

Assessment of the Enabling Environment for Civil Society



Country Report: Cambodia

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Promoting NGO Solidarity and Cooperation Since 1990

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Foreword

Dear Reader,

Please find attached the report *Assessment of the Enabling Environment for Civil Society* for Cambodia in 2013.

This study report was commissioned by the Cooperation Committee for Cambodia (CCC) in partnership with the CIVICUS: World Alliance for Citizen Participation, and other technical and financial support from the Civic Space Initiative, the International Center for Not-for-Profit Law, ARTICLE 19, and the World Movement for Democracy. The report was also partially financed by the Swedish International Development Agency, Sida.

An environment that enables civil society organisations to best contribute to a country's development is necessarily premised on respect for, and the upholding of, fundamental rights that allow people to organize and participate in development.

This report assesses the current health of Cambodia's legal, regulatory, and policy environment, as it impacts the formation and operation of civil society organizations (CSOs) in Cambodia. It considers challenges relevant to seven nominated dimensions of an enabling environment, those being: formation, operation, expression, peaceful assembly, access to resources, and collaboration and coalitions both within civil society organizations and between CSOs and government. The report highlights both the opportunities and challenges that both CSOs and the Royal Government of Cambodia face in improving the enabling environment.

I would like to thank Louise Coventry, Menh Navy and Alison Hillis for their work in preparing this report. I also thank CCC's Research Advisory Board (RAB) for their advice. In particular, I acknowledge the individuals from national NGOs, coalitions, networks and informal groups as well as CSO activists, CSO donors, media journalists covering civil society, and academics researching civil society. These important stakeholders have spent valuable time to share their ideas in individual interviews, and in a consultation workshop.

CCC trusts that this research report will be used as a basis for dialogue among government, development partners and CSOs to work together to improve the enabling environment for CSOs, strengthen CSO-government relations, and enable CSOs to more effectively contribute to the sustainable and equitable development of Cambodia.

In solidarity



Soeung Saroeun

Executive Director

Cooperation Committee for Cambodia

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Executive Summary

Civil societies are not only shaped by the legal and regulatory frameworks, but by the economic, political, cultural, religious and social environments in which they operate. A full assessment of the environment in which civil societies operate would examine all these dimensions – economic, political, cultural, religious and social – in an effort to promote understanding of the potential and success of civil society. This report focuses on the legal, regulatory, and policy environment in which civil society organisations (CSOs) operate, as this is key to their ability to register, operate, access resources, and effectively engage in advocacy, all of which in turn contributes to civil society's ability to flourish and be successful.

For the purposes of Cambodia, seven of a possible ten dimensions of the legal, regulatory and policy environment were assessed. These were: (1) formation, (2) operation, (3) access to resources, (4) expression, (5) peaceful assembly, (6) government-civil society relations, and (7) CSOs' cooperation and coalition. The three dimensions not addressed in this assessment were internet freedom, taxation and access to information.

Following the research guide for completing national assessments of the enabling environment for CSOs worldwide, the Country Report for Cambodia focuses specifically on the weaknesses and challenges identified in these seven dimensions of the enabling environment for civil society. Findings are based on desktop research, interviews with 24 key stakeholders and the proceedings of a national consultation workshop attended by 75 people in Phnom Penh on 28 November 2013.

This report addresses two of three research objectives: to identify laws, regulations and the policy environment which affects the ability of Cambodian civil society to function at national and sub-national levels and to identify key problems, weaknesses and challenges of laws, regulations, and the policy environment which affects the ability of Cambodian civil society to function at national and sub-national levels. The third objective, to determine how best to overcome the challenges of the legal, regulatory and policy framework for Cambodian civil society in order to increase democratic space in Cambodia, is the subject of an accompanying action plan – ideally shared by civil society and government – and it is not specifically addressed in this report.

Limitations of this report are the overreliance on the views of NGO staff, and underrepresentation of voices from government, community based organisations and the media. The small sample size and time constraints are additional limitations. More extensive dialogue especially with government could shed more light on findings and strengthen the accompanying action plan.

Currently, there are around 1,350 active non-governmental organizations (NGOs) and associations in Cambodia. Total annual expenditure by international and local NGOs in Cambodia has been estimated at US\$600-700 million, and is comparable to current total government expenditure on social services (Cooperation Committee for Cambodia 2013). The right to form a CSO in Cambodia is guaranteed in the Constitution of Cambodia and, in practice, citizens are able to access and use this right. The long and complex *Civil Code of*

Cambodia 2007 determines how NGOs and associations can be formed and registered in Cambodia, and the provisions in this Code are supplemented by various additional laws, regulations and prakas. Registration requirements are generally complex and onerous. In practice, government discretion plays a large role in determining registrations. However, Ministry of Interior staff are usually available to facilitate the registration process for an unofficial fee.

Currently, relevant laws applicable to civil society in Cambodia include the *Civil Code on Cambodia 2007*, the *Law on Taxation 2004*, the *Penal Code 2009*, the *Peaceful Demonstrations Law 2009*, the *Anti-corruption Law 2010* and the *Counter Terrorism Law 2007*. Key administrative requirements affecting CSOs include the following:

- sign project agreements with at least one line ministry - this is especially important for international NGOs which cannot be registered without such an agreement in place,
- report project activities to government,
- disclose assets (affecting senior staff only),
- seek permission to call public assemblies, and
- report changes in the employment of senior staff, composition of the board and changes to office location.

In practice, many such requirements, except seeking permission for assemblies, are not met by CSOs. CSOs are not subjected to government audit or inspection. Government oversight of CSOs is moderate. There are several recorded instances of CSOs, especially organisations promoting human rights, facing strong pressure to cease their activities, and in some cases having their activities stopped by some government actors. There is growing concern among some respondents that certain individuals within the Royal Government of Cambodia would like to continue to use pressure as a means of controlling the activities of some civil society organisations.

Cambodian CSOs are heavily dependent on international grants and donations and the legal environment for accessing funds can be characterised as permissive. Significant non-legal barriers to accessing funds are associated with the shrinking availability of international funds, increasing competition for such funds and generally low capacity in fundraising among local CSOs. In responding to these issues, CSOs are increasingly engaged in social enterprises. Local philanthropy is negligible and grants from government are uncommon, although increasing.

Article 41 of the Constitution of Cambodia states that Khmer citizens shall have freedom of expression, press, publication and assembly. Yet, the press in Cambodia has been deemed 'not free' and the space for freedom of expression has been shrinking since 2012. Television and newspapers are largely controlled by the dominant political party. The internet, however, is only lightly regulated. The *Penal Code 2009* and the proposed new anti-cyber law (will) provide the legal framework for freedom of expression in Cambodia, addressing issues of defamation, disinformation and incitement. The *Penal Code* significantly constrains freedom of expression and some civil society actors fear that the anti cyber law will also be constraining. The *Anti-Corruption Law 2010* further restricts freedom to make complaints. Nonetheless, CSOs seem to intuitively understand what can and cannot be said, using cultural knowledge to exercise judgement about advocacy strategies. Interviewees perceive that their criticisms of government

– when contained within certain unstated boundaries – are generally tolerated. CSOs are campaigning for the government to introduce a freedom of information law.

The *Law on Peaceful Demonstrations 2009* specifies that individuals or CSOs planning a strike/protest required to notify (in practice, seek permission from) the government five days in advance of the strike/protest. In some instances, individuals from local and national security forces, in cooperation with certain local (and national?) government authorities have acted to restrict the freedom of movement and the freedom of assembly of Cambodian citizens. Examples of this include refusal to give permission for peaceful protests, insistence that community members require permission to travel, even between villages, monitoring of meetings by police and state authorities, photographing meeting participants and asking for names and contact details of meeting participants, police disturbance of meetings, and using tactics of coercion to deal with communities that engage with NGOs¹.

Government and civil society relations in Cambodia have significant room for improvement in areas of mutual trust, confidence, respect, and reciprocity. That noted, relations vary significantly depending on the nature of the civil society organisation, its constituents and location, the type of work it carries out (i.e. advocacy or service delivery). The nature of relations also varies depending on the level of government with which the civil society organisation is engaged. CSOs engaged in service delivery in sectors such as health, agricultural development, humanitarian responses and education generally have better relationships with government. CSOs promoting democracy and human rights tend to have greater difficulty establishing a common ground and mutual understanding with government. Relationships between civil society and government tend to be much stronger and more effective at provincial, district and commune level, but weaker at national level. The operation of CSOs at subnational levels is affected by their relationships with local elected officials, and those officials' interpretation of the legal framework governing CSO activities. Government strategy documents contain mixed messages about the role and value of CSOs, and in practice, there is still considerable room for including more voices from civil society in public policy debate and formulation.

Coalitions of CSOs are common in Cambodia. Cooperation among CSOs is increasing, but the depth of cooperation is generally low. Further, the extent of cooperation varies considerably by sector. Cross-sectoral cooperation is generally low. Umbrella groups have too few mechanisms of performance evaluation and limited opportunities to receive and address members' complaints. There is no government oversight of partnerships and alliances.

A law on NGOs and associations is proposed and is in its fourth draft. Many CSOs consider that the proposed new law on NGOs and associations will increase the government's role in the oversight of CSOs and allow for too much government control of CSO activities. More positively, the national election of July 2013 may help to foster more constructive engagement between government and civil society, as some interviewees have predicted. To what extent, however, the Royal Government of Cambodia will be able to further enhance the enabling environment for CSOs in Cambodia remains to be seen.

¹ <http://www.icnl.org/research/monitor/cambodia.html>, accessed 28 February 2013

Section I: Introduction

Civil societies are not only shaped by the legal and regulatory frameworks, but by the economic, political, cultural, religious and social environments in which they operate. A full assessment of the environment in which civil societies operate would examine all these dimensions – economic, political, cultural, religious and social – in an effort to promote understanding of the potential and success of civil society.

This report focuses on the legal, regulatory, and policy environment in which civil society organisations (CSOs) operate, as this is key to their ability to register, operate, access resources, and effectively engage in advocacy, all of which in turn contributes to civil society's ability to flourish and be successful. Moreover, the laws and regulations that govern civil society organisation and the ways in which they are implemented, and which form part of civil society's enabling environment, potentially shape a host of other significant factors as well: a civil society organisation's ability to communicate and associate with others, to engage in peaceful assembly, to seek tax exemptions, to engage in philanthropy, and to access information. All of these factors, as well as the relationship between civil society organisations and their government, help to define the nature of the enabling environment for civil society within a particular country. Importantly, these factors, when taken together, significantly affect the receptivity of the public – that is, the lifeblood of a well-functioning civil society – to the important work performed by civil society.

To improve and strengthen a country's civil society sector, it is important to assess the current health of its enabling environment in an accurate and objective way. A series of national assessments of the enabling environments for civil society organisations worldwide was conceived jointly by CIVICUS World Alliance for Citizen Participation and the International Center for Not-for-Profit Law (ICNL). As part of the Civic Space Initiative program, and in partnership with ARTICLE19, and the World Movement for Democracy, with support from the Swedish International Development Agency, CIVICUS and ICNL co-produced a research guide indicating how such assessments can be completed. These national assessments are intended to be locally-driven, rooted in primary data collected at the grassroots level, and validated by a consensus based, multi-stakeholder process which, in the case of Cambodia, took the form of a national consultation meeting. Identified problems in the enabling environment for civil society, as outlined in this report, were the focus of deliberations at a national consultation meeting held on 28 November which had, as its core focus, the identification of strategies to overcome key challenges. Ultimately, the national assessments are intended to serve as springboards for local actors to improve the legal and enabling environments for civil society organisations (CSOs). By gathering evidence of the relevant issues and promoting dialogue about how they can be addressed, the national assessments are expected to facilitate the strengthening of civil society and improvements in civil society-government relations. An action plan accompanies this report.

Research objectives

This report was commissioned by the Cooperation Committee for Cambodia. It is based on primary and desktop research. Three research objectives for the current research project were identified by the Cooperation Committee for Cambodia.

1. Identify laws, regulations and the policy environment which affects the ability of Cambodian civil society to function at national and sub-national levels
2. Identify key problems, weaknesses and challenges of laws, regulations, and the policy environment which affects the ability of Cambodian civil society to function at national and sub-national levels
3. Determine how best to overcome the challenges of the legal, regulatory and policy framework for Cambodian civil society in order to increase democratic space in Cambodia

The third objective is not met by this report but rather by an accompanying action plan.

Definitions

In broad terms, the enabling environment for civil society refers to “the conditions within which civil society works.”² An **enabling environment** for civil society is premised on respect for, and upholding of, fundamental human rights that allow people to organise and participate in development. This involves, for example, guaranteeing:

- Freedom of association and assembly
- Legal recognition facilitating the work of CSOs
- The right to freedom of expression
- Freedom of movement, mobility rights and the right to travel
- The right to operate free of unwarranted state interference and
- The legal space to seek and secure necessary resources in support of legitimate roles in development.

A **civil society organisation** (CSO) is defined, for the purposes of this assessment, as a formalised collection of individuals that are independent of government and do not function as for-profit businesses³. Civil society organisations in Cambodia are generally understood to include traditional associations, ‘modern’ community-based organisations, non-governmental organizations (NGOs), trade unions, youth organisations, as well as think tanks and independent research organisations, independent institutions of higher learning, students’ associations, independent media organisations and associations, and business associations (Bañez-Ockelford 2011).

² https://civicus.org/eei/downloads/Civicus_EEI%20REPORT%202013_WEB_FINAL.pdf, accessed 28 November 2013

³ It is acknowledged that some civil society organisations conduct social enterprises, which have a motive of generating profits that directly benefit community members.

NGOs in Cambodia are constituted as different organisational types⁴ – international NGOs are administered by the Ministry of Foreign Affairs and International Cooperation, whereas local NGOs and community based organisations (CBOs) are administered by the Ministry of Interior or the Council of Ministers. Additionally, some CBOs seem able to register with – and are administered by – provincial levels of government, although it is not clear what legal frameworks govern this. This report is especially interested in the experiences of local NGOs and community based organisations.

CIVICUS and the International Center for Not-for-Profit Law have identified ten dimensions of the legal, regulatory and policy environment for civil society organisations⁵. Seven of these dimensions were chosen by the Cooperation Committee for Cambodia for study in Cambodia being (1) formation, (2) operation, (3) access to resources, (4) expression, (5) peaceful assembly, (6) government-civil society relations, and (7) civil society organisations' cooperation and coalition. The three dimensions that were not addressed in this assessment include internet freedom, taxation and access to information. Nonetheless, information about these three dimensions has been incorporated into other sections of the report. The seven assessed dimensions of an enabling environment for civil society in Cambodia are defined as follows:

(1) Formation

Formation refers to the right of citizens to organise themselves into groups that can debate, discuss, associate, and seek to influence broader society. This right is formally known as freedom of association. Freedom of assembly is protected in the Universal Declaration of Human Rights - Articles 20 and 23 – and the International Covenant on Civil and Political Rights – Article 22. Cambodia is signatory to both of these instruments and guarantees freedom of assembly in the Constitution (Article 41). The ease with which Cambodian citizens can form associations and register as civil society groups is of interest here

(2) Operation

For the purposes of this research, operation refers to the ability of civil society organisations to conduct their activities free of unwarranted interference from the state. Appropriate government oversight of civil society organisations is recognised as important.

