

## **NGO and Associations Law**

### **Briefing Report (2).**

#### **Benchmarks for a law that meets International Standards**

- 1. Three types of NGO and Associations legislative framework**
- 2. What would the provisions of an enabling NGO and Associations Law include?**
- 3. Restrictions on activity can take a variety of forms and can be direct and indirect.**

Information comes from ICNL; and the Charity Commission England and Wales.

The briefing is compiled by the Co-operation Committee for Cambodia 12/09

## **1.Three types of NGO and Associations legislative framework**

Laws and regulations that address the rights of association and assembly differ from one country to another depending on the political and economic system in the country and the level of the state's control of CSOs, but we can divide the countries of the world into three broad categories according to their regulations:

1. **Countries that adopt voluntary “notification” systems for CSOs.** These countries permit the existence of informal civil society groups; individuals generally do not need to form legal entities to practice their right of freedom of association. If an organization decides to obtain legal personality, then it simply announces its existence to the government authority by taking certain steps to notify the government.

This system is used in France, Lebanon, the Netherlands, and a handful of other countries.

2. **Countries that adopt voluntary “registration” systems for CSOs.** These countries also permit the existence of informal civil society groups; however, if a CSO decides to obtain legal personality, then it must apply for registration and await the approval of a government authority.

It is important to note that these types of systems can be either enabling or restrictive depending on the requirements involved, but in the United States of America and most other Western countries they are enabling.

3. **Countries that adopt mandatory registration systems for CSOs.** These countries generally prohibit informal, unregistered groups and require that certain (often very difficult) conditions be met before formal establishment of a new CSO is granted.

This system is especially prevalent in the Middle East and Asia, and is used in Iraq today.

## **2. What would the provisions of an enabling NGO and Associations Law include?**

### **Examples from other countries to help formulate alternative responses and International Best Practice**

**Background:** The context of a particular country, the system of law and other factors all determine what is an enabling law. Most countries do not have an NGO Law rather they have a legislative framework composing of a number

CSOs are typically subject to a range of laws and regulations, addressing issues from registration to taxation, economic activity to public funding, volunteerism to philanthropy. In some countries, there may be a single law, which deals with many aspects of the “life-cycle” of the CSO, but there will always be issues, such as V.A.T., social contracting, or participation in policy-making, regulated elsewhere in the legal framework.

### **1. Creating an enabling environment**

#### **South Africa**

- Within the limits prescribed by law, every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of nonprofit organisations to perform their functions.
  
- Object of the Act  
The objects of this Act are to encourage and support nonprofit organisations in their contribution to meeting the diverse needs of the population of the Republic by—
  - a) creating an environment in which nonprofit organisations can flourish;
  - b) establishing an administrative and regulatory framework within which nonprofit organisations can conduct their affairs;
  - c) encouraging nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards;
  - d) creating an environment within which the public may have access to information concerning registered nonprofit organisations; and
  - e) promoting a spirit of co-operation and shared responsibility within government, donors and amongst other interested persons in their dealings with nonprofit organisations.

#### **International Best Practice**

- The State duty includes an accompanying obligation to ensure that the legislative framework relating to freedom of association and civil society is appropriately enabling, and that the necessary institutional mechanisms are in place to ensure the recognized rights to all individuals.
- Within the limits prescribed by law, every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of nonprofit organisations to perform their functions.
- State interference is only justified where it is prescribed by Law to further a legitimate government interest and necessary in a democratic society.

## 2. Voluntary Registration

**Country :**

**England and Wales, Australia ,United States and most western countries**

These are examples of countries that adopt voluntary “registration” systems for CSOs. These countries also permit the existence of informal civil society groups; however, if a CSO decides to obtain legal personality, then it must apply for registration and await the approval of a government authority.

### **International best Practice**

Creation of a CSO: Protecting fundamental freedoms of expression, association, and peaceful assembly means that CSOs should be allowed freely to come into existence. It also means that CSOs should not be required to obtain legal personality in order to engage in lawful activities.

## 3. Mechanism for hearing appeals or defining activity

**South Africa** – Arbitration Panel to hear appeals.

**England and Wales** - Charity Commission e.g. determines public interest

**International Best practice;**

Registration or Incorporation Organ. The organ of the state that is vested with the responsibility for giving legal existence to CSOs should be adequately staffed with competent professionals, it should be even-handed in fulfilling its role, and its decisions not to register CSOs should be appealable to an independent court. If the registration or incorporation organ is a court, its adverse decisions should be appealable to a higher court.

