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Your Excellencies:

Re: Fourth draft Law on Associations and Non-Governmental Organizations (NGO Law)

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 the freedoms of association and of expression.

LRWC and CLD have learned that the Ministry of Interior, on 12 December 2011, released a fourth draft of the Law on Associations and Non-Governmental Organizations (NGO law) and that the Ministry has announced it

will invite civil society groups to meet with officials of the Ministry of Interior on 19 December 2011 to discuss the draft law.

LRWC and CLD are disappointed to learn about the extremely short time for civil society groups to study the law.

We have read the draft law as translated into English by the UN Office of the High Commissioner for Human Rights. We have read other commentaries on the law, including the commentary by the International Centre for Not-for-profit Law (ICNL). We have assessed the provisions in the law against Cambodia's international human rights obligations, as well as the Cambodian Constitution, Article 31 of which states that Cambodia shall recognize and respect human rights as stipulated in the UN Charter, the UDHR and other human rights Covenants and Conventions.

LRWC and CLD respectfully offer the following comments and recommendations:

- **Improvements in the Fourth Draft:** We are pleased to note that mandatory registration provisions in previous drafts have been eliminated as have prohibitions on the activities of unregistered associations and NGOs. We are also pleased to note that the fourth draft no longer includes a requirement that registered associations or NGOs notify the authorities in writing of activities in given locales.

- **Provisions on "Community Based Organizations" violate the right to freedom of association:** New provisions in the fourth draft apply to Community Based Organizations (CBOs), as defined in Article 4, even though formally CBOs do not appear to be not included within the scope of application of the law as defined in Article 3. Although CBOs are not required to register, Article 5 requires them to "provide a prior written notice regarding the name of the organization, objectives and name of the organization's president to the authorities of the commune/Sangkat where they conduct activities." This provision is extremely broad and appears to require a CBO to provide notice to local authorities regarding all activities it proposes to conduct. Such notification is effectively a kind of *de facto* compulsory "registration" requirement. A blanket requirement that CBOs notify authorities of activities violates the right of association protected by Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which is legally binding on Cambodia. Article 22(2) stipulates that there may be no restrictions on the exercise of the right of association beyond what are strictly "necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." In interpreting what is a permissible curtailment of the right of association, the Human Rights Committee (Committee) has concluded that States must demonstrate the necessity of any restrictions on freedom of association, and that in no case may restrictions be "invoked in a manner than would impair the essence of a Covenant right."

- **Limitations on who is eligible to incorporate**: The fourth draft has reduced the number of founding members required to register at the Ministry of Interior to three, which is welcome. However, Article 6 limits eligibility for registration to Cambodian nationals of 18 years of age or older. Such limitations violate Article 2 of the ICCPR, which prohibits discrimination in the enjoyment of rights, and cannot be justified as a restriction on freedom of association. The Committee has ruled, in General Comment 15, that the rights in the ICCPR extend to *everyone* within the territory and jurisdiction of a county without distinction of any kind. Limiting the right of registration to Cambodian citizens prevents refugees and stateless persons (including some indigenous peoples), as well as foreigners, from exercising their rights under the Convention. It is recommended that Articles 4 and 6 be amended to eliminate nationality requirements for registration. The age limitation is also a violation of the ICCPR and Convention on the Rights of the Child (CRC). Further consideration is recommended with a view to producing a text that balances the need to protect the rights of minors with the need for parental supervision of young children and to protect children from exploitation.

- **Problems with the registration process:** While the registration process has been somewhat simplified, two provisions remain problematic. First, the registration process requires that a letter be provided "stating the address of the central office.... recognized by the Commune of Sangkat Chief" (Article 7). This is problematical for several reasons. The definition of "office" is not provided. Not all NGOs and associations can afford to rent a formal office space, and so this provision could limit the freedom of association of NGOs and associations with limited resources. In addition, there is no time limit for the Commune/Sangkat chief to produce a letter creating potential for the authorities to delay registration by failing or refusing to produce the required letter in a timely fashion. Such delays would render the Article 8 time limits meaningless. We recommend that Articles 6 and 7 be amended to require only an address (not an "office") and to eliminate the requirement of a letter from an authority in Article 7. A second problem is the requirement in Article 7 that "profiles" of each founding members be submitted as part of the application for registration. There is no definition of "profile" and without clear limitations on what is required, this provision gives authorities opportunities to require inappropriate amounts of information and to delay or deny registration on spurious grounds. We recommend that "profiles" be replaced with "name and address".

- **Refusal of registration: clarify grounds and require written reasons:** LRWC and CLD are very concerned that the fourth draft continues to be silent regarding the possible grounds for refusal of registration. Article 8 states that the Ministry of Interior (MOI) "shall examine the documents and the legality of the statute" of the domestic association or NGO and "decide whether or not to accept the registration within 45 days". There is no definition of what "legality" means or any clear limitation on the grounds for accepting or refusing an application. The law should set out clearly the grounds for refusing registration, which should be strictly and exhaustively limited to what is strictly necessary in accordance with Article 22(2) of the ICCPR. The fourth draft also fails to require officials to provide applicants with clear reasons for any refusal of registration. These deficiencies significantly complicate the possibility of a serious court appeal pursuant to Article 8.

