



# CENTRE FOR LAW AND DEMOCRACY

[info@law-democracy.org](mailto:info@law-democracy.org) • [www.law-democracy.org](http://www.law-democracy.org) • tel: +1 902 431-3688 • fax: +1 902 431-3689  
39 Chartwell Lane, Halifax, N.S., B3M 3S7, Canada

## Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*  
[www.lrwc.org](http://www.lrwc.org); [lrwc@portal.ca](mailto:lrwc@portal.ca); Tel : +1 604 738 0338 ;Fax : +1 604 736 1175  
3220 West 13<sup>th</sup> Avenue, Vancouver, B.C. CANADA V6K 2V5

8 April 2011

H.E. Samdech Hun Sen  
Prime Minister  
Office of the Prime Minister  
Phnom Penh, Kingdom of Cambodia  
Fax: +855 23 36 06 66 / 855 23 88 06 24  
(c/o Council of Ministers)  
Email: [leewood\\_phu@nida.gov.kh](mailto:leewood_phu@nida.gov.kh)

H.E. Sok An  
Deputy Prime Minister and Chairman, Council for  
Legal and Judicial Reform Council of Ministers  
N° 38, Confederation de la Russie 12209  
Phnom Penh, CAMBODIA  
Fax: +855-23-880-628, +855-23-880-635, +855-23-  
212-490; Email: [info@pressocm.gov.kh](mailto:info@pressocm.gov.kh),  
[pressocm@gmail.com](mailto:pressocm@gmail.com)

H.E. Sar Kheng  
Deputy Prime Minister and Minister of Interior  
Ministry of Interior,  
275 Norodom Blvd,  
Phnom Penh, Kingdom of Cambodia,  
Fax: + 855 23 212708. Email: [moi@interior.gov.kh](mailto:moi@interior.gov.kh)

H.E. Ang Vong Vathna  
Minister of Justice  
No 240, Sothearos Blvd.  
Phnom Penh, Kingdom of Cambodia,  
Fax: 023 364119. Email: [moj@cambodia.gov.kh](mailto:moj@cambodia.gov.kh)

H.E. Hor Nam Hong  
Minister of Foreign Affairs  
161 Preah Sisowath Quay  
Phnom Penh, Kingdom of Cambodia  
Fax: + 855 23 21 61 44 / + 855 23 21 69 39.  
Email: [mfaicasean@bigpond.com.kh](mailto:mfaicasean@bigpond.com.kh)

Dear Prime Minister, Deputy Prime Ministers and Ministers of Justice and Foreign Affairs;

### **Re: Draft Law on Associations and Non-Governmental Organizations**

Lawyers Rights Watch Canada (LRWC) and the Centre for Law and Democracy (CLD)<sup>1</sup> have studied the Draft Law on Associations and Non-Governmental Organizations (draft NGO Law) and have compared it with international standards on the right to freedom of association, as well as better international practice regarding laws regulating non-governmental organizations (NGOs). We have also considered other current critiques of this

---

1. LRWC is a committee of 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 international human rights NGO based in Canada that promotes foundational rights for democracy, including the right to freedom of association.

draft law. We note that there has been very widespread concern about this legislation from NGOs from various sectors, including the development and human rights sectors.

Our comments are, in particular, based on the right to freedom of association as guaranteed by Article 31 of Cambodia's Constitution and Article 22 of the *International Covenant on Civil and Political Rights* (ICCPR), to which Cambodia is a Party. Article 22(2) of the ICCPR provides that there may be no restrictions on the exercise of this right other than those "which are 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."