#### 4. Activity

##### **England and Wales**

A charity can never be formed for the primary purpose of engaging in political activities and can never support a political party or candidate. A charity may, however, engage in some political activities (such as lobbying activities), if the activities relate to the charity's specific purposes or to the well-being of the sector generally, and if these political activities are not the main reason for its existence. Other NGOs (that is, non-charitable NGOs) are free to engage in political activities. For the purposes of the law, a charitable organisation must demonstrate that it serves the [public interest](#), and that its purpose lies entirely in the promotion of one or more of the following causes:

- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- the advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare;
- the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;

##### **International Best Practice:**

Permitted Purposes and Activities:

- a. A civic organization should be permitted to engage in activities for the benefit of its members (mutual benefit) or for the benefit of the public at large (public benefit).

- b. A civic organization should have the right to speak freely about all matters of public significance, including debate about and criticism of existing or proposed state policies and actions.
- c. Any civic organization engaging in an activity (e.g., health care, education, social services to persons living with HIV/AIDS, etc.) that is subject to licensing or regulation by a state organ should be subject to the same generally applicable licensing or regulatory requirements and procedures that apply to activities of individuals, business organizations, or public organs.

**From ICNL and Charity Commission England and Wales**

**3. Restrictions on activity can take a variety of forms and can be direct and indirect. ( from ICNL)**

**Direct prohibitions against spheres of activity.** In some cases, the law may directly prohibit NGOs from participating in certain spheres of activity. Laws in several countries prohibit participation in ‘political’, ‘extremist’, or ‘terrorist’ activity without clearly defining what these terms mean. Vague language allows the state to block NGO activity in legitimate spheres of work (and to brand NGOs or NGO activists as ‘extremists’ or ‘terrorists’).

**Laws that have invasive supervisory oversight.** The law invites arbitrary interference in NGO activities by empowering governmental bodies to exercise stringent supervisory oversight of NGOs. Invasive oversight may take the form of burdensome reporting requirements, interference in internal management, and mandatory coordination with government policy.

**Government harassment.** Poorly drafted laws encourage government harassment through repeated inspections and requests for documentation, as well as the filing of warnings against NGOs. Indeed, governments also take “extra-legal” actions to harass independent groups.

**Criminal sanctions against individuals.** The use of criminal penalties against individuals connected with NGOs can prove a powerful deterrent against NGO activities and freedom of association.

<b>Country</b>	<b>Restriction</b>
<b>Equatorial Guinea</b>	Restricts NGOs from engaging in promoting, monitoring or engaging in any human rights activities and requires government approval for political gatherings involving more than ten individuals.
<b>Uganda</b>	Government has wide-ranging powers to suspend NGOs that did not conform to any "government policy or plan".  Governmental approval for activities: NGOs have to give “seven days notice in writing” of any intention to “make direct contact with people in any part of the rural area of Uganda
<b>Bolivia</b>	Prohibiting any kind of foreign assistance that carries “implied political or ideological conditions,” including prohibiting Bolivian government agencies from using bilateral foreign aid to contract local NGOs to provide services. Government authority to veto hiring decisions of any international cooperation agencies operating in Bolivia
<b>Belarus</b>	78 civil society organizations (CSOs) were forced to cease

	operations in 2003 due to harassment from government officials. In 2004, the government inspected and issued warnings to 800 others. These inspections have proved successful in disrupting NGOs, preventing them from concentrating on their mission activities.
<b>Vietnam</b>	Decree 88, governing associations, provides for strict control over associations at all levels. Associations registered under Decree 88 are directly linked to government programs, and effectively serve as agencies of government ministries. The government has the right to intervene in all stages of NGO operations, including membership, and it may veto members or introduce members of its own choice.

#### **4. From Sept. 15<sup>th</sup> Strategic Workshop**

**What would and would not be acceptable provisions in a new NGO law – benchmarks?**

##### **Acceptable Provisions:**

- Annual reporting in a simple format to one central office
- Existing INGOs and NGOs that are registered should be endorsed; 180 days to be given to express the intention of registering and the steps they will take.
- CSOs have the right not to register
- the right to promote and protect human rights
- the right to engage in policy debate and dialogue and that includes raising objections on impact of policy decisions
- Shall not conduct activities on behalf of established political parties
- Appeals procedure needs to be an independent committee
- If an NGO is dissolved the assets should go to another NGO with similar goals; to be decided by the independent committee

##### **Unacceptable provisions:**

- Interference into internal systems of NGOs
- Restriction on conducting activities for any political interests
- Appeal procedure to be decided by the MOI and the courts.
- NGO assets, if dissolved, to be given to National Red Cross Cambodia

**The impact of possible provisions was assessed and of most concern was:**

- Restriction of activity on the basis of political interest
- Reporting requirements
- Sanctions
- Appeals procedures/mechanisms

**Other possible provisions to consider**

- Alignment with national development programs
- Sub national level reporting and registration for activities
- Financial reporting requirements