(3) Access to Resources

For the purposes of this research, access to resources refers to the ability of civil society organisations to secure financial means from a variety of different sources such as from the Royal Government of Cambodia, through international grants and donations, from philanthropy and through local income-generating activities including social enterprises.

⁴ More information about different organisational types in Cambodia is included in Appendix 3.

⁵ The Enabling Environment National Assessment (EENA) research guide is currently not publicly available.

(4) Expression

The right to freedom of expression is a fundamental human right protected by Article 19 of the Universal Declaration of Human Rights and by Article 19 of the International Covenant on Civil and Political Rights. Freedom of expression has central importance to human life and dignity because it is the essential underpinning of all human rights – including the right to participate in political life – due to its cross-cutting nature as well as its role in ensuring the effective protection of rights. It is a freedom that includes the right to express controversial opinions in public; the mere fact that an idea is unpopular cannot justify preventing a person from expressing it. Freedom of expression is not, however, limited to the right to express oneself⁶. The Constitution of Cambodia guarantees freedom of expression in Article 41.

(5) Peaceful Assembly

Peaceful assembly is a broad term covering all types of gatherings, including peaceful demonstrations. As outlined above, the right to peaceful assembly is a fundamental freedom guaranteed under international human rights law, namely under [Article 20](#) of the Universal Declaration of Human Rights (UDHR), under [Article 21](#) of the International Covenant on Civil and Political Rights (ICCPR), and [Article 15](#) of the Convention on the Rights of the Child. The general rule under Article 21 of the International Covenant on Civil and Political Rights is that any restriction placed on such freedom shall be prohibited, unless it is provided by law, subjected to a strict test of necessity in a democratic society, and imposed only in the interests of national security or public safety, public order, the protection of health and public morals, or of the rights and freedoms of others⁷.

(6) Government-CSO relations

For the purposes of this research, the relationship between the Royal Government of Cambodia including all levels of subnational government and civil society organisations is of key importance to the ability of civil society to make a meaningful contribution to Cambodia's development. The research seeks to document the nature and extent of partnership between government and civil society and how this relationship is perceived by both sides.

(7) CSO Cooperation and Coalition

For the purposes of this research, CSO cooperation and coalition refers to the extent to which civil society actors are able to work together to achieve common aims, using formal partnerships or other forms of collaboration.

⁶ <http://www.article19.org/data/files/pdfs/publications/cambodia-gagged-democracy-at-risk-.pdf> accessed 17 November 2013

⁷ www.cambodia.ohchr.org, accessed 18 November 2013

Structure of report

The Country Report for Cambodia summarises relevant information on each of the seven chosen dimensions, focusing primarily on the problems, challenges and weaknesses with respect to each. (The accompanying action plan highlights potential solutions to these problems, challenges and weaknesses.) The Country Report for Cambodia is organised according to the seven dimensions. Each dimension forms a separate chapter, or section, of the report, with key headings identifying which dimension is being discussed. Each section begins with an overview of key findings, including positive as well as problematic legal provisions, along with any draft laws and implementation issues. This overview is followed by a more in-depth discussion of the applicable laws and regulations pertaining to each dimension, showing the results of discussions with interviewees and other key informants about how the implementation of laws/regulations happens in practice and the ways in which they are actually experienced by civil society organisations and affected individuals. The final section of each chapter summarises the key weaknesses and challenges regarding the laws/regulations and the ways in which they are implemented and experienced, as well as any other weaknesses or challenges pertaining to each dimension. This final section of each chapter is expected to provide the foundation for development of an advocacy plan that addresses the weaknesses and challenges.

Each section/chapter clearly specifies how the information for that dimension was gathered (whether through desktop research, interviews, and/or any other method), and where applicable, the number of individuals that were interviewed or otherwise participated in providing information.

Section II: Methodology

The research team worked in collaboration with research sponsor, Cooperation Committee for Cambodia (CCC) and indirectly with CCC's research advisory group, to determine appropriate methods for gathering and analysing the required information.

The method consisted of two major forms of data generation, a review of documents, and interviews with key stakeholders. A focus group with key stakeholders was also planned but was unable to be undertaken in the available timeframe. Data was analysed thematically by the research team and analysis was validated by the research sponsor and an advisory group. An earlier, summarised version of this report was also discussed at a national consultation workshop of Cambodian civil society stakeholders (including government and media) held in Phnom Penh on 28 November 2013 and attended by 75 people.

For the desktop review, a variety of websites and published documents were accessed by the research team. Notably, one research team member had previously written a review of literature addressing a similar topic and her literature review was mined for relevant information.

Individual interviews took place with different stakeholders including senior managers of local NGOs, NGO coalitions, donors and development partners, trade unions, and academics researching civil society. Interviewees were selected jointly by Cooperation Committee for Cambodia and the consultant following a comprehensive mapping exercise in which the expertise and experiences of a range of potential interviewees were discussed and mapped against the seven chosen dimensions. The primary selection criterion was perceived expertise in one or more of the seven dimensions of the enabling environment under study. Those with atypical and extreme experiences – both positive and negative – were specifically targeted in the selection process, although the research team was not always successful in securing relevant contact details and permissions to interview such people. In selecting interviewees, due consideration was also given to ensuring that the experiences of women, minority and indigenous peoples, youth and people with disabilities would be heard.

A total of 24 stakeholders participated in individual, face to face interviews; one interview was conducted with a pair of key informants. Altogether, 17 interviewees were drawn from local NGOs, and four from international NGOs; six interviewees were able to speak on behalf of membership organisations/coalitions of NGOs. Two interviewees were academics and two were from trade unions⁸. Overall, 10 interviewees were women. A list of interviewees comprises Appendix 2.

No media/journalists were interviewed because CCC and the research team were initially unable to identify any journalists in Cambodia who specialise in civil society reporting. However, a women's media NGO was included among the interviewees. Subsequent

⁸ These numbers do not total 24, as categories are not mutually exclusive and some interviewees identified as representing multiple groups of stakeholders.

identification of potential interviewees from the media resulted in a concerted effort to invite these stakeholders to join the consultation workshop on 28 November.

Significant difficulties in recruiting government officials to participate in an interview were encountered, as the research took place during the post-election period where many elected officials were occupied or otherwise unavailable to participate. The research team had intended to interview a range of government officials. However, despite multiple requests by mail, phone and email, no one made themselves available to speak on behalf of government.

The planned focus group with key stakeholders was specifically intended to engage those involved in community based organisations. As the focus group did not occur and thus those from community based organisations were not adequately represented in the key stakeholder interviews, individuals involved in community based organisations were recruited to join the national consultation workshop on 28 November in larger numbers than would otherwise have happened. This resulted in some community based organisations engaging with the preliminary findings of the research.

Interviews were conducted by the consultant and her team. Interviews followed a predetermined schedule that was first piloted in full with one interviewee by all three team members. After completion of the pilot interview, the schedule was subsequently amended. Refer Appendix 1 for a copy of the final interview schedule. Most interviewees answered questions relating to only one or two of the dimensions of an enabling environment. The matching of interviewees to dimensions was undertaken in advance by the research team. However, interviewees also had the opportunity to nominate their interest in particular dimensions of the enabling environment. Interviews lasted between 45 minutes and 2.5 hours.

To analyse data, responses from interviewees were collated, reviewed and, as needed, discussed by the research team. On occasions, corroborating information was sought informally from colleagues and connections within civil society in Cambodia. All information included in this report represents views that have been corroborated by multiple sources, unless otherwise reported.

In many instances, quotes presented in this report have been edited to represent the statements of several individuals simultaneously, in an effort to protect the anonymity of interviewees. Naturally, composite quotes render it difficult to attribute actions to any particular individual. To clarify, the purpose of this research is not to evaluate or assign responsibility for specific actions to any individual. In presenting testimonies, the research simply offers the views of the participating interviewees as objectively as possible.

Limitations

There are several limitations of this study. These are outlined below:

1. The views of some stakeholders, especially government, media and unregistered community based organisations, are under-represented in this report. As noted above, it proved extremely difficult to identify government actors who were willing and available to be interviewed at the time the research was undertaken. With more time or perhaps with assistance from other stakeholders, it is possible that the research team may have been able to identify some government stakeholders willing to be interviewed and may have also been able to facilitate a focus group with community based organisations, as was originally planned. As noted above, a special effort was made to invite community based organisation and media to participate in the national consultation workshop of 28 November, a strategy which succeeded to a small degree.
2. The sample size of 24 interviewees is clearly small, given that there are around 1,350 active civil society organisations in Cambodia. It is not possible to confirm that the views represented in this report are truly representative of civil society actors in Cambodia. The composition of the sample has of course directly impacted the nature and type of testimony that has been revealed to the researchers.
3. Time was a significant limitation of the study. A total of 34.5 days was allocated to completing the report and the accompanying action plan. With more time, the research team may have been able to explore the available literature in more depth, interview more stakeholders and more thoroughly analyse and corroborate the information collected.

The low participation of some key stakeholders combined with the small sample size means that this report is best understood as an educative tool for civil society to raise awareness about the challenges of the enabling environment. Insofar as it lacks the aforementioned key voices, this report cannot be considered as representing all relevant challenges facing the enabling environment.

Section III: Formation of Civil Society Organisations

Overview

Currently, there are around 1,350 active non-governmental organizations (NGOs) and associations in Cambodia. The right to form a civil society organisation in Cambodia is guaranteed in the Constitution of Cambodia and, in practice, citizens are able to access and use this right. The long and complex *Civil Code of Cambodia 2007* determines how NGOs and associations can be formed and registered in Cambodia, and the provisions in this Code are further supplemented by various additional laws, regulations and prakas. The complexity and confusing nature of these legal requirements for registration mean, in effect, that they are sometimes difficult to understand and can be interpreted in different ways. Therefore, civil society organisations have had varied experiences with the registration process, as the individual discretion of many officials in the relevant ministries and local government offices can affect the outcomes of the process. Registration requirements are viewed by some civil society organisations to be complex and onerous. However, interviewees agreed that Ministry of Interior staff are usually available to facilitate the registration process for an unofficial fee. Interviewees were unaware of any mechanism for appeal and any instances in which appeals may have been lodged. A proposed new law on NGOs and associations could potentially assist to simplify and consolidate the legal provisions for registration. However, many civil society actors are very concerned that the proposed changes to legal provisions determining formation requirements will, in fact, create additional barriers to the formation of civil society organisations.

Findings

The Constitution of Cambodia⁹ guarantees the right of Cambodia people to form civil society organisations, in that it is founded on principles of liberal democracy and pluralism, which are explicit. Article 42 states that Khmer citizens shall have the right to establish associations and political parties and that these rights shall be determined by law. Khmer citizens may also take part in mass organisations for mutual benefit to protect national achievements and social order¹⁰.

The *Civil Code of Cambodia 2007* is the main law which determines how NGOs – and probably associations too, although this is not explicit – can be formed and registered. The provisions of the *Civil Code* are formally being implemented effective as of December 2011; a newer law, *Promulgation on the Law of Implementation of the Civil Code 2011*, confirms this, simultaneously amending and supplementing a number of articles in the *Civil Code*.

⁹ The Cambodian Constitution was adopted by the Constitutional Assembly in Phnom Penh on 21 September 1993.

¹⁰ <http://www.constitution.org/cons/cambodia.htm>, accessed 16 November 2013

In this law, an organization granted the status of being the subject of rights and obligations independent of those of the members that compose the organization shall be referred to as an “incorporated associations”, and contributed assets granted the status of being the subject of rights and obligations independent [of the contributors of such assets] shall be referred to as an “incorporated foundation”. In this law juristic persons that do not have profit among their objects are referred to as “non-profit juristic persons” and juristic persons that do have profit among their objects as “for-profit juristic persons”. A non-profit juristic person may be incorporated under this law or another law or regulation (*Civil Code of Cambodia 2007* 2.1.1).

The language of the *Civil Code of Cambodia 2007* is confusing and not easy to understand. Both government officials and staff of civil society organisations do not use consistent language to describe issues of registration. For example, the distinction between incorporated associations and incorporated foundations is not widely understood and the term ‘non-profit juristic person’ is not used in practice¹¹. As such, it is difficult to discern which organisations are covered by the *Civil Code*. Some small associations, for example, which are known as community based organisations (CBOs) would seem to be free from regulation requirements, although it appears some have nonetheless registered with the Royal Government of Cambodia. One of the barriers to greater awareness of the *Civil Code* both by civil servants and the public is the very length of the law itself. It contains 1,305 articles in nine books although only a few of these provisions seem to apply to NGOs and/or associations.

An overarching law on NGOs and associations is proposed, supplementing the *Civil Code of Cambodia 2007* and potentially – although not necessarily – simplifying and consolidating information relevant to the formation and operation of civil society organisations. This law is currently in its fourth draft. The draft law has been contested by some civil society organisations who voice concerns that it could possibly be used to restrain criticism of government bodies by civil society organisations, or to restrict freedom of association and expression. In fact, the very need for the law is questioned by some¹². Notably, as indicated above, civil society organisations can already obtain legal status through the *Civil Code*. In December 2011, the Prime Minister of Cambodia, Hun Sen, partially in response to these concerns by civil society as well as those from international development partners and bi-lateral donors, committed to delaying introduction of the law until after the national elections held in mid- 2013¹³. A recent announcement¹⁴ suggests that the proposed law will be implemented as part of the current (5th) mandate of Prime Minister Hun Sen’s government.

Sections 46-118 of *The Civil Code of Cambodia 2007* provide details on registration and dissolution of non-profit legal entities and various other registration requirements. However, the status and procedures for registration of NGOs are also currently governed by a handful of additional

¹¹ Definitions of civil society organisations as used by the Cooperation Committee for Cambodia, a leading membership organisation of civil society actors, is attached as Appendix 3.

¹² See, for example, [http://www.sithi.org/admin/upload/media/\[2012-08-30\]The/2011_10_19_%20Fact%20Sheet%20%E2%80%93%20LANGO%20and%20the%20Shrinking%20Space%20for%20Civil%20Society%20in%20Cambodia.pdf](http://www.sithi.org/admin/upload/media/[2012-08-30]The/2011_10_19_%20Fact%20Sheet%20%E2%80%93%20LANGO%20and%20the%20Shrinking%20Space%20for%20Civil%20Society%20in%20Cambodia.pdf), accessed 31 March 2013

¹³ <http://www.rfa.org/english/news/cambodia/delayed-12282011172731.html>, accessed 15 March 2013

¹⁴ <http://www.cambodiadaily.com/news/government-pushes-ahead-with-ngo-law-48245/>, accessed 8 December 2013

laws and regulations¹⁵. According to an administrative order of the Royal Government of Cambodia, known as a *prakas*¹⁶, local non-governmental organizations, that is, those run predominantly by Cambodian citizens, must register through the Ministry of Interior (MOI). Different and even more onerous provisions apply to the registration of international non-governmental organizations. The MOI requires the following:

1. Five copies of the application form for registration, with signatures (confirmed by commune and district officials on the back of the form)
2. Two copies of permission letters, issued by the municipality, relating to the location of the office of the local organisation
3. The curriculum vitae of at least three Cambodian founders, including the director, the administrator and the treasurer (five copies each), and 4cm x 6cm photographs of each founder (attached to a copy of the Khmer ID card or birth certificate or equivalent documentation). Note that while foreigners can be involved in the management and functioning of a local NGO, the key figures – including the chairman, administrative officer and treasurer – must be Cambodian citizens¹⁷
4. Five copies of the statute (Memorandum and Article of Association) of the local organisation, based on a template issued by MOI, with signatures of the director
5. Five copies of the organisational structure, based on a template issued by MOI, with signatures of the director
6. Five copies of a map of the NGO's address, certified by the local *sangkat*, four copies of the lease and four 10cm x 15cm photos of the office's façade, two of the office and two with the house owner and director together in front of the office. This final requirement is for associations or organisations whose office is in Phnom Penh. Less stringent requirements apply to associations and organisations in provincial areas.

Regarding the Memorandum and Article of Association, no specific agendas or purposes of intending registrants are expressly forbidden. As such, human rights organisations and democracy promotion organisations are entitled to register. Interviewees report that Ministry of Interior staff routinely check for consistency in the registering organisation's mission and vision and compliance with other features of the Memorandum. One interviewee reported being asked by the Ministry of Interior to change the organisation's mission and vision as well an article related to the promotion and organisation of a network (and this request was fulfilled).

In terms of the capitalisation requirements of registering a civil society organisation, the *Civil Code of Cambodia 2007* specifies that a limited liability incorporated association must have an asset base of not less than 20 000 000 (twenty million) riel, which equates to approximately US\$5,000 and an incorporated foundation shall maintain an asset base of not less than 200 000 000 (two hundred million) riels (Civil Code of Cambodia 2007), or about US\$50,000. It is unclear whether civil society organisations are aware of or attentive to complying with this provision, as no information about capitalisation is sought by the Ministry of Interior at the time of registration.

¹⁵ <http://cambodianlaw.wordpress.com/2010/07/16/doing-good-by-doing-it-right-setting-up-an-ngo-in-cambodia/>, accessed 16 November 2013

¹⁶ <http://www.icnl.org/research/monitor/cambodia.html>, accessed 28 February 2013

¹⁷ <http://cambodianlaw.wordpress.com/2010/07/16/doing-good-by-doing-it-right-setting-up-an-ngo-in-cambodia/>, accessed 16 November 2013

Registration must be done in person; electronic registration is not possible. It typically takes a few months to fully register. Because registration requirements for organisations outside of the capital, Phnom Penh, are slightly more relaxed, faster registration in provincial areas is possible. One informant from a provincial area advised that their organisation secured registration after only 15 days.

Once secured, registrations do not need to be renewed: No maximum or minimum duration of registration is specified in the *Civil Code*. However, international NGOs need to renew their memorandum of understanding with the Ministry of Foreign Affairs every three years. Any changes to an organisation's address, turnover in the board of directors or among senior staff, or changes to the Memorandum and Article of Association need to be reported to the Ministry of Interior.

Procedural safeguards regarding registration seem to be lacking, with the Ministry of Interior or Ministry of Foreign Affairs having full discretion to deny registration¹⁸. No interviewee was able to point to any examples of an appeal being lodged by an organisation whose registration was denied or delayed. It seems that no formal mechanism of appeal is in place.

Some interviewees report that unofficial fees are often paid to commune and district officials in order to secure the required stamps on documents. Apparently, some large NGOs use agents who will facilitate the process of registration and who charge an all-inclusive fee for this service. Interviewees for this research advised that they paid government officials around US\$300 in unofficial fees in order to process their applications for registration smoothly and quickly. Some interviewees from civil society expressed frustration that certain civil servants within the Ministry of Interior were unhelpful to them during the registration process. This involved, for instance, the bureaucrats failing to provide information that could facilitate preparation and compilation of a full, complete set of documents for registration unless a facilitation fee was paid. Some civil society staff interviewed, however, reported receiving timely assistance. It seems then that the level of cooperation by individual civil servants within the Ministry depends to some degree on whether the civil society applicant already has a strong relationship with that individual or one of his/her colleagues.

Given what is publicly known about the low salaries of civil servants in Cambodia¹⁹, it is quite possible that staff in the Ministry of Interior are underpaid, under-resourced and thinly stretched. However, no interviewees explicitly confirmed this.

According to a Census undertaken in late 2011, active non-governmental organizations (NGOs) and associations in Cambodia now number 1,350 (Cooperation Committee for Cambodia 2012). A much larger number of organisations are formally registered, including about 1,110 smaller community based organisations; such organisations tend to work informally at grass-roots level and do not always register their presence with authorities (Cord Cambodia 2011). As such,

¹⁸ <http://www.icnl.org/research/monitor/cambodia.html>, accessed 28 February 2013

¹⁹ See, for example, http://www1.worldbank.org/publicsector/civilservice/rightsizing/KH%20CSR%20Case_Draft2%200914.doc, accessed 30 November 2013

there are problems with both registered organisations being defunct and unregistered organisations being active. This is compounded by general difficulties in determining the actual number of registered NGOs and associations because the databases held by the Ministry of Interior, the Council for the Development of Cambodia and various civil society umbrella organisations are not always up to date nor aligned.

The current draft law on NGOs and associations is expected to influence significantly the formation and operation of civil society organisations in Cambodia. The key concern in relation to the draft law is the granting of considerable powers to both local and national government officials which may be used to control the rights of civil society organisation members to organise and express themselves. There are several main areas of concern in the fourth draft of the law (12 December 2011), specific to the formation of civil society organisations:

1. Registration of associations and NGOs continues to be very complex. Documentation requirements continue to be burdensome; and a new requirement for an office is proposed, establishing a barrier for smaller organisations. Furthermore, whilst activities conducted by unregistered associations will apparently be lawful, “prior written notice” of activities will also be required of CBOs.
2. The law does not include a time period for an appeals process for the denial of registration.
3. There do not appear to be any safeguards to ensure that either denials of registration or involuntary dissolutions are imposed objectively and there is no mention of a right to appeal after suspension or termination.
4. The law proposes that eligible founding members of both associations and NGOs be restricted to Cambodian nationals; and additional barriers to the registration and activity of foreign NGOs are also proposed.

A more general criticism levelled at the draft law is that key terms are left undefined, and many sections are vague.

Method

The above information was sourced from an extensive review of documents, notably the *Civil Code of Cambodia 2007*, published analyses of the *Civil Code* and analyses of the proposed new law on NGOs and associations. In this regard, the NGO Law Monitor (<http://www.icnl.org/research/monitor/cambodia.html>) proved especially helpful. Formal interviews with the Cooperation Committee for Cambodia and an indigenous people’s organisation provided information about how legal provisions are interpreted and applied in practice. Available information was augmented and checked against anecdotal evidence arising from informal conversations with civil society actors.

Summary of key challenges

Key challenges in relation to the formation of civil society organisations in Cambodia are:

- Lack of clarity in key provisions of the Civil Code for Cambodia, including the very definition of non-governmental organizations
- Complex registration requirements which are sometimes difficult to understand and follow
- Apparent absence of objective criteria being uniformly applied by Ministry officials in determining civil society organisations' eligibility for registration
- Payment of unofficial fees by civil society staff to individual Ministry officials in order to secure assistance for the registration process
- Apparent absence of a mechanism of appeal for failed attempts at registration
- Uncertainty and doubt among civil society actors concerning proposed changes to legal provisions determining formation requirements (i.e. the proposed introduction of a law on NGOs and associations)
- Gap between determinants of the law and the actual practice of implementing the law

Section IV: Operation of Civil Society Organisations

Overview

Currently, relevant laws applicable to civil society in Cambodia include the *Civil Code on Cambodia* 2007, the *Law on Taxation* 2004, the *Penal Code* 2009, the *Peaceful Demonstrations Law* 2009, the *Anti-corruption Law* 2010 and the *Counter Terrorism Law* 2007. Key administrative requirements affecting civil society organisations include a requirement to:

- sign project agreements with at least one line ministry - this is especially important for international NGOs which cannot be registered without such an agreement in place,
- report project activities to government,
- disclose assets (affecting senior staff only),
- seek permission to call public assemblies, and
- report changes in the employment of senior staff, composition of the board and changes to office location.

In practice, many of these requirements, with the exception of seeking permission for assemblies, are not met by civil society organisations. Civil society organisations do not report being subjected to government audit or inspection and generally perceive that oversight of civil society organisations is not a high priority for most government departments. Oversight by relevant government bodies of their work is perceived by civil society staff interviewed as being moderate. Indeed, some interviewees seem to believe that government failure to implement laws consistently has the effect of making their oversight seem arbitrary, or subjective. The interviewees reported that this lack of consistency and uniformity in the application of the laws can actually become a greater burden than the requirements exacted by the laws or policies themselves. The operation of civil society organisations at subnational levels is affected by those officials' interpretation of the legal framework governing civil society organisational activities. There are several recorded instances of civil society organisations, especially organisations promoting human rights, being subjected to words or actions by individual government officials which involve the use of coercion or force by the latter. Moreover, there are recorded instances where local government officials have ordered civil society organisations to stop their activities. There is growing concern among civil society staff that certain local, district, and provincial officials within the government seem inclined to the use of strong pressure and in some cases force when dealing with them. Many civil society organisations consider that the proposed new law on NGOs and associations will unnecessarily increase the government's role in the oversight of civil society organisations and give certain officials within the government the power to more easily control the operations of civil society organisations.

Findings

Relevant laws applicable to civil society in Cambodia include the *Civil Code on Cambodia 2007*, the *Law on Taxation 2004*, the *Penal Code 2009*, the *Anti-corruption Law 2010* and the *Peaceful Demonstrations Law 2009*. As noted in the section addressing the formation of civil society organisations, the *Civil Code* defines the legal nature of NGOs and associations. NGOs can seek tax exemptions in accordance with the *Law on Taxation 2004* (Article 9). The *Counter-Terrorism Law 2007* requires NGOs to accept only ‘clean’ funds whereas the *Penal Code 2009* and *Anti-Corruption Law 2010* both address fraud. In the case of the *Anti-Corruption Law 2010*, the Royal Government of Cambodia has taken the unprecedented step of including civil society leaders within the scope of the law, requiring them to disclose assets. The *Peaceful Demonstrations Law 2009* is explained later in this report – see Section VI.

Beyond organisational registration, civil society organisations are expected to sign project agreements with a government ministry. Securing an agreement means submitting a letter of request for support, copies of strategic plans or project action plans, project budgets, staff lists and a list of vehicles²⁰. It is unclear on what basis requests for project agreements are assessed. Nearly 95% of all registered, active international NGOs have at least one agreement with the government and 86% of registered, active local NGOs also have an agreement with government (Cooperation Committee for Cambodia 2013). However, there is some confusion in this statistic with some CSOs equating registration with the development of a formal agreement with government, which may lead to the over-reporting of agreements with government (Cooperation Committee for Cambodia 2013). Two interviewees reported paying unofficial fees to individual bureaucrats within a relevant ministry: “If we sign agreement with ministry and work with them as counterpart, we pay money for service with no clear purpose and unofficial receipt”.

Following the negotiation of a project agreement, civil society organisations then have to register their project activities with the Council for the Development of Cambodia (Bañez-Ockelford 2011; Cooperation Committee for Cambodia 2013). Registered civil society organisations need to provide general updates to the CDC every three months (Bañez-Ockelford 2011). However, most civil society organisations do not report to CDC at all (Cooperation Committee for Cambodia 2013). Project updates are expected to include activity reports and a financial statement. Reporting to the Ministry of Interior (MOI), on the other hand, is annual.

Civil society organisations’ project activities do not appear to be assessed in terms of their alignment with governmental priorities as defined in national development plans and there is no requirement for project activities to be aligned in this manner.

The Council for the Development of Cambodia (CDC) has issued guidelines relating to activity notification of NGOs in the form of an NGO Guidebook. This book seems to be available in hard copy only²¹ and there is low awareness of this Guidebook among local NGOs. No

²⁰ <http://www.ccc-cambodia.org/aboutus/faq.html>, accessed 1 December 2013

²¹ Efforts to track down a citable version of the Guidebook proved unsuccessful.

interviewees consulted on this matter stated that they had ever submitted the required activity or financial reports to CDC or to MOI. Changes to key positions such as director, president and secretary are also required to be reported, however, most interviewees also had no experience of submitting such reports. One interviewee reported advising the government of a change in the organisation's business address (and paying an unofficial fee to do so).

If local NGOs are conducting activities in a province other than where they are registered, then the local authority needs to be informed five days in advance. Whether this happens or not varies considerably and seems dependent on several factors including the CSO's own assessment about the likelihood that an activity will draw the scrutiny of local officials who may even try to interfere with or stop it. In some provinces these guidelines are interpreted by individual government authorities there to mean that approval for CSO activity is required from provincial authorities. One interviewee reported that securing approval to conduct such activities in provincial areas involves a lot of administrative work and, from year to year, it is becoming more difficult.

Practices of securing permission from provincial authorities vary significantly from province to province. During the election campaign of July 2013, subnational government officials in Ratanakiri issued a letter to inform civil society organisations that they should not to invite any (village) stakeholders to have meetings with them during the campaign period. Another interviewee reported:

(Organisation) cannot rent their office for one project. In the past, the Kampong Thom governor not allowed civil society organisations to run the workshop. But in Battambang, the police work with (organisation), because they don't want (organisation) said bad things about them, or report to newspaper.

Anonymous interviewee

A report commissioned by the UNDP, having also examined evidence of restrictions of freedom of assembly and expression by subnational authorities concluded that "(t)his is not a generalized behavior of sub-national authorities (SNAs). It is localized only in a few provinces, and it is mainly due to a lack of capacity and understanding of civil society in SNAs, and to the strong upward accountability and fear of repercussions if they loose (sic) control over CSOs activities in their provinces or districts" (Merla 2010, p. 25).

Whilst reporting of project activities and related issues is clearly required by the government's regulatory framework, this requirement is not widely understood. Even when it is understood, how this requirement is interpreted in practice varies widely. Interviewees variously reported:

- a. not advising the government of any upcoming meetings – and never having been requested to do so,
- b. needing to advise the government only about those meetings attended by more than 200-300 people and
- c. needing to advise the government of only those meetings attended by more than 700.

One interviewee noted that meetings in public places are more sensitive than those in private venues and all public meetings would normally be notified to the government, consistent with

the *Peaceful Demonstrations Law 2009* – see Section VI. In almost all instances, interviewees reported feeling burdened by the administrative requirements associated with having to report these types of gatherings to the government.

Overall, however, interviewees did not perceive that the government has significant oversight of civil society. “We have space to work with them. However, it depend on the person that we work with; if she or he moderate, we easy to approach them”. As stated above, most interviewees seem to perceive that the greater barrier to civil society’s operation is insufficient understanding of and capacity to effectively and equitably implement the law by certain government civil servants. A composite quote from two interviewees illustrates this point:

They treat us not according to law, but based on their feeling and relation. The government uses verbal orders or decisions. Law enforcement is not the genuine commitment of government. The authority did not understand/ be aware about law and policies.

Anonymous interviewees

As is already apparent, many civil society organisations do not meet their legal obligations to report to CDC or MOI²². This is not followed up by government, except in isolated cases. ‘Failure to submit reports’ has, however, been used on some occasions by officials at various levels within the government to criticise certain CSOs, or in some cases even to interfere with their operations or demand that they suspend their operations²³. In 2011, a local NGO called Sahmakum Teang Tnaut (STT) was suspended for a period of five months for failing to submit a report to the government. STT was at the time involved in preparation of a report citing the failure of local government officials to uphold the rights of urban poor communities displaced by a major development project. STT did not appeal the decision, nor did the relevant ministry who suspended them provide any information about their right to appeal.

According to the *Civil Code of Cambodia 2007*, the grounds for dissolution of an incorporated association include: bankruptcy, extreme hardship leading to irrecoverable damage, extremely “improper management”, the number of members being reduced to one, incorporation for an illegal object; failure to commence business within one year after incorporation, cessation of business for one year or more; and/or continued or repeated conduct that deviates from or abuses organisational powers(*Civil Code of Cambodia 2007*). No interviewees were aware of any instances of dissolution of a registered non-governmental organization by government in accordance with the provisions of the *Civil Code*. Voluntary dissolution of NGOs is also permitted and the procedures for this are usually addressed in each registered organisation’s by-laws.

There is growing concern expressed by certain human rights organisations that some elected officials and members of the security forces (i.e. police and military) are increasingly resorting to the use of pressure, coercion, and even force to deal with NGO staff and community

²² <http://www.aidinfo.org/wp-content/uploads/2009/09/Case-Study-Cambodia.pdf>, accessed 21 June 2013

²³ <https://www.devex.com/en/news/cambodia-s-consecutive-warnings-suspension-of-critical-ngos-a-preview-of-things-to-come/75689>, accessed 21 June 2013

members where those NGOs operate.²⁴ This pattern of behaviour seems to be more evident with regard to NGOs that conduct activities relating to the protection of land rights of the poorest communities in urban and rural areas, natural resource management, and the promotion of the freedoms of expression, assembly and association. Of these activities, the arrest by local police of CSO staff and community members for their involvement in these activities is cause for particular concern. The following quote is a composite of the experiences of three interviewees – the composition is intended to protect the anonymity of interviewees.

We got a lot of warning, and frightening to kill or close down office. They sent police to monitor our activities; strangers followed us every day. People parked near my house and watched everything I did. They sent someone to shoot me at my house and they frighten my daughter. It scared my wife. Recently when I organised indigenous peoples' day and I did not give [time to] parliamentary member to speak before community, they unhappy and said to me that they will report to Ministry of Environment to close down our office.

Anonymous interviewees

As already noted in Section II – Methodology, composite quotes render it difficult to attribute actions to any particular individual. It is not clear who 'we' or 'they' may be in the above quote.

Civil society organisations in Cambodia are not currently subject to formal government audits or inspections, although informal monitoring of NGO events and activities is not unusual. Similarly, public reporting of civil society organisations is not required or specified in relevant laws. However, the latest draft of the Law on NGOs and Associations contains provisions for government audits and inspections of NGOs. It is proposed that NGOs be required to open their financial books for inspection by the Ministry of Finance or National Audit Authority. Many civil society organisations seem to consider that the proposed new law on NGOs and associations will unnecessarily increase the government's role in the oversight of civil society organisations and allow government to interfere with or control civil society organisations.

The *Anti-Corruption Law 2010* requires civil society leaders to report assets, however, this provision has not yet taken effect.

In terms of the *Law on Taxation 2004*, NGOs are eligible to apply for a tax exemption. This is not automatic and the process of applying can be a long and drawn out procedure²⁵. NGO employees remain subject to income (salary) tax and NGOs still need to comply with other related requirements including contributing to the National Social Security Fund. In practice, many NGOs do not pay tax even if they have not secured an exemption under the law.

Forthcoming laws in relation to trade unions, farmer associations and land management, as well as a proposed cyber law, may also impact on civil society's ability to operate. How these laws will impact civil society remains to be seen.

²⁴ See, for example, <http://www.hrw.org/world-report/2013/country-chapters/cambodia>, accessed 31 March 2013

²⁵ <http://cambodianlaw.wordpress.com/2011/05/30/do-ngo-employees-have-to-pay-tax-on-salary/>, accessed 1 December 2013

Method

Information explained here was sourced from an extensive review of key documents and interviews with five civil society actors. Interviewees included representatives from an indigenous-led organisation, a legal service, a youth service, an international NGO and a membership organisation. Available information was augmented and checked against anecdotal evidence arising from informal conversations with civil society actors.

Summary of key challenges

Key challenges in relation to the operation of civil society organisations in Cambodia are:

- Low compliance with existing legal provisions by civil society organisations
- Reporting obligations that are complex and difficult to understand
- Insufficient capacity of relevant government officials to implement existing legal provisions
- Lack of uniform application of regulatory frameworks and legal provisions by various subnational actors within government
- Payment of unofficial fees to some civil servants within government in order to facilitate operations of civil society organisations
- Absence of, and inconsistent, consequences for failure to comply with legal obligations
- Occasional use of coercion, pressure, or even verbal or physical force by certain local and/or national security forces (or their representatives), elected officials, and/or government bureaucrats when dealing with certain staff of non-governmental organizations, in particular those involved in human rights work
- Absence of a mechanism for appeal in the event of deregistration, suspension or dissolution
- Fear among civil society actors in relation to the potential misuse of the proposed new law on NGOs and associations

Section V: Access to Resources²⁶

Overview

Total annual expenditure by international and local NGOs in Cambodia has been estimated at US\$600-700 million, which is comparable to current total government expenditure on social services (Cooperation Committee for Cambodia 2013). Cambodian civil society organisations are heavily dependent on international grants and donations. There are minimal legal barriers to the receipt of international funds by local NGOs in Cambodia, documented in the *Counter Terrorism Law 2007*; indeed, the legal environment for accessing funds can be characterised as permissive. There are, however, some significant non-legal barriers to accessing funds largely associated with the shrinking availability of international funds, increasing competition for such funds and generally low capacity in fundraising among local civil society organisations. In responding to these issues, NGOs are increasingly engaged in social enterprises. Local philanthropy is negligible and grants from government are uncommon, although increasing.

Findings

Total annual expenditure by international and local NGOs in Cambodia has been estimated at US\$600-700 million (Cooperation Committee for Cambodia 2013). Such estimations are contentious – the Cambodia Development Effectiveness Report 2011 suggests a much more modest contribution of approximately US\$200 million²⁷. In broad terms, it seems likely that the level of expenditure of NGOs in Cambodia is comparable to current total government expenditure on social services (Cooperation Committee for Cambodia 2012). Partially, this money is spent on employing approximately 43,000 Cambodians (Cooperation Committee for Cambodia 2013). Some of these funds (estimated to be US\$44 million) are disbursed to smaller associations and community-based organisations (Cooperation Committee for Cambodia 2012, 2013).

Over 30% of international NGOs operating in Cambodia indicate having yearly expenditures greater than \$1 million U.S. dollars (USD), but only 4% of local NGOs are in that size category, and local NGOs generally are more constrained in financial terms than international NGOs (Suárez & Marshall 2012). Yet, there are no legal restrictions on how local civil society organisations can raise funds. Constraints in accessing funds seem mostly related to local NGOs' lower capacity – compared with international NGOs – in identifying appropriate donors, communicating with them in English, building trusting relationships with them and submitting clear and viable (sophisticated) proposals for funding. As in most countries, access

²⁶ For the purposes of this research, access to financial resources is of key interest and this section addresses this issue. Civil society organisations also require access to technical and human resources, however, a review of how these resources can be accessed in Cambodia was beyond the scope of the research.

²⁷ See [http://www.cdc-crdb.gov.kh/cdc/aid_management/DER%202011%20FINAL%20\(31%20Oct%202011\).pdf](http://www.cdc-crdb.gov.kh/cdc/aid_management/DER%202011%20FINAL%20(31%20Oct%202011).pdf), accessed 1 December 2013

to foreign funds is highly competitive. The near absence of local philanthropy means that local fundraising is also constrained.

Constraints notwithstanding, on average, NGOs maintain two sources of funding (Suárez & Marshall 2012). Grants and donations are the most significant and most common source of funding for NGOs operating in Cambodia. Commonly, grants and contracts are provided by the United Nations, foreign governments and international NGOs, with nearly 60% of local and international NGOs in Cambodia receiving funding from these organisations. Accordingly, civil society in Cambodia is heavily dependent on such grants. Almost 56% of local NGOs secure donations from individuals – often foreigners – and 32% of local NGOs earn their own income, through commercial activities (Suárez & Marshall 2012). Commercial activities may include income from health clinics, restaurants, office rentals, sale of publications and craft shops (Cooperation Committee for Cambodia 2012). Over 40% of international NGOs have bilateral (non-Cambodian) government funding through foreign aid, although just 22% of national NGOs access funds in this way (Suárez & Marshall 2012). Very occasionally, some NGOs are able to access state funds. Cambodian government funding and supports in the form of tax exemption, subsidies or partnership in a project account for 3.8% of the income of NGOs (Cooperation Committee for Cambodia 2012).

All funded NGOs in Cambodia receive at least some of their funding from foreign sources (Bañez-Ockelford 2011). Foreign funds generally support the full range of civil society programs and activities, although many organisations struggle to secure adequate funds for activities that can be characterised as “overheads”, such as program development and design, strategic planning, governance development, institutionalising innovations, research, staff capacity development and the like. Some donors are willing to contribute to such costs, other are not, depending on their internal policies. Most donors place a cap on administrative expenses of around 10%. Local civil society organisations can sometimes source untied funds from either earned income or individual donors. These funds are especially useful in meeting core or overhead costs.

Unregistered community based organisations (CBOs) and networks of NGOs cannot receive funds in their right, mostly because donor policies do not permit this. However, such organisations and networks are usually legally able to access funds indirectly through a registered NGO, which may act as the sponsor of the CBO or secretariat for the network, as the case may be.

For the past twenty or so years, foreign institutional donors have been the most reliable source of income for Cambodian civil society organisations. However, after twenty years of investment in Cambodia’s civil society and especially as Cambodia prepares to become a middle-income country in the next few years, many donors have become increasingly interested in promoting the sustainability of programs using alternative forms of funding with a view to reducing international investment in Cambodia’s development. Other countries in the region, notably Myanmar, have emerged as higher priorities for aid distribution. Some donors have recently closed their offices in Cambodia. For example, the UK’s Department for International Development closed its office in Cambodia in January 2011, Canada ceased their bilateral

funding relationship with Cambodia effective as of June 2013 and Danida, Denmark's aid agency, is also scheduled to phase out.

In response to changing donor priorities, many NGOs are under pressure to start earning their own income. The establishment of social enterprises is an increasingly common practice of NGOs. According to one interviewee, media institutions and agricultural development NGOs have been relatively successful in generating their own income. Some NGOs are even transforming themselves into microfinance institutions or social enterprises or universities. However, NGOs that change their legal status to a (social) enterprise – which is, in effect, a for-profit institution – are “being disrespectful” of their own by-laws.

Partnership agreements are essential to doing business (and getting grants) in Cambodia. Yet, the Royal Government of Cambodia does not have a formal high level partnership with civil society that facilitates the transfer of funds to civil society from government. The government has established relationships with the private sector, through a trade forum, and a government-donor partnership, notably through the Government-Donor Coordinating Committee and the Cambodia Development Cooperation Forum. Yet these forums do not incorporate civil society participation. There is no equivalent mechanism – a forum or agreement – that facilitates cooperation between the government and civil society. Combined with the limited role ascribed to civil society (i.e. only service delivery) in the Royal Government of Cambodia's new Development Cooperation and Partnership Strategy 2014-2018, , it would seem that the government does not fully acknowledge the potential role that civil society organisations can play as strategic partners in the development of Cambodia.

Despite the absence of a broad or high level partnership agreement, the Royal Government of Cambodia has established some funds for NGOs, mostly at the behest the foreign partners. Large internationally funded projects such as the Demand for Good Governance project funded by the World Bank, have required the government to set aside funds for local NGOs. Criteria for accessing these types of funds is generally clear, as it follows procurement guidelines specified by the donors. For example, the Ministry of Information, the Ministry of Labour and the National Assembly Senate Relations and Inspection Ministry, using pooled funds from the World Bank and AusAid, and through linking organisations like The Asia Foundation, have distributed funds to more than 20 NGOs. As another example, the National NGO Fund, which is intended for the expansion of legal and social services for women and girl survivors of gender-based violence and is administered by the Ministry of Women's Affairs, with support from GIZ and AECID, have offered funds to NGOs. Six NGOs have been able to avail themselves of support through this National NGO Fund. One interviewee with experience of accessing government funds reported that the process for accessing funds was cumbersome and bureaucratic. This seemed to be related to the fact that two government ministries with slightly different concerns and agendas were co-administering the grant..

While examples of government distribution of funds to NGOs are growing, many CSOs still experience that government funds are inaccessible to them. Furthermore, the government's role as funder is sometimes downplayed. The international donor and back-funder is more likely to receive the credit for having provided funds. And government is perceived more as a seeker rather than giver of funds. There is no sense among civil society actors that the government

would seek to continue supporting civil society in financial terms without the requirement to do so being imposed by international partners.

The government has no incentive to see NGOs being better resourced. The legal framework in Cambodia does not encourage local resource mobilisation for NGOs.

Anonymous interviewee

To its credit, the Royal Government of Cambodia has a solid history of supporting civil society organisations at times of humanitarian crisis such as after floods and storms. The government has an especially strong relationship with the Cambodian Red Cross, which is the largest humanitarian organisation in Cambodia. Importantly, the family of Prime Minister Hun Sen are closely involved in the governance of the Cambodian Red Cross.

There is a limited history or culture of philanthropy that benefits NGOs in Cambodia. However, donations for religious purposes and to political parties are the norm and article 16 of the *Law on Taxation 2004* allows for limited tax deductions for making charitable donations. Some NGOs have experimented with the promotion of local philanthropy but these efforts are modest and have not made significant traction as yet. Furada, a coalition of local NGOs providing services to people with disability, is a case in point. Furada has developed marketing campaigns and hosted several fundraising events; it also secured international assistance in developing a local culture of philanthropy toward people with a disability. However, its success has been very limited. In general, corporations and Cambodian individuals are not regular financial contributors to civil society organisations.

Projects in villages around Cambodia often require local community members to make in-kind contributions towards a project. For example, villagers may be asked to donate their labour or secure natural resources for construction – bamboo or the like.

In terms of the legal framework for receiving and expending funds, restrictions are minimal. The *Counter Terrorism Law 2007* contains detailed provisions relating to the question of financing of and material assistance to terrorism and “accords significant power to the Executive in limiting the financing of activities and organisations linked to terrorism” (Observatory for the Protection of Human Rights Defenders 2010, p. 11). For expenditure, restrictions are more likely to be sourced from a civil society organisation’s own by-laws, rather than national laws. Civil society organisations generally have provision, in their by-laws, for ensuring that profits are not distributed to staff or directors, and that upon dissolution of the organisation, any remaining funds or assets are transferred appropriately, sometimes to a non-governmental organization with similar objectives and sometimes to government.

Some restrictions in relation to accessing and spending resources are proposed in the draft law on NGOs and associations. According to the draft law, civil society actors will have to confirm that donations are sourced legally. This provision does not appear problematic as it is consistent with the *Counter Terrorism Law 2007*. The draft law also requires civil society organisations to cap expenditure on administrative costs.

Method

Information explained here was sourced from a review of key documents, interviews with three civil society actors and an interview with an academic specialising in economic research. Interviewees included representatives from two international NGOs and one local NGO. Available information was augmented and checked against anecdotal evidence arising from informal conversations with civil society actors.

Summary of key challenges

Key challenges for Cambodian civil society organisations to access resources are:

- Absence of official encouragement of donations to civil society organisations by corporations
- Increasing competition among CSOs to access foreign funds
- Increasing donor concern with the financial sustainability of projects and shifting donor priorities (away from Cambodia)
- Low organisational capacity of CSOs in fundraising
- Perceived pressure for CSOs to generate independent income
- Potential for some social enterprise development to displace the core work of civil society
- Absence of a high level partnership agreement or other formal granting mechanism between government and civil society as a whole
- Near absence of local philanthropy, except in relation to religious and political donations
- Absence of policy and legal frameworks in relation to social enterprise development by NGOs.

Section VI: Expression

Overview

Article 41 of the Constitution of Cambodia states that Khmer citizens shall have freedom of expression, press, publication and assembly. Yet, the press in Cambodia has been deemed ‘not free’ and infringements on free speech have been increasing since 2012 and into 2013, to the point of being deemed ‘exceptional’²⁸. Television and newspapers are largely controlled by the dominant political party, however, the internet is only lightly regulated. The *Penal Code 2009* and, in due course, the proposed new anti-cyber law provides the legal framework for freedom of expression in Cambodia, addressing issues of defamation, disinformation and incitement. Both laws are of concern to civil society actors because they are perceived as unnecessarily constraining freedom of expression. Furthermore, Article 41 of the *Anti-Corruption Law 2010* restricts freedom to make complaints especially against government officials. Nonetheless, civil society organisations seem to intuitively understand what can and cannot be said, using this cultural knowledge to exercise judgement about how best to advocate for what they need. Interviewees also perceive that their criticisms of government – when contained within certain assumed and unstated boundaries – are generally tolerated. Civil society actors have been lobbying the government to introduce a freedom of information law for many years.

Findings

Article 41 of the Constitution of Cambodia states that Khmer citizens shall have freedom of expression, press, publication and assembly. Supporting this, Cambodia is signatory to all international human rights treaties that address freedom of expression. However, the commitment of the government to uphold freedom of expression was challenged by some interviewees.

Mostly, what government says about respect to rights, it is just lip service. Not applied.

Anonymous interviewee

The *Penal Code 2009* contains several articles that impact directly on civil society and its freedom of expression e.g. articles 305, 307, 311, 495, 502 and 523. The Penal Code establishes the legal framework for defamation, disinformation and incitement. Any allegation or slanderous charge that undermines the honour or the reputation of a person or an institution constitutes defamation. Defamation committed by one of the following means:

1. by speeches, by any means whatsoever, announced in a public place or in public meeting;

²⁸ <http://www.freedomhouse.org/report/freedom-press/2013/cambodia>, accessed 19 November 2013 and http://www.cchrcambodia.org/admin/media/report/report/english/2013_09_19_CCHR_FoEx_Report_Repression_of_Expression_The_State_of_Free_Speech%20in_Cambodia_EN.pdf, accessed 2 December 2013

2. in writing or sketches by any means whatsoever, circulated in public or exposed to the sight of the public;
3. by any means of audio-visual communications intended for the public²⁹.

Defamation is punishable by a fine of between 100,000 (one hundred thousand) and 10,000,000 (ten million) riels. In US dollars, the penalty for defamation would amount to between \$25 and \$2,500.

Article 502 of the Penal Code criminalises insult addressed to a public official acting on behalf of his or her office, and Article 523 outlaws discrediting judicial decisions (see *Compilation of reports submitted by civil society organizations to the United National Human Rights Council during the 18th session of the Universal Periodic Review of the Kingdom of Cambodia* 2013). According to these reports, Article 495 of the Penal Code – incitement to commit a felony – is regularly used against “human rights defenders, NGO workers and other individuals/groups that speak out against the authorities or that attempt to educate the Cambodian public on their human rights. Mr Ou Virak, president of CCHR, was summoned for questioning by the Ratanakiri Provincial Court in October 2012” on disputed charges of inciting members of an ethnic minority group to violently protest a land eviction (p. 12).

Behaviour that is considered defamatory or insulting that is portrayed through the media is dealt with under the *Press Law* 1995. However, laws regulating the media are not clearly written and sometimes inconsistently applied. In the past, certain media personnel have been prosecuted under provisions of the *Press Law* that prohibit reports deemed threatening to political stability³⁰.

Almost all of Cambodia’s media is aligned to a political party. Television is totally owned or controlled by those affiliated with the dominant ruling political party. Radio has a few opposition-aligned stations and some important independent voices, and most newspapers, with the exception of the foreign-language press, are run by political parties or individual politicians³¹.

Independent media outlets find themselves closely scrutinised and their expression sometime curtailed or controlled by government. For example, the government decided to cancel broadcasts of “Equity Weekly” in November 2012. This program originated with support from UNDP and others in 2003 as a nightly vehicle for fair and inclusive coverage of the national election campaign. It was so popular that the Ministry of Information agreed to continue it as a weekly program. The abrupt decision to take it off the air occurred in advance of the elections of July 2013.

The capacity for comprehensive, equitable, and transparent reporting by local Khmer language media about civil society organisations’ activities is generally regarded as weak. . Many people in civil society do not have faith in these media outlets and do not regard them as appropriate venues for advocacy efforts. Many media outlets tend to bias the nature of the information they provide in favour of government pronouncements. In doing so, they give the impression that

²⁹ <http://sogi.sithi.org/admin/upload/media/125-rlhnfhw1371009220.pdf>, accessed 19 November 2013

³⁰ <http://www.freedomhouse.org/report/freedom-press/2013/cambodia>, accessed 19 November 2013

³¹ <http://licadho-cambodia.org/reports/files/119LICADHOMediaReport2008.pdf>, accessed 21 November 2013

they do not recognise, appreciate, or acknowledge what CSOs have to say. Concerning capacity, many journalists have not received adequate training in professionalism and ethics related to their field. Some in fact have been reported to request unofficial payments from members of the public, including CSO staff, in exchange for media coverage. The Cambodian Journalism Centre for Ethics is currently working with the Cambodian Health Education Media Service on a project to encourage adherence to a Code of Journalism Ethics.

Interviewees generally had a nuanced understanding of what, in practice, could be said and what could not. Interviewees indicated that there was generally good tolerance of their criticism of government policy, unless that criticism was personally directed to named senior officials.

(They) likely tolerate if our criticize (is) more general. We may face challenge if our words affect to public officials.

CSO who active criticise to government, they got warning letter, but the government rarely take action against them. Overall, CSO have rights to say. Only the government have control of the media.

Anonymous interviewees

This experience of tolerance appears at odds with civil society organisations' analysis of the legal and regulatory environment, which draws attention to the government's difficulty in effectively implementing and applying the law. The story of Mr Mam Sonando, human rights activist and owner of Beehive Radio, sheds some different light on how freedom of expression can be experienced in Cambodia:

Mr. Mam Sonando owns Beehive Radio, one of Cambodia's few independent news outlets, which broadcasts commentaries which are often critical of the Royal Government of Cambodia. Mr Sonando's radio station reported human rights abuses related to recent protests in eastern Kratie province which the government characterised as a rebellion. According to news reports, the protests allegedly resulted in a 14-year-old girl being shot dead when locals resisted a military operation to clear land for a private Russian company. Authorities arrested Mr. Sonando in July, and on 1 October, a Cambodian court found him guilty of "insurrection" against the state under the *Penal Code 2009* and sentenced him to 20 years in prison³². After an international public outcry, Mam Sonando was released from Phnom Penh's Prey Sar prison on 15 March 2013 after serving eight months of a twenty year sentence, with the rest of the sentence being suspended³³.

While many media outlets in Cambodia are state-owned or state-controlled, the internet is currently only lightly regulated. During the recent election campaign, many people in Cambodia and especially young people turned to social media as their primary source of breaking news and information about current affairs, and as a mechanism for monitoring the counting of votes, among other things. Information on Facebook is experienced as more reliable

³² <http://globalfree.wordpress.com/2012/10/01/cambodian-court-sentences-journalist-to-20-years/> accessed 19 November 2013

³³ <http://livewire.amnesty.org/2013/04/12/freed-cambodian-human-rights-defender-speaks-out/> accessed 20 November 2013

than information on other forms of (state-controlled) media. Anonymous interviewees have relayed that the internet and more specifically Facebook has given people the opportunity to connect/organise and discuss political issues and that this could be perceived by government as a challenge to their authority or control. The use of social media by youth (Facebook, Twitter) has largely gone unregulated by the government and provides an important way for certain population segments, in particular youth, to bypass the antiquated censorship stance of the government. Many NGOs also use social media networks as a means of expression and sharing information.

In May 2012, the Royal Government of Cambodia announced that it is drafting its first ever cyber law to regulate and to limit the use of the internet. One of the reasons for the adoption of such a cyber law is to prevent “ill-willed people... from spreading false information”. The law is in the early stages of drafting and has not yet been made available to the public, but fears abound that such a law could hamper freedom of expression online in Cambodia. Thailand’s Computer Crime Act, which was passed in 2007, provides a pertinent example as to how the implementation of a similar cyber law in Cambodia, instead of protecting the interests of the Cambodian people, could have a detrimental effect on political freedom, freedom of expression, and the “right to know”³⁴.

Concern was also raised by interviewees in regards to the current draft law on NGOs and associations and the possibility that this may negatively impact civil society organisations’ ability to exercise their right to free speech. In particular, the draft law of NGOs and associations’ requirement for civil society organisations “to refrain from activity in support of Political Parties” could potentially subject political activity to broader restrictions under any new legislation.

The absence of a law promoting access to information is regarded by some interviewees as an impediment to the effectiveness of civil society in Cambodia:

The Royal Government of Cambodia have failed to adopt a Freedom of Information law (FoI) to implement the constitutional right to information, despite commitments dating back to 2007. This is in spite of the political opposition submitting draft FoI laws to the National Assembly in 2010, 2012, and 2013. The last draft was dismissed by the ruling party on the basis that it was unconstitutional, despite international experts finding it to contain many of the main features of an effective FoI law (*Compilation of reports submitted by civil society organizations to the United National Human Rights Council during the 18th session of the Universal Periodic Review of the Kingdom of Cambodia 2013*, p. 13).

In summary, constraints to freedom of expression in Cambodia are significant and of serious concern to civil society actors and other observers. Civil society organisations seem skilled to navigate this difficult terrain.

³⁴ http://www.ifex.org/cambodia/2013/04/30/cambodia_internet_censorship_cchr.pdf accessed 17 November 2013

Method

The above information was sourced from an extensive review of documents, notably the Penal Code, published analyses and from formal interviews with five stakeholders. Interviewees included two trade union officials, a representative from a not-for-profit media organisation, and a representative each from a local NGO and an international NGO. The national consultation workshop was attended by several media personnel who provided additional valuable information and insights. Available information was augmented and checked against anecdotal evidence arising from informal conversations with civil society actors. For further up-to-date information about freedom of expression in Cambodia, see http://www.cchrcambodia.org/admin/media/report/report/english/2013_09_19_CCHR_FoEx_Report_Repression_of_Expression_The_State_of_Free_Speech%20in_Cambodia_EN.pdf.

Summary of key challenges

Key challenges in relation to expression in Cambodia are:

- Highly restrictive provisions in the Penal Code relating to defamation, disinformation and incitement
- Lack of independence of most local media, especially television and Khmer-language newspapers
- Interference by the Ministry of Information in the broadcasting of media programs that promote human rights
- Improper use of the law by certain members of the executive and judiciary branches of government to severely constrain individuals who express opinions contrary to the government, creating a climate of self-censorship
- Lack of capacity and professionalism among media reporters
- Absence of objective, equitable reporting about civil society in local media
- Inadequate legal mechanisms to protect journalists and their sources
- Potential for a new law on NGOs and associations to restrict freedom of expression
- The adoption of a new draft anti-cyber law has the potential to further restrict freedom of speech/ expression

Section VII: Peaceful Assembly

Overview

Article 41 of the Constitution of Cambodia states that Khmer citizens shall have freedom of expression, press, publication and assembly. The *Law on Peaceful Demonstrations 2009* determines the legality of peaceful demonstrations and specifies the notification requirements for staging demonstrations. Individuals or civil society organisations planning a strike/protest required to seek permission or notify the government five days in advance of the strike/protest. In some instances, certain members of the security forces, elected officials and/or bureaucrats have acted to restrict the freedom of movement and the freedom of assembly of Cambodian citizens. Examples of this include refusal to give permission for peaceful protests, insistence that community members require permission to travel, even between villages, monitoring of meetings by police and state authorities, photographing meeting participants and asking for names and contact details of meeting participants, police interference in meetings, and using pressure or coercion with communities that engage with NGOs³⁵.

Findings

Article 41 of the Constitution of Cambodia states that Khmer citizens shall have freedom of expression, press, publication and assembly. Khmer citizens may also take part in mass organisations for mutual benefit to protect national achievements and social order³⁶. The Constitution confirms that no one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security. Supporting this, Cambodia is signatory to all international human rights treaties.

The *Law on Peaceful Demonstrations 2009* determines the legality of peaceful demonstrations, defines peaceful demonstrations and specifies the notification requirements for staging demonstrations. Under Article 4 of the Law, a peaceful demonstration should have the following characteristics:

1. A peaceful gathering or march conducted by a group of people
2. To publicly demand, protest or express their sentiments, opinions or will
3. By using various forms or means peacefully³⁷

Provisions under the law also require that any group of individuals wishing to organise a peaceful assembly at any public venue must notify local authorities in writing at least five days in advance³⁸. In practice, this 'notification' actually means the organisers must seek permission

³⁵ <http://www.icnl.org/research/monitor/cambodia.html>, accessed 28 February 2013

³⁶ <http://www.constitution.org/cons/cambodia.htm>, accessed 27 February 2013

³⁷ http://cambodia.ohchr.org/WebDOCs/DocProgrammes/Law_on_peaceful_demonstration-promulgated_Eng.pdf, accessed 19 November 2013; see also

http://cambodia.ohchr.org/EN/PagesFiles/The_right_peaceful_assembly.htm, accessed 17 November 2013

³⁸ http://www.sithi.org/temp.php?url=publication_detail.php&mid=4769, accessed 17 November 2013

to organise an assembly. Permission to demonstrate peacefully is not always given: 'Many cases happen where the local authority did not allow us gathering or assembly'. Permission to demonstrate seems more likely to be refused if the demonstration is perceived as politically sensitive: According to the draft law on NGOs and associations, civil society organisations are expected to refrain from activities in support of political parties and this requirement can be subjectively interpreted by certain officials within the government.

Interviewees suggested that they believed reasons given by public officials for refusing permission to demonstrate were insincere:

The law also clearly mentions that in case demonstration may cause danger, jeopardise national security, safety, public order, they will not approve. However in the practice, they reject our notice by responding that this could cause traffic problem.

Anonymous interviewee

While it is generally accepted in international law that governments can place restrictions on protests for legitimate social concerns, one of which is traffic congestion, the concern among civil society staff interviewed is that these legitimate reasons are being used to cover up an illegitimate motive: which is the desire on behalf of certain public officials to restrict their freedom of assembly. Some rejections appear to be categorical and without explanation or justification:

In the northeast it is in writing that people are not allowed to gather without permission and they are never given permission.

Anonymous interviewee

Another challenge identified by interviewees is that the *Law on Peaceful Demonstration 2009* requires organisers of demonstration to be individually identified. This requirement is challenging for many individuals who fear that being identified will cause them to become the subject of investigation by local government officials or even arrest by local police. One interviewee noted, 'If mass demonstration face problem, they can accuse us and arrest us'.

Even when consent is obtained, many events are interrupted by local police, who often object to the size of the groups, the routes of the marches, or the locations of the activities. Participants are sometimes arrested on charges of incitement or disrupting the peace – even if the protests are, by all appearances, peaceful³⁹.

Whilst the law appears clear on specifying the conditions under which a demonstration can be organised, the concern raised by civil society actors and interviewees, is that peaceful assembly is discouraged by local police and authorities. Moreover, they state that peaceful assemblies in some cases result in local police, the military or other non civil servant individuals acting on behalf of the government, using physical force to achieve their ends. For example, on 24 September 2013, a joint public statement⁴⁰ was released by Human Rights Watch signed by five non-governmental organizations voicing their concern at the use of excessive force by Cambodian

³⁹ <http://www.licadho-cambodia.org/reports.php?perm=149>, accessed 17 November 2013

⁴⁰ <http://www.hrw.org/news/2013/09/24/cambodia-joint-public-statement>, accessed 17 November 2013

security forces to disperse a peaceful gathering led by a CNRP official and supported by a group of Buddhist monks at Wat Phnom. This, the HRW statement claims, had the effect of preventing the citizens from exercising their right to freedom of peaceful assembly and expression. Another occurrence two days later of a peaceful vigil to support the release from prison of Yorm Bopha, a community activist, resulted in the use of slingshots and electroshock weapons allegedly by the security forces. It seems that human rights monitors as well as media representatives were targeted during the incident.

Interviewees spoke of several instances of the excessive use of force by local security forces during their attempts to engage in peaceful assembly and to voice their criticisms against certain activities of the government. In the case of Boeung Kak lake, a young woman known as Yorm Bopha was arrested in the course of defending her community's rights at the former Boeung Kak lake in Phnom Penh, where thousands of people have been removed against their will from their homes since the land was leased to a company in 2007. Amnesty International convened an international campaign to call for the release of Yorm Bopha. Yorm Bopha was released on 22 November 2013 by decision of the Supreme Court.

Yorm Bopha, 30-year old mother of one, who has defended her community's housing rights, was arrested on 4 September 2012 and sentenced to three years' imprisonment in December last year after a trial which was regarded by many as unfair. *"Yorm Bopha is a prisoner of conscience, jailed for her peaceful activism and defending the rights of those in her community who lost their homes through forced evictions,"* said Isabelle Arradon, Amnesty International's Deputy Asia Pacific Director.

Her case and that of her community is representative of some of the issues that have led to growing dissatisfaction in Cambodia – *"unequal development, land conflict and forced evictions, and a justice system that fails to protect the rights of the poor"* and is often used to curtail freedom of speech⁴¹.

The incidents of excessive use of force described above also do not seem to be investigated thoroughly⁴². International NGOs have drawn attention to the lack of transparency in investigative processes into the actions of individual police or other local authorities who have been accused of using excessive force against the participants of peaceful assemblies (*Compilation of reports submitted by civil society organizations to the United National Human Rights Council during the 18th session of the Universal Periodic Review of the Kingdom of Cambodia* 2013). Demonstrations linked to the recent national elections in Cambodia were well-documented on social media sites. Some demonstrators were arrested. However, despite serious injuries to and even deaths of some bystanders, none of the police or other authorities who were responsible for keeping the peace at these events has been charged with any offence. The apparent lack of respect for the rule of law, which would require investigation and prosecution of those responsible for the excessive use of force against participants, is of great concern.

⁴¹ <http://www.amnesty.org.au/news/comments/33372/>, accessed 20 November 2013. See also <http://www.amnesty.org/en/news/cambodia-jailed-activist-must-be-released-not-forgotten-2013-09-03>, accessed 17 November 2013

⁴² <http://www.cambodiadaily.com/news/groups-want-independent-human-rights-body-48227/>, accessed 2 December 2013

On a more encouraging note, in the wake of the recent mass political demonstrations in July, August and September 2013, the security forces under the control of the government have seemed more willing to tolerate public gatherings that are critical of the government and its performance.

In summary, while the Royal Government of Cambodia has endorsed international instruments protecting freedom of assembly, it appears that challenges to peaceful assembly for Cambodian people still persist.

Method

The above information was sourced from an extensive review of documents, notably the *Peaceful Demonstration Law 2009*, published analyses and from formal interviews with three key stakeholders - two were trade union officials and one represented an international NGO. Available information was augmented and checked against anecdotal evidence arising from informal conversations with civil society actors.

Summary of key challenges

Key challenges in relation to peaceful assembly in Cambodia are:

- Apparently denials by local government officials of requests to assemble/demonstrate
- Fear among organisers and participants of demonstrations or assemblies of arbitrary investigation or detention by the authorities
- Interference or disturbance of peaceful assemblies by authorities
- Occasional escalation to violence of otherwise peaceful demonstrations
- Lack of respect for rule of law in investigative processes into police or other authorities involved in the excessive use of force against participants in peaceful assembly

Section VIII: Government and Civil Society Relations

Overview

Government and civil society relations in Cambodia are generally untrusting, although they vary quite significantly mostly depending on the type of work performed by the civil society organisation and the level of government with which civil society is engaged. Civil society organisations engaged in service delivery in sectors such as health, agricultural development, humanitarian responses and education generally have better relationships with government. Organisations promoting democracy and human rights tend to experience more obstacles in their relationship with government. Relationships between civil society and government tend to be much stronger and more effective at provincial, district and commune level, but poor at national level. Government strategy documents contain mixed messages about the role and value of civil society organisations, but in practice, civil society actors struggle to find space to make a meaningful contribution to public policy processes in Cambodia.

Findings

There are no legal constraints on civil society's input into the political and electoral process or the public policy process in Cambodia. That noted, moral obligations imposed on civil society organisations to be non-partisan are prevent them from engaging in political activities.

Civil society actors in Cambodia are generally eager to increase their contributions to public policy processes relating to Cambodia's development. Currently, the key mechanisms for consulting and securing input into Cambodia's development plans are:

- the Cambodian Development Coordination Forum (CDCF) which is supposed to occur every 12 months. At these meetings, NGOs have the opportunity to – and do – table their own report of Cambodia's development. The CDCF has not met for the past three years.
- a series of 19 Technical Working Groups (TWGs) which meet periodically, most – but not all – of which include representation from NGOs, usually limited to one representative.
- through the TWGs, NGOs can provide input on national policy such as the National Strategic Development Plan.
- NGOs can also participate as observers in the Government-Donor Coordinating Committee process and can offer feedback to the government and donors by preparing NGO position papers on Joint Monitoring Indicators. The Government-Donor Coordinating Committee is slated to meet every 12 to 18 months and it last met in September 2012. There is a precedent of scheduled meetings being cancelled by the Royal Government in Cambodia, in the event of critical comments being made about the government by key Committee members.

In practice, the CDCF has been effectively shelved, and yet it is the forum which has traditionally been most open to civil society input. NGOs attending the Technical Working Groups report that they are not accorded sufficient time and space to speak.

The question is about the quality of representation of civil society organisations on Technical Working Groups and the time allocation for civil society to participate in collaborative mechanisms. The true space given to CSOs is an issue. Sometimes CSOs are neglected. This needs to be improved.

Anonymous interviewee

The new 'Rectangular Strategy' of the Royal Government of Cambodia foresees four main axes of development: social stability, regional and international integration, partnerships with the international community and the private sector for the development of the country, and macro-economic development. Good governance features at the core of the new strategy, however, civil society does not figure prominently within the Rectangular Strategy.

To explain, the Rectangular Strategy Phase III (2013) specifically commits the Royal Government of Cambodia to:

- Preparing and implementing the **"Strategy on Development Cooperation and Partnership 2014-2018"**. The main objective of this strategy is to strengthen **comprehensive partnership with all stakeholders** in the new context in which Cambodia has to address two main challenges: (1) the necessity to redefine the role of development cooperation financing due to a global decline in grant financing and developments in the partnership arrangements with individual partners; and (2) the anticipated decline in concessional financing when Cambodia reaches a lower-middle income country status in the near future.
- Conducting an annual consultative meeting between the Royal Government and NGOs while promoting the enactment of the law on associations and NGOs through broader consultation with all concerned stakeholders to ensure efficiency, transparency, and accountability of their operations.
- Continuing to strengthen **Cambodia Development Cooperation Forum, Government-Private Sector Forum, Consultative Meeting between Government and NGOs, Bilateral Consultation** mechanisms, with the aim to transform all these fora into a **"Cambodia Development Forum"** which will serve as a unified platform for dialogue between the Royal Government and all its stakeholders, including development partners, private sector and NGOs as well as other relevant stakeholders, to discuss development issues in the country⁴³.

As is apparent from the above excerpt of the Rectangular Strategy, the potential role of civil society in contributing to Cambodia's development is not fully appreciated. One interviewee from an international NGO stated it strongly: "It is rare that national governments are as uncommitted to partnership with CSOs as is the case in Cambodia".

⁴³ [http://library.opendevelopmentcambodia.net:8080/newgenlibtxt/CatalogueRecords/SNEC-RECTANGULAR%20STRATEGY-PHASE%20III-ENGLISH\(6SEPT2013\)_Final.pdf](http://library.opendevelopmentcambodia.net:8080/newgenlibtxt/CatalogueRecords/SNEC-RECTANGULAR%20STRATEGY-PHASE%20III-ENGLISH(6SEPT2013)_Final.pdf), accessed 2 December 2013

The three commitments outlined in the Rectangular Strategy (above) are here reviewed in turn. First, the Development Cooperation Partnership Strategy (DCPS) 2014-2018 has already been drafted. The Strategy does not mention the key role of civil society as a development partner in its own right, in accordance with the Accra Agenda for Action. The DCPS limits CSOs to work in support of service delivery. CSOs' broader role in promoting democracy, as a watchdog or in educating people about their rights is not acknowledged. More positively, the Royal Government's "political platform" for its fifth mandate does acknowledge a broader role for civil society and commits to 'enabling them to participate in socio-economic development, promoting democracy and human rights and monitoring implementation of policies'⁴⁴ (p. 12).

Second, and again on a more positive note, the Prime Minister Hun Sen has called for an annual forum between government and civil society. A meeting along these lines was held in February 2012 and some civil society actors are hopeful that this dialogue will continue. After the meeting, guidelines were issued about how to conduct future such meetings. However, no such meetings have occurred and there is no indication as to whether they will be held in the future.

Third, the intention to create a new Cambodia Development Forum is also included in the government's 'Political Platform'. This commitment seems at odds with the second commitment to continue annual consultative meetings with civil society organisations. It remains to be seen how these commitments are applied by the Royal Government of Cambodia.

Although not acknowledged in the Rectangular Strategy Phase III, a high level memorandum of understanding between civil society organisations and the Royal Government of Cambodia has also been proposed. A concept note and accompanying terms of reference have been released and some initial consultations have occurred in relation to this initiative.

As is evidenced by the following quote, subnational governments tend to be better at consulting and including civil society than the national government.

Local governments are generally OK at consulting civil society organisations about commune development plans and commune investment plans.

Anonymous interviewee

Interviewees from civil society tend to report more positive relationships with low and middle level governments. This aligns with the finding of the Cooperation Committee for Cambodia that "whilst 72% of surveyed CSOs identified at least one level of government as a stakeholder to some degree, local government was understood as a more important stakeholder than central government (such as line ministries)" (Cooperation Committee for Cambodia 2012, p. 48). This suggests that "while CSOs operate autonomously – not aligned with national-level RGC programs and priorities – they nonetheless engage closely with tiers of government closer to the ground on the implementation of programs and their relationship with local plans, contexts and dynamics" (Cooperation Committee for Cambodia 2012, p. 48).

⁴⁴ [http://www.sithi.org/admin/upload/media/\[2013-09-26\]Political/2013_09_25_Political_Platform_Royal_Government_Cambodia_5th_English.pdf](http://www.sithi.org/admin/upload/media/[2013-09-26]Political/2013_09_25_Political_Platform_Royal_Government_Cambodia_5th_English.pdf), accessed 2 December 2013

In many instances, civil society actors also report positive relationships with the line ministries with whom they engage, although this varies for different ministries. Some line ministries conduct annual meetings with the NGOs with whom they maintain a memorandum of understanding. The Ministry of Education's annual forum with NGOs is particularly well-regarded. Similarly, the Ministry of Interior's Working Group on Partnerships in Decentralisation appears to be effective.

The Ministry of Interior are doing ok on this front. Every three months, they have a meeting with NGOs engaged in decentralisation and deconcentration. It's called the Working Group for Partnerships in Decentralisation. This is a good forum and it is building relationships.

Anonymous interviewee

Government-led consultations with civil society do sometimes occur. For example, several consultations have been held to discuss the draft Law on NGOs and Associations. Some civil society actors complain that consultations are not announced in a timely manner and do not include adequate time for constructive dialogue. Furthermore, consultations tend to be isolated one-off events and not part of an ongoing dialogue. Such events are perceived by some as efforts to appease civil society actors through 'token' participation. For example, consultation events do not necessarily include a session for questions and answers.

There is also a precedent for certain individuals within the government to be involved in selectively choosing specific NGOs to represent Cambodian civil society in consultation exercises, especially international fora, instead of permitting civil society organisations to nominate their own representatives⁴⁵. This has the effect of bringing in only a sub-section of civil society voices, namely those that are in accord with RGC principles and policies. The ASEAN People's Forum on 2012 is a case in point⁴⁶.

When civil society contributes inputs to public policy processes, these are sometimes overlooked.

With the Joint Monitoring Indicators, less than 20% of civil society's input has been taken into account. The government seems to have judged most of the CSO inputs as not relevant.

Anonymous interviewee

In some case, they (government) invited me to the meeting, but it is not for discussion. They insult and curse me for an hour, and did not allow me to say or clarify.

Anonymous interviewee

⁴⁵ <http://www.opendevelopmentcambodia.net/news/ngo-representatives-chosen-months-ago-statement-claims/>, accessed 2 December 2013

⁴⁶ <http://www.cambodiadaily.com/archive/in-one-city-a-tale-of-two-peoples-forums-603/>, accessed 2 December 2013

Another interviewee shared a more positive story:

Land law was good case that shows we worked together. Feedback was taken into consideration.

Anonymous interviewee

The capacity of civil society actors to engage effectively in national public policy processes would seem modest, although this is contested. Some interviewees report high capacity and others report low capacity.

Method

Information explained in this chapter was sourced from a review of key documents and interviews with eight key stakeholders. Interviewees included one person from academia, five from local NGOs and two from an international NGO. Available information was augmented and checked against anecdotal evidence arising from informal conversations with civil society actors.

Summary of key challenges

Key challenges for the relationship between government and civil society include:

- Ongoing lack of trust, especially between the government and those civil society organisations that are active in promoting democracy and human rights
- Insufficient understanding of how to work in partnership, on the part of both government and civil society
- Missed opportunities for ascribing a more significant role to civil society in Cambodia's Rectangular Strategy
- Mixed messages in various different government strategies and policies about the role of civil society
- Insufficient opportunities for dialogue and for government and civil society to provide meaningful input and feedback to each other, especially at national level
- Inadequate space and time for civil society contributions to Technical Working Groups and other comparable consultative mechanisms
- Lack of clarity about commitment to proposed annual forum between government and civil society
- Limited capacity for cooperation on the part of both government and civil society
- Lack of interest or political will for cooperation on the part of both government and civil society

Section IX: Civil Society Cooperation and Coalition

Overview

Coalitions of civil society organisations are common in Cambodia. However, no count of such coalitions is available to verify this. Cooperation among civil society organisations is increasing, but the depth of cooperation is generally low. Further, the extent of cooperation varies considerably by sector – some sectors enjoy high levels of cooperation. Other sectors, even those that host multiple coalitions appear to have low levels of cooperation. Cross-sectoral cooperation is generally low. Umbrella groups have too few mechanisms of performance evaluation and limited opportunities to receive and address members' complaints. There is no government oversight of partnerships and alliances, although the proposed new law on NGOs and associations would introduce a process for registering and overseeing coalitions.

Findings

Current laws affecting civil society in Cambodia, and notably the *Civil Code for Cambodia 2007*, are silent on the issue of coalitions or cooperative endeavours. Because of this, it is generally understood that local CSOs are legally able to partner with international CSOs, and vice versa. There is no government oversight of partnerships and alliances.

Coalitions of civil society organisations are understood to be very common in Cambodia. However, it is not possible to quantify the presence of coalitions or associations of NGOs. This is because registered NGOs are not separately identified as coalitions or associations, and no independent count of such organisations is undertaken. Furthermore, many coalitions remain unregistered and informal, working together with the support of a secretariat (a registered NGO). Failure to register coalitions is not regarded as problematic, as the members of coalitions are already legally registered in their own right.

Several studies of NGOs in Cambodia have found that cooperation is increasing, but the depth of cooperation is generally low:

There are many levels of networking within Cambodian NGOs, and more generally within CSOs, based on geographical criteria (local, provincial, national networks) or sector of activity, with a diverse range of roles and objectives, form the most common of exchanging information and coordination to the more demanding roles of learning, or advocacy and policy dialogue. If the way in which these networks are organized is quite developed, their roots are narrow (Merla 2010, p. 26). (See also Cooperation Committee for Cambodia 2012; Rasmussen 2010).

Shallow cooperation within civil society may also contribute to a reduced ability to reach out with a common voice and a common agenda to government, which further complicates or frays the relationship between civil society and government.

Furthermore, peak bodies or umbrella groups are seen to have too few mechanisms of evaluation of their performance or opportunities to receive and address complaints from members in a transparent manner (Merla 2010). This, in effect, can mean that peak bodies reproduce the same patterns of representation and decision-making for which the current democratisation process in Cambodia is being criticised and share similar deficits in governance.

A positive example of civil society cooperation in Cambodia is the establishment of a 'peer accountability' system. This voluntary, self-certification system was introduced by the Cooperation Committee for Cambodia, a key peak body within the sector. It is based on a Code of Ethical Principles and Minimum Standards for NGOs, developed through a large scale participatory process led by a working group of representatives of the NGO community in Cambodia, and inclusive of feedback from a wider audience of NGOs, government departments, and other development stakeholders. The self-certification system has been progressively implemented since 2007 but to date, has had a low-take-up rate. As of November 2013, 32 organisations have been certified through the GPP Voluntary Certification System as compliant with the code and minimum standards of good practice and professionalism. Moreover, a further 108 organisations have been engaged in the process of securing certification⁴⁷. Funding support for this initiative comes from the Australian Agency for International Development (AusAID), Action Aid International, Plan International, DanChurchAid/ChristianAid (DCA/CA), EED (Bread for the World), KEPa, Concord, Oxfam Novib, Concern Worldwide, and the Spanish Agency for International Cooperation and Development (AECID).

According to interviewees, the extent of cooperation varies by sector. Cooperation was suggested to be highest in the land sector, in education, health, in water and sanitation and in agriculture and the environment sectors.

The WATSAN sector is the best coordinated and this is led by the Ministry for Rural Development. For 18-20 years, these meetings have been running every second Tuesday of the month. That is impressive.

Anonymous interviewee

Human rights advocates are generally regarded as poorly coordinated. Similarly, the child rights/anti-trafficking sector has multiple networks which some interviewees find confusing; the HIV/AIDS sector and the gender sector also have several overlapping networks and peacebuilding organisations are similarly poorly coordinated.

⁴⁷ <http://www.ccc-cambodia.org/ccc-program/voluntary-certification/applying-for-certification.html>, accessed 20 November 2013

Overall, cooperation around technical issues is perceived as easier and more successful than cross-sectoral cooperation. Supporting collective activities in areas in which an organisation does not have specific technical expertise is understandably challenging for many.

The draft law on NGOs and associations provides for the formation of coalitions of NGOs. However, one interviewee noted that the law, when introduced, will likely be interpreted and applied in a manner that is more enabling for service delivery organisations than for those organisations that take a rights based approach to development, consistent with current practices of the Royal Government of Cambodia. This may create a division between civil society organisations of different types, which in turn can effect cooperation negatively.

Method

Information explained in this chapter was sourced from a review of key documents and interviews with twelve key stakeholders. Interviewees included one person from academia, seven from local NGOs and four from international NGOs. Of the local NGOs, five interviewees were from membership organisations and/or were providing secretariat support to coalitions and networks of NGOs. Available information was augmented and checked against anecdotal evidence arising from informal conversations with civil society actors.

Summary of key challenges

Key challenges in relation to civil society cooperation and coalitions are:

- Lack of trust among NGOs
- Shallow cooperation, mostly addressing technical issues
- Inadequate mechanisms for the evaluation of umbrella group performance
- Inadequate mechanisms for receiving and addressing complaints from members
- Poor cross-sectoral cooperation
- Intense competition for funds among NGOs

Conclusion

This report documents the key challenges, weaknesses and problems in seven dimensions of the enabling environment for civil society in Cambodia, focusing specifically on challenges in the legal, regulatory and policy context for civil society. Some dimensions of the enabling environment are more robust than others with perhaps access to resources being the most enabling and opportunities for freedom of expression and, to a lesser extent, freedom of assembly being the least enabling.

Key challenges in the enabling environment predominantly relate to issues of interpretation, implementation or practice of the law. Additional challenges are with the legal framework itself and, perhaps most importantly, with relational issues of understanding, trust and cooperation. A separate action plan contains recommendations for how key challenges may be addressed. Central to further work in addressing these challenges is the need to promote more mutual understanding and trust between civil society actors and the government. Genuine dialogue is the foundation for building understanding and trust. Dialogue, in this sense, is a focused and intentional conversation, a space of civility and equality in which those who differ may listen and speak together. In dialogue, participants are supported to set aside fears, preconceptions, the need to win and take time to hear other voices and possibilities. Moreover, multi-stakeholder processes embracing civil society actors, political actors, government representatives, private sector individuals, are critical when defining, assessing, and improving the enabling environment for civil society. Key to this dialogue is the assumption that enhancing this environment is the joint responsibility of both state and non-state actors, and that despite the challenges and problems described herein, there is much that is positive and can be strengthened. True partnership and collaboration between civil society actors and state actors is an essential precondition for a more peaceful, democratic society to emerge and flourish in Cambodia.

Overall, the democratic space available to civil society in Cambodia is small with the potential to shrink further in coming years. Conversely, there is also a window of opportunity to expand the space available for civil society. To explain:

In terms of shrinking space, the signing of the ASEAN declaration of human rights in Phnom Penh November 2012 is likely indicative of the Royal Government of Cambodia's new approach to human rights. The declaration's vague wording gives scope for ASEAN governments to tolerate serious abuses of human rights on the grounds of "national particularities" or "cultural background". Restrictions on the exercise of rights can occur in the interests of "national security" and "public morality".

A law on NGOs and associations is also proposed. The fourth draft of this law was released in December 2011 and the Royal Government of Cambodia has suggested that this law will be implemented during its current fifth mandate. Most CSOs consider that the proposed new law on NGOs and associations will increase the government's role in the oversight of CSOs and

empower government bodies to unnecessarily control CSOs, thereby shrinking democratic space for civil society.

The lack of a strong, capable, and independent judiciary together with insufficient respect for rule of law in Cambodia also serves as major constraints on the work of civil society actors, in particular around their efforts to secure fundamental rights and freedoms for the citizens of Cambodia.

Despite these worrying signs, there are also some positive signs. The recent national election of July 2013 may help to foster more constructive engagement between government and civil society, as some interviewees have predicted. While the impact of the recent election on governmental attitudes towards civil society is yet to be fully appreciated, some civil society actors are hopeful that the mass public demonstrations organised by civil society organisations will cause all political parties to be more respectful, appreciative, and tolerant of a diversity of views. There is hope that politicians and government officials alike will see freedom of expression, freedom of speech, and freedom of assembly as necessary components of a healthy democratic society. And that they will reach out more positively to civil society as a whole. Some interviewees have indicated that they can already witness a positive change in the way that government actors are engaging with civil society organisations. Yet, the direction taken by the government to improve or further restrict the enabling environment for CSOs in Cambodia remains to be seen.

Appendix 1: Interview schedule

Thank you for giving so generously of your time to help us understand more about the enabling environment for civil society in Cambodia.

This interview is intended to last for one hour. We are exploring seven different dimensions of civil society's environment, being 1. Formation, 2. Operation, 3. Access to Resources, 4. Expression, 5. Peaceful Assembly, 6. Government-CSO relations, and 7. CSO Cooperation and Coalition.

Going through all seven dimensions will take too much time, so we propose to start with one dimension (state the dimension). If you would like to comment on other dimensions, you can. Please just let me know.

Before we start, I want to explain about the confidentiality of this interview. I plan to record as much of what you say as possible. I will keep the notes and refer to them later. My notes will not be seen by anyone other than research team. Is that OK with you?

Summaries of the ideas and views of the interviewees will be used in the report. Occasionally, we will quote people who said interesting things. If we quote you, we will make sure that you cannot be personally identified. Is that OK with you?

Finally, we would like to acknowledge your participation by putting your name in the appendix. Are you happy to be named as an interviewee in the appendix of the report? (Record answer: Yes/No)
Do you have any questions before we start?

FORMATION

I have some questions about how civil society organisations form and register in Cambodia.

1. We sent you some information that we had already prepared to describe this. Did you have time to scan/read this page? Do you think we have adequately captured the issues? How could we improve the quality of this information?
2. How easy was it register your organisation? For example, was it easy to go to the MOI office to register?
3. Did you experience any barriers or difficulties in registering? For example, slow or ineffective bureaucracies, inability to access funds, or difficulty buying/leasing property?
4. When you registered your organisation, what costs did you pay? What were these costs for? Were these official or unofficial payments?
5. To what extent was there corruption in the registration process?
6. Do you know if registration decisions can be appealed? Have you heard of anyone appealing a decision? What happened?
7. Have you ever had to renew your registration?
8. In your view, is the government body responsible for registering CSOs (MoI) sufficiently funded and staffed to perform this role?
9. Have you heard about other organisations registering faster or slower than you did? What is your view about how this happened?
10. Is there something else you would like to add?

THANK YOU SO MUCH FOR YOUR TIME.

OPERATION

I have some questions about the operation of civil society organisations in Cambodia.

1. We sent you some information that we had already prepared to describe this. Did you have time to scan/read this page? Do you think we have adequately captured the issues? How could we improve the quality of this information?
2. The Royal Government of Cambodia requires that civil society organisation notify them of certain meetings. Which of your meetings do you notify to the government? All or only key meetings? Or no meetings? If only key meetings, how do you determine which to notify and which not?
3. Do you notify the government of the list of candidates for the board of directors? Or of the results of elections?
4. When was the last time you submitted a report to the government? What kind of report was it – e.g. activity report or financial report?
5. What has happened to you when you have not fulfilled relevant legal obligations? Anything?
6. Have you or anyone you know been subjected to government audits or inspections? Please explain what happened. (For example, when did it occur, who was involved, was there any follow up, what exactly was inspected?)
7. What other administrative requirements affect the operation of civil society organisations in Cambodia?
8. Are you aware of any instances in which the government legally terminated or dissolved a civil society organisation? What happened? What opportunities for appeal were available? Are there non-legal grounds that, in practice, the government uses to terminate or dissolve civil society organisations? In practice, how have such terminations happened: according to the law or otherwise?
9. Are you aware of the grounds on which a civil society organisation can be voluntarily dissolved? Please explain how you understand this.
10. Overall, in your opinion, what is the level of oversight that government has over civil society organisations? Is it extensive, moderate, or light?
11. In your experience, what are the major legal and administrative barriers to the productive operation of civil society organisations?
12. Are you aware of any history or incidences of state harassment of civil society organisations when they do not follow administrative and/or legal requirements? (Or is the history of state harassment of CSOs better understood as mostly unrelated to administrative and legal requirements?)
13. Is there something else you would like to add?

THANK YOU SO MUCH FOR YOUR TIME

ACCESS TO RESOURCES

I have some questions about civil society organisations' ability to access resources, meaning foreign funds, local funds, grants, donations, earning their own income through sales and training courses, etc.