We offer the following observations on the draft NGO Law:

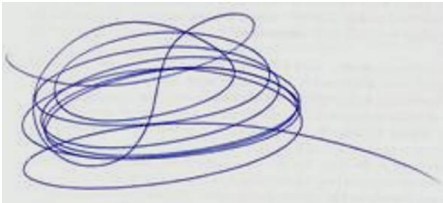
1. Given its importance to democracy and the ability of civil society to participate and to carry on activities, the process of drafting of NGO legislation should be inclusive and participatory, aiming to achieve seeking broad-based consensus so that the resulting legislation will successfully address the legitimate aims of enabling the non-profit sector to serve legitimate public interests. We point out that the public interest includes the promotion and observance of human rights, which according to the Universal Declaration of Human Rights (and other human rights conventions binding on Cambodia) is the responsibility of every person and every organ of society, including NGOs.
2. The draft NGO Law defines associations and NGOs extremely broadly to include any group of citizens who collaborate to further, or even consider, their own or public interests (Article 4). Unregistered associations and NGOs are prohibited from operating. Strict conditions are placed on the formation, registration and operation of associations and NGOs, including as to a minimum number of members, fees and formalities for registration, and the obligation to produce an annual report. This cannot be justified, particularly for groups which do not seek to attain legal status, employ staff or receive funding.
3. The registration body is the Ministry of Interior (MOI), which has the power under the draft NGO Law to reject applications on vague and as yet unspecified grounds (see, for example, Article 17). It is clear that under international law, there should be no discretion to refuse to register an organisation, perhaps except on very technical grounds such as using the same name as an already registered organisation, and that any mandatory registration requirements should be overseen by a body that is independent of political control. The approach adopted in the draft NGO law clearly does not conform to these standards. This creates the potential for arbitrary, politicized or abusive exercise of discretion by public officials to deny registration on illegitimate or unreasonable grounds.
4. Concerns about possible political interference are also raised by various other provisions in the draft NGO law, such as Article 43, which requires associations and NGOs to inform local authorities about the establishment of local offices, the requirement to inform the authorities every time there is a change in the members or staff of an association or NGO (Article 44), the requirement to submit annual activity reports and action plans to the Ministry of Interior (Article 46) and the power of the Ministry of Economy and Finance to examine the financial reports or property of NGOs (Article 48).
5. The registration and reporting procedures in the draft law are very burdensome, particularly for small organizations in rural areas or with limited resources (see, for example, Articles 10, 13 and 46).
6. There are harsh penalties for wide and vaguely worded offences such as an association or NGO failing to comply with its Charter, which may lead to the organisation being shut down. This is an extreme penalty for what may be a minor technical infringement. Furthermore, many organisations may not have been able to adopt legally precise charters, due to a lack of legal capacity, opening the door to abuse.
7. These problems are exacerbated by the often vague wording in the draft NGO Law, which creates uncertainties as to the scope of the law and the expectations of NGOs. For example, Article 48, noted above,

provides no guidance as to grounds which might justify an examination of an organisation's finances or property, and it includes no other process guarantees, such as a limitation on the frequency of such examinations or requirements of notice.

Our comments on this draft law are placed in the context of Cambodia's overall human rights performance. Lawyers' Rights Watch Canada and the Centre for Law and Democracy have noted a pattern of increasing judicial harassment of journalists and human rights defenders over the past several years, together with the lack of significant improvement in independence of lawyers and judges. We have also noted a persistent climate of impunity for serious allegations of human rights violations including land-grabbing, intimidation and even murders of human rights defenders. This draft law provides opportunities for official harassment of NGOs. We urge the Government of Cambodia to restart the process of developing this legislation, working cooperatively with NGOs in all sectors, both local and foreign, to develop a sound NGO law that provides for appropriate regulation and accountability of the non-profit sector within the framework of respect for international human rights standards.

We look forward to your response.

Yours sincerely,



Gail Davidson  
Executive Director  
Lawyers' Rights Watch Canada



Toby Mendel  
Executive Director  
Centre for Law and Democracy

- cc. H.E. Om Yentieng  
President, Cambodian Human Rights Committee  
Office of the Prime Minister  
Phnom Penh, Kingdom of Cambodia  
Fax: +855 12 81 37 81 / +855 23 21 11 62 or +855 23 88 10 45 (c/o Council of Ministers)  
Email: [info@pressocm.gov.kh](mailto:info@pressocm.gov.kh), [pressocm@gmail.com](mailto:pressocm@gmail.com)
  
- cc. Ambassador Mr. Sun Suon  
Permanent Mission of Cambodia to the United Nations in Geneva  
Chemin de Taverney 3  
Case postale 213  
1218 Grand-Saconnex, