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Your Excellencies:

Re: Third draft Law on Associations and Non-Governmental Organizations

We are writing on behalf of Lawyers Rights Watch Canada (LRWC) and the Centre for Law and Democracy (CLD). LRWC is a committee of Canadian lawyers who promote human rights and the rule of law internationally, and provide support to lawyers and other human rights defenders in danger because of their advocacy. CLD is an international human rights NGO that specialises in providing legal and policy expertise to promote foundational rights for democracy, including freedom of association and of expression.

LRWC and CLD wish to comment on the third draft Law on Associations and Non-Governmental Organizations (NGO law) provided to civil society groups on 29 July 2011. We understand that the draft law was approved by the Council of Ministers in August 2011, but that it has now been sent back to the Ministry of Interior for reconsideration, following widespread criticism of some of its provisions.

We do not object to laws regulating NGOs which genuinely protect the public interest and adhere to the standards and principles of international human rights law which are binding on Cambodia, including the *Universal Declaration of Human Rights* and various human rights treaties which Cambodia has ratified. There may be legitimate reasons to regulate certain associations, for example those that seek to take advantage of special tax benefits. However, any such regulatory measures must comply with international standards and, in particular, be ‘necessary in a democratic society’ (Article 22(2) of the International Covenant on Civil and Political Rights, ratified by Cambodia 26 August 1982).

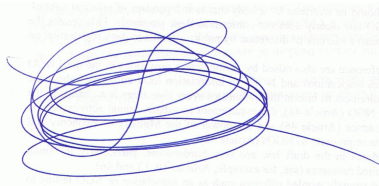
LRWC and CLD’s most serious concerns about the 3rd draft of the NGO law are as follows:

- **Failure to distinguish between groups claiming tax-free status and those which do not:** It is legitimate to impose special conditions on associations and NGOs seeking tax benefits, since this is a form of public subsidy. The draft Law, however, purports to grant limited tax benefits in relation to imported goods to all (non-profit) associations and NGOs (see Article 42). A better approach would be to relax considerably the rules for registration of non-profit organisations in general, and to impose stricter conditions only on those groups which apply for tax benefits.
- **Prohibition of activities of unregistered associations and NGOs:** Article 6 prohibits unregistered domestic associations and NGOs from conducting any activities. Article 4 defines “associations” as including “any group of Cambodian natural persons” who agree to establish for the purpose of *any* non-profit activity. Read together, Articles 4 and 6 would wrongly prohibit activities of all unregistered groups wishing to conduct non-profit activities, no matter what their size or purpose, including *ad hoc* groups temporarily set up or coming together for particular purposes or events. Furthermore, while we recognise that the maximum period for registration has been reduced to 45 days, this is still unacceptably long given the wide definition of associations and NGOs, as well as the fact that this may effectively be extended for another 45 days if amendments to the application are required.
- **Unduly onerous requirements:** Article 8 provides that associations must have at least eleven members to register, although only three members are required for NGOs, which must serve public purposes (Article 9). As a result, groups of less than 11 persons may not register an association and may therefore not conduct non-profit activities on behalf of their members. Pursuant to Articles 14 and 15, the registration process is unnecessarily complex and onerous. Article 46 requires associations and NGOs to submit annual reports, budget information and an annual action plan, and considerable other information to different ministries. Pursuant to Article 53, an association or NGO may be suspended for up to three months for breach of this requirement. This is unnecessary and, given the lack of any clear limitations on the level of detail required, could be abused by officials to harass or curtail the activities of non-profit organisations. Article 48 empowers the Ministry of Economy and Finance or the National Audit Authority to examine the financial reports or property of NGOs upon two weeks notice, but without any requirements relating to the reasons, frequency or scope of such examinations. The draft law provides no remedies for organisations concerned about official abuses of these requirements.
- **Problems with the process of registration and appeals thereto:** Article 17 makes it clear that the Ministry of Interior may refuse to register an association or NGO, but it fails to set out clear grounds for this. We believe that refusal of registration should almost never be allowed, except perhaps on very technical grounds, such as that another association with the same name already exists. Otherwise, officials may abuse their powers by arbitrarily refusing registration. At the minimum, very clear grounds for refusing registration must be set out in the law. We note that, given the lack of any established criteria for refusing to register an association or NGO, the right of appeal to the courts provided for by Article 17 is of little use.
- **Lack of criteria for suspension or termination:** The law allows courts to involuntarily suspend or terminate associations and NGOs, but fails to set out any grounds for this (Article 49). The law needs to set out clear grounds upon which cancellation of registration or suspension may be based. We believe such grounds should be limited to technical grounds such as situations in which the organisation is no longer operation as an entity.

LWRC and CLD note that it is of particular importance that any law governing associations comply strictly with international standards given the very real risk that officials could use the law to exert inappropriate levels of control over civil society organisations in Cambodia and, in particular, to curtail dissent and thereby violate the internationally protected rights to freedom of association and expression. Many reports have been issued over the past years which have demonstrated a clear pattern of administrative and judicial harassment of government critics, including opposition politicians, journalists, labour leaders, lawyers, community activists and other human rights defenders. This pattern was most recently evidenced by the selective suspension of and warnings to several NGOs that had been expressing concerns about ongoing land rights violations in Cambodia. This problem is exacerbated by longstanding, persistent corruption, lack of transparency and lack of independence of the judiciary in Cambodia.

LRWC and CLD therefore urge the Government of Cambodia to withdraw the draft Law on Associations and Non-Governmental Organizations entirely. Instead of trying to remedy this fundamentally flawed draft law, we urge the Government to enter into sincere consultations with all stakeholders so that the next draft properly serves the public interest and adheres to Cambodia's obligations under international law. We look forward to your response.

Yours sincerely,



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