1. We sent you some information that we had already prepared to describe this. Did you have time to scan/read this page? Do you think we have adequately captured the issues? How could we improve the quality of this information?
2. What legal barriers get in the way of accessing potential sources of funding for civil society organisations?
3. What non-legal and non-governmental barriers get in the way of accessing potential sources of funding?
4. Do you know what laws and/or regulations prevent civil society organisations from distributing profits or otherwise giving private benefits to officers, directors, or other insiders? (We think this is written in the Civil Code; but have not found it yet.)
5. If your (civil society) organisation were to be dissolved, what would happen to your organisation's assets? What laws and/or regulations affect the distribution of assets upon dissolution? (The Civil Code?) How would these regulations affect you?
6. How reliable is your or other (civil society) organisations' access to legally permissible funds? And how freely available are these funds?
7. How much does a civil society organisation's financial sustainability depend on government oversight and approval?
8. How effectively does the legal and policy framework in Cambodia support the mobilisation of local resources?
9. Does government and donor funding support the full range of civil society programming and activities, including, for example, innovation, policy development and advocacy? Is your organisation able to access funding for core administrative costs?
10. What source of funding is most reliable for civil society organisations?
11. Have you seen any recent changes in the national funding environment for civil society in Cambodia? If so, what are the impacts of these changes on civil society organisations?
12. Have you ever received financial support directly from the Royal Government of Cambodia? To your knowledge, in what form and at what level is government funding available? E.g. grants, subsidies? At national or subnational level? Do you know any examples of contracting with the government by civil society organisations?
13. Are you aware of any laws, rules and policies for making government grants and subsidies to civil society organisations? Which ones?
14. To what extent does the legal framework in Cambodia support government funding for civil society organisations? What are specific legal and non-legal barriers to increased, more efficient or more transparent government support?

15. In your view, when government funds are given, are these predictable, transparent, easily understandable and impartial?
16. Has government support for civil society decreased or increased within the past year? What do you expect will happen in the following two years?
17. Are there different standards/requirements for accessing foreign sources of funding versus local or domestic sources of funding?
18. What legal barriers exist to accessing and using foreign resources by civil society organisations? e.g. are there additional reporting requirements?
19. Are there bilateral or multilateral agreements in place that affect foreign donors' ability to donate and establish partnerships with civil society organisations? If yes, what kind of agreements are they? (e.g. statement of medium to long-term commitment to a relationship; funding framework, etc.)
20. What non-legal barriers to receiving foreign funds exist in practice?
21. Has the overall state of governance and rule of law in Cambodia affected donors' contributions to CSOs? If so, how?

The next few questions are about philanthropy, meaning private gift giving to civil society organisations by individuals or corporations.

22. What are the laws and/or regulations specifically addressing philanthropy?
23. Are civil society organisations allowed to receive gifts and donations from corporations and individuals?
24. Does the legal and regulatory framework encourage philanthropy? If so, how? If not, how?
25. In your view, what encourages philanthropy in Cambodia? What discourages it?
26. Do civil society organisations regularly try to raise funds from local people and local businesses?
27. Finally, do civil society organisations have enough fundraising capacity? Or capacity to diversify their funding?

THANK YOU SO MUCH FOR YOUR TIME.

EXPRESSION

I have some questions about civil society organisations' ability to express opinions.

1. We sent you some information that we had already prepared to describe this. Did you have time to scan/read this page? Do you think we have adequately captured the issues? How could we improve the quality of this information?
2. What laws affect civil society organisations' ability to freely express their opinions?
3. Do you know which international treaties have been ratified by the Cambodian government that affect the ability to publicly express ourselves? Do you know what treaties have been ratified that affect the right to access the Internet?
4. What laws and/or regulations in Cambodia determine what we can say? What restrictions are placed on what we can say? (i.e. restrictions for national security, defamation, incitement, obscenity, speaking against the king, etc)?
5. Are there restrictions on when, where and how we can express ourselves? What are these?
6. What legal barriers hinder civil society organisations' ability to openly express its opinions, particularly on matters critical of government policies?
7. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – freedom of expression for civil society? If so, can you please summarise what you understand the key provisions of the new law to be and explain in what stage of the legislative process it currently stands?
8. What non-legal barriers hinder civil society organisations' ability to openly express its opinions?
9. Is open criticism of government policies and practices tolerated? What, historically, has been the reaction of the government to criticism against it?
10. Are individuals and civil society organisations aware of their rights with respect to expression? Does the political culture in Cambodia openly support these rights? Or are they actively suppressed regardless of legal protections?
11. Is there anything you would like to add?

THANK YOU SO MUCH FOR YOUR TIME.

PEACEFUL ASSEMBLY

Now I want to ask some questions about civil society and the right to peaceful assembly.

1. We sent you some information that we had already prepared to describe this. Did you have time to scan/read this page? Do you think we have adequately captured the issues? How could we improve the quality of this information?
2. Apart from the Peaceful Assembly Law, what additional laws address the rights to peaceful assembly, including domestic regulations and international treaties that Cambodia has ratified?
3. To your knowledge, are there limits placed on who can assemble? Are groups with certain agendas or orientations forbidden from assembling?
4. Are there limits on how, where and when individuals or groups can assemble, strike, protest or otherwise publicly (and peacefully) express themselves?
5. How are aggressive or violent demonstrators dealt with in the law and in practice? Can you give some examples.
6. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, make it easier to access – the right to peacefully assemble? If so, can you please summarise what you understand the law will do? Are how long it may take for the law to be enacted?
7. Is there a history of government-led violence or aggression against peaceful demonstrators, activists and/or strikers? Can you give some examples.
8. In practice, is there tolerance for groups who gather to openly criticize the government through protest, strike or other form of peaceful demonstration?
9. Is there anything you would like to add?

THANK YOU SO MUCH FOR YOUR TIME.

GOVERNMENT – CSO RELATIONS

I have some questions about the relationship between government and civil society in Cambodia.

1. We sent some information that we had already prepared to describe this. Did you have time to scan/read this page? Do you think we have adequately captured the issues? How could we improve the quality of this information?
2. Are civil society organisations allowed to engage in the political (electoral) process? e.g., are they able to nominate candidates for public office? Support or oppose political parties? Fundraise for political parties/candidates? If so, under which conditions?
3. Are civil society organisations allowed to participate in public policy activities? Are they allowed to advocate, campaign and lobby for legislation? If so, under which conditions?
4. Are there any special agreements or similar mechanisms to promote cooperation and communication between government and civil society? Such as technical working groups, liaison officers, committees, etc?
5. Are there draft laws or regulations that, if adopted, would affect government-civil society relations? What can you tell me about these draft laws? How long do you think will it take for these to become law?
6. In general, how would you describe the relationship between the government and civil society? Contentious? Harmonious? Somewhere in the middle?
7. Is there regular communication between civil society and government? What is the quality of the dialogue between the government and civil society?
8. Are the views of civil society organisations taken into account when drafting legislation, or in other ways?
9. Are there timely consultations with civil society organisations that can really help civil society to influence government decisions?
10. When the government sets priorities and makes strategies, plans etc, is this generally transparent and accountable?
11. Does civil society have a way to disagree or appeal certain government decisions at the national or provincial level? Is this a reliable, genuine and effective way for civil society organisations to explain their concerns? In practice, do civil society organisations actually disagree or appeal successfully to government to get fairer results?
12. Does the government view civil society organisations as partners and allies in their own work, or as potential threats? Or in another way altogether?
13. Are civil society organisations actually capable of participating in a broad range of public policy initiatives and activities?
14. Have there been any significant changes in the relationship between civil society and the government in Cambodia in the last two years? If so, please describe these.
15. Have any global events in the past two years affected the relationship between civil society and national government? (i.e. the aid effectiveness or development effectiveness debate, etc.)

16. What do you think needs to be in place to make good and effective relationships between the government and civil society?
17. Is there anything else you wish to add?

THANK YOU SO MUCH FOR YOUR TIME.

CSO COOPERATION AND COORDINATION

I have some questions for you about cooperation among civil society organisations.

1. We sent some information that we had already prepared to describe this. Did you have time to scan/read this page? Do you think we have adequately captured the issues? How could we improve the quality of this information?
2. Does the law governing civil society operations (the Civil Code) also regulate coalitions of civil society organisations working together? Does the law allow groups of organisations to form? Does it encourage or block groups from forming?
3. Are local civil society organisations legally able to partner with international NGOs, and vice versa? If not, what are the conditions for cooperation? What do you have to report to government when you get involved in a partnership like this? Anything?
4. Are coalitions, networks or similar groups of civil society organisations common in Cambodia? Do civil society organisations generally work together for shared causes?
5. What is the nature of the relationship between civil society organisations? Are they able and willing to cooperatively work with one another? Are there certain sectors where cooperation is more effective than others? Which sectors are best at cooperating? Which sectors need the most improvement?
6. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – cooperation among civil society groups? What can you tell me about these laws? How long until the law is in use?
7. Is there anything you would like to add?

THANK YOU SO MUCH FOR YOUR TIME.

Appendix 2: Key informants

Mr. Chhith Sam Ath, Executive Director NGO Forum on Cambodia

Mr. Soeung Saroeun, Executive Director, Cooperation Committee for Cambodia

Ms Toy Monireth, Cooperation Committee for Cambodia

Ms. Haidy Ear-Dupuy, former chairperson, Cooperation Committee for Cambodia

Dr. Kim Sedara, academic

Dr. Kem Ley, independent social researcher

Ms. Caroline McCausland, Country Director, ActionAid Cambodia

Ms. Ros Sopheap, Executive Director, Gender and Development for Cambodia (GADC)

Representative, NGO Education Partnership (NEP)

Representative, NGO Coalition on the Rights of the Child (NGOCRC)

Representative, LICADHO

Ms. Stav Zotalis, Country Director, Care Cambodia

Ms. Thida Khus, Executive Director, SILAKA

Mr. Eang Vuthy, Executive Director, Equitable Cambodia

Dr. Sam Inn, Executive Director, Life With Dignity

Mr. Ee Sarom, Executive Director, Sahmakum Teang Tnaut

Mr. Cheang Sokha, Executive Director, Youth Resource Development Program

Mr. Koy Neam, Senior Program Officer- Law and Human Rights, The Asia Foundation

Mr. Art Thom, President, Cambodian Labour Confederation

Mr. Vorn Poa, President, Independent Democracy of Informal Economy Association

Mrs. Dam Chanthy, Executive Director, Highlander Association

Mr. Yeng Virak, Executive Director, Community Legal Education Centre

Mrs. Prak Sokhany, Executive Director, Cambodia Civil Society Partnership

Mrs. Chea Sun Danet, Executive Director, Women's Media Centre

Appendix 3: A Typology of Civil Society Organisations in Cambodia

Excerpt from <http://www.ccc-cambodia.org/aboutus/faq.html>

What is a Civil Society Organization (CSO)?

There are a myriad of academic definitions but in practice, civil society organizations (CSOs) are those that have *emerged beyond the spheres of the state, the private (family networks) and the market (profit-driven entities)*. They *have some type of formal structure and coherent non-profit agenda*, with any financial surpluses typically ploughed back into the organization to further their objectives. To be considered a CSO, an organization must be able to *practice independent self-governance*. The term CSO is generally considered to be an umbrella term that includes Non-governmental organizations (NGOs). [[CCC 2012, CSO Contributions to the Development of Cambodia 2011](#)]

CSO include such forms as: formal development, environmental and human rights NGOs, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, coalitions and advocacy groups, among others. [*Open Forum on CSO Development Effectiveness, 2011*]

What is a Non-Governmental Organization (NGO)?

Non-governmental and non-profit organizations are established for a specific purpose, or set of specific purposes –they often have a social goal such as relieving suffering, defending the rights or promoting the interests of the poor, protecting the environment, or undertaking community development. They do not belong to any state or government apparatus, although they may collaborate with them (sometimes closely and/or over a long period) if there are shared goals and objectives. [[CCC 2012, CSO Contributions to the Development of Cambodia 2011](#)]

The term non-governmental organizations refer to domestic non-governmental organizations and foreign non-governmental organizations. [*3rd Draft of LANGO, 2011*]

What is a Local Non-Governmental Organization (LNGO)?

This type of NGO is formed and operated in a particular country. This may be at the national level, with representation in provinces/districts (sometimes known as a national NGOs); or can be a more local/district-based NGO, concentrated on a particular locality. In the context of Cambodia, local NGOs are those NGOs that operate within Cambodia by Cambodian nationals, and that do not have other international operations. [[CCC 2012, CSO Contributions to the Development of Cambodia 2011](#)]

A domestic non-governmental organization is referred to a group of Khmer nationals who agree to establish an organization that will serve public interests without conducting any activity to generate profits for sharing among their members. [*3rd Draft of LANGO, 2011*]

What is an Association?

Associations are those organizations that are primarily established to serve their own members. They are usually made up of members that formally join the association in order to share services, resources, experience, or for the ability to negotiate as a single entity. Associations, like NGOs, are nonprofit and do not conduct any activity to generate profits for sharing among their members, although their members may engage in profit-making activities.

[CCC 2012, CSO Contributions to the Development of Cambodia 2011; 3rd Draft of LANGO, 2011]

An association is referred to a group who agree to work for the protection of their members' interests or/and public interests without conducting any activity to generate profits for sharing among their members. *[3rd Draft of LANGO, 2011]*

What is a Community Based Organization (CBO)?

Community based organizations (CBOs) are typically established by a particular group or community (whether a geographic community or 'community of interest') to advance specific and shared interests, most commonly on a small scale. They usually comprise members whose interests are directly at stake, and generally operate by mobilizing and representing communities to government (local or national), aid/development partners, private companies or others, with regard to social, cultural, economic or environmental issues. Many CBOs do not employ paid staff and function on a voluntary basis, which can be one distinguishing feature from NGOs.

What is an International Non-Governmental Organization (INGO)?

International NGOs are those NGOs which operate across more than one country, whether through multiple international operations, a foreign registration, or merely a founder who is foreign to the country in which operations are based. Some INGOs are thus highly localized. In the context of Cambodia, INGOs are those which meet any of these criteria and which operate in Cambodia. *[CCC 2012, CSO Contributions to the Development of Cambodia 2011]*

A foreign non-governmental organization refers to a group of foreign nationals, established under foreign law to take action for serving public interests in the Kingdom of Cambodia, without operating any activity to generate profits for sharing among its members. *[3rd Draft of LANGO, 2011]*

What are Alliances?

Alliances of associations or domestic non-governmental organizations refers to lawful associations or domestic non-governmental organizations gathering together for a common purpose, operating to serve public interests without sharing profits among their members. *[3rd Draft of LANGO, 2011]*

- See more at: <http://www.ccc-cambodia.org/aboutus/faq.html#sthash.97j7ZnUD.dpuf>

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Vision:

A strong and capable civil society, cooperating and responsive to Cambodia's development challenges.

Mission:

As a professional association of non-governmental organizations in Cambodia, the Cooperation Committee for Cambodia provides high quality services to civil society and influences Cambodia's development partners with our shared voice.

Values:

- ☆ Integrity
- ☆ Cooperation
- ☆ Responsiveness
- ☆ Quality

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