the foreign non-governmental organization during at least a one-year period, one (01) copy. • A permit for running the organization issued by the responsible authority of the home country where the NGO is permanently situated, one (01) copy, • A letter disclosing the funds deposited in any bank recognized by National Bank of Cambodia for implementing aid projects or programs of the foreign non-governmental organization, one (01) copy; 	<p>- Change “budget equivalent” to “estimated budget”</p> <p>-Request that a subdecree be issued to line ministries and government institutions that they issue their letters in support of a foreign NGO’s request for memorandum within 10 days after they receive the request.</p> <p>- Change the requirement that a letter disclosing the funds deposited in a recognized bank to a letter disclosing the funds that the organization will deposit within 30 days of registration.</p> <p>- Eliminate the requirement that notice be given of all staff changes. If deemed necessary, the requirement should be amended so that it only applies to changes to management or other key decision-makers.</p>

<ul style="list-style-type: none"> • A letter supporting aid projects or programs of the foreign non-governmental organization issued by one or more ministries or governmental institutions in the Kingdom of Cambodia, one (01) copy; • A name list of Khmer and foreign staff who work in the Kingdom of Cambodia, one (01) copy. 	
<p>Article 32: Examination on the Contents of the Documents and Response The Ministry of Foreign Affairs and International Cooperation shall examine the contents of the filed documents and shall decide whether to approve or disapprove the memorandum signing of a foreign non-governmental organization within a maximum of forty-five (45) working days.</p>	<p>-Same as the comments on Article 17.</p>
<p>Article 46: Annual Reports of Associations or Domestic Non-Governmental Organizations or Alliances of Associations and Domestic Non-Governmental Organization -Lawful domestic associations or non-governmental organizations or alliances of associations or domestic non-governmental organizations shall generate reports on activities, the status of their budget in the previous year, and action plan for the next year to file in its office and submit to the Ministry of Interior or Ministry of Foreign Affairs and International Cooperation and the Ministry of Economic and Finance and other relevant ministries not after the end of January.</p>	<p>- Propose to move the date to end of March, not January.</p> <p>- Revise article to clarify the reporting obligations of domestic associations/NGOs and alliances; consider a graduated reporting requirement that would exempt smaller organizations from reporting, or at least simplify their reporting obligation.</p>
<p>Article 48: Competency to Examine Financial Reports and Properties of Non-Governmental Organizations and Alliances of Association and Domestic Non-Governmental Organizations -The Ministry of Economy and Finance or the National Audit Authority has the right to examine the financial status reports and properties of any association or non-governmental organization or alliances of associations or domestic non-governmental organizations.</p>	<p>- Revise article by including procedures, such as 2 weeks advance notice of the inspection and the requirement to conduct the inspection during regular business hours.</p> <p>-Should be conducted by an independent auditor.</p>
<p>Article 49: Activity Postponement or Dissolution of the Association or Domestic Non-Governmental Organization or Alliance of Associations or Domestic Non-Governmental Organizations. -An association or domestic non-governmental organization or alliance of associations or domestic non-governmental organizations may postpone it activities or dissolve in accordance with the determination of its own charter, and shall notify in writing to the Ministry of Interior.</p>	<p>- Refer to Civil Code Articles 64-65 for guidelines on dissolution of entities.</p> <p>-Provide criteria for evaluating whether postponement or dissolution should be imposed.</p>

<p>-In case an association or domestic non-governmental organization or alliance of associations or domestic non-governmental organizations is postponed or dissolved by the final court judgment, all relevant competent institutions shall enforce this decision.</p>	<p>-Provide opportunity for appeal.</p>
<p>Article 50: Activity Postponement or Memorandum Termination of Foreign Non-Governmental Organizations -A foreign non-governmental organization may make a request to postpone or terminate its memorandum by submitting its request to the Ministry of Foreign Affairs and International Cooperation, with duplicates to all relevant ministries. -In case a foreign non-governmental organization is postponed or has its memorandum terminated by the court’s judgment, all relevant competent institutions shall enforce this decision.</p>	<p>-Same concerns and issues in Article 49.</p>
<p>Article 52: Distribution of Resources and Properties in Case of Dissolution or Memorandum Termination Through the Court’s Final Judgment -For an association or a non-governmental organization or alliance of associations or domestic non-governmental organizations which is dissolved or has a memorandum terminated by a court’s final, resources and properties shall be distributed in accordance with the final court’s judgment.</p>	<p>-In all instances of dissolution, distribution of assets should be in accordance with organization’s charter and donor guidelines.</p>
<p>Article 53: Act of Violation of Article 46 -In case a lawful association or a non-governmental organization or alliance of associations or domestic non-governmental organizations does not comply with Article 46 of this law, the Ministry of Interior or Ministry of Foreign Affairs and International Cooperation shall issue a warning in writing. -In case an association or a domestic non-governmental organization or alliance of associations or domestic non-governmental organizations commits the same violation again, the Ministry of Interior shall issue a decision in writing to temporarily postpone its activities for a period from one (01) to three (03) months. -In case a foreign non-governmental organization commits the same violation again, the Ministry of Foreign Affairs and International Cooperation shall issue a decision in writing to postpone its activities and invalidate the memorandum.</p>	<p>- The penalties for foreign NGOs should be reduced to the less severe penalties applied to domestic organizations.</p>
<p>Article 54: Act of Violation of Charter or Memorandum -In case a lawful association or a non-governmental organization or alliance of associations or domestic non-governmental organizations fails to comply with its charters or memorandum, the Ministry of Interior or Ministry of Foreign Affairs and International Cooperation shall issue a warning in writing to that association or non-governmental organization or alliance of associations or domestic</p>	<p>- Remove the term “serious case” -Alternatives to criminal sanctions should be provided for, including the revocation of the</p>

non-governmental organizations. -If it conducts the same violation again or in a serious case, it shall be punished in accordance with the law in force.	CSO's registration, and fines.
Article 55: Re-registration of Associations and Domestic Non-Governmental Organization or Alliances of Associations or Domestic Non-Governmental Organization -Following the entry into force of this law, an association or domestic non-governmental organization or an alliance of associations or domestic non-governmental organizations which has already filed application documents at any state institution shall prepare documents to re-apply, in accordance with the provisions set forth in Chapter 2 and Chapter 3 of this law, within a maximum of one hundred eighty (180) days. Where an organization fail to re-apply new documents within the period mentioned above, its pre-existing registration documents shall be hereby nullified.	-Include a requirement that the government provide notice of the duty to reapply. - Clearly define the basis on which MoI may deny a renewal application. - Limiting the time MoI has to decide on the renewal application to 45 days, just as is provided for the review of initial registration applications.
Amibiguity of terms used in the draft law	-Incorporate a Glossary of Terms and develop explanatory notes for every article

ⁱ The Kingdom of Cambodia is a signatory to both the ICCPR and the ICESCR (26 August 1992 and 26 May 1992, respectively).

ⁱⁱ Good Earth Japan (GEJ), NPO/NGO Hearts of Gold (HG), Japan Mine Action Service (JMAS), Japan International Volunteer Center (JVC), People's Forum on Cambodia, Japan (PEFOC,J), PH - Japan Foundation (PHJ), Services for the Health in Asian & African Regions (SHARE), Shanti Volunteer Association (SVA)

ⁱⁱⁱ Council for Legal and Judicial Reform, Royal Government of Cambodia, *Legal and Judicial Reform (Adopted by the Council of Ministers on June 20, 2003)* and Plan of Action for Implementing the Legal & Judicial Reform Strategy, adopted by the Royal Government of Cambodia at the Plenary Session on 29 April 2005.

^{iv} Council for Legal and Judicial Reform, Royal Government of Cambodia, *Legal and Judicial Reform (Adopted by the Council of Ministers on June 20, 2003)*.

^v The 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.