- **Provide clear and limited criteria for termination by the courts:** Article 28 envisages courts dissolving domestic association and NGOs, without providing any limitations on the grounds which might justify this. There are no procedural safeguards or right of appeal. The relationship between Article 28 and the rules on administrative termination for non-filing as contemplated in other articles (Articles 30 and 31) is unclear. We recommend that Article 28 be clarified to specify exhaustively the grounds for involuntary dissolution and provide a right of appeal to a higher level of court. It is our view that grounds for involuntary cancellation or suspension of registration and be limited to technical grounds, such as situations in which the organisation is no longer in operation as an entity, or for serious and repeated criminal breaches.

  Provide criteria for distribution of assets after court dissolution. Article 28 says that on dissolution by "court decisions, the management of resources and assets shall comply with decisions thereof." This vague provision opens the door to inappropriate, back-door punishments or penalties and to cash or asset grabs by authorities exercising improper influence through the courts. We recommend that this section be clarified to so as to ensure distribution of assets upon involuntary dissolution in accordance with the relevant provisions of the statute of the organization (as per the first paragraph of Article 28).

- **Ensure rights of appeal:** We recommend that the draft law be amended to include the right of appeal to an independent and impartial body (i.e. a court) for official breaches of the law including in relation to registration process timelines; suspensions or termination of registration; and official demands for excessive application requirements.

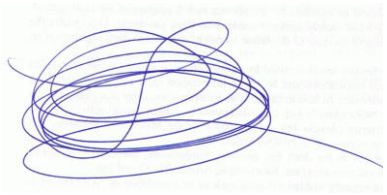
- **Foreign associations and NGOs:** There are new provisions in the fourth draft that create significant barriers for registration of foreign associations and NGOs and create opportunities for arbitrary or politicized decisions by authorities. We note that foreign groups also benefit from the right to freedom of

association. While we recognise that some restrictions may legitimately be placed on this freedom – for example to safeguard the control by locals over the political process – the fourth draft goes far beyond what is necessary or legitimate. Some of the key problems include:

- It is not legitimate to impose a blanket requirement for all foreign associations and NGOs working in the country for more than one year to sign a memorandum of understanding (MOU) with the Ministry of Foreign Affairs and International Cooperation. There may be legitimate reasons to require foreign groups working in a country to have some sort of legal form – for example for purposes of hiring. Groups wishing to work with the government would normally wish to have some sort of agreement. Otherwise, a non-discretionary system of registration for foreign groups (i.e. essentially a notice approach) is enough to ensure that the government is informed about their activities.
- Article 12 appears to recognise only activities by foreign associations and NGOs in the area of "aid projects", which is not defined. These groups may undertake a wider range of legitimate activities which would not normally be considered to be aid projects. We recommend that the term "aid projects" be deleted, and replaced with a reference to non-profit work.
- The registration process is highly bureaucratic, posing unnecessary barriers, and we recommend that it be simplified. For reasons noted above, we recommend that Article 12 be amended to delete the requirement of a "profile" of the country representative, letter of support from the government and letter from the Commune or Sangkat Chief, and replace this with a simple requirement of a name and address. The requirements relating to financial statements should also be simplified.
- Procedural safeguards, such as timelines, should be added to the registration process, along with the grounds that would justify a refusal and a right of appeal to the courts.
- The grounds for termination of the work of a foreign group, set out in Article 17, are far too broad and vague, including such issues as harming local culture and customs. These should be limited to the grounds which are in conformity with the grounds for restricting freedom of association in Article 22(2) of the ICCPR.
- The requirement of renewal every three years opens foreign associations and NGOs to potential official harassment in the renewal process. The United Nations Special Rapporteur on Human Rights Defenders has expressed concern that requirements for renewals can result in self-censorship, inappropriate compliance or corruption of foreign associations or NGOs. We recommend that the law be amended to remove time limits on the period of registration.
- Article 15 requires foreign groups to have a "sufficient budget" to conduct their activities. There is no justification for this requirement, which creates opportunities for arbitrary or politicized delays and decision making. We recommend this requirement be eliminated.
- Article 15 provides for a cap of 25% for administrative expenses. Caps on administrative expenses are not legitimate as they are arbitrary and discriminatory, and fail to take into account the diverse nature of non-profit groups and variable costs of providing different sorts of services. We recommend that the requirement be eliminated.

We recommend that these issues, as well as those raised by others, be resolved through dialogue with local stakeholders. The overriding goal should be to ensure respect for human rights in accordance with constitutional and international standards, as well as principles of administrative fairness. It is regrettable that the short time available for consultation has resulted in hurried responses. We also recommend that the time for study and reflection on the draft be extended.

Yours sincerely,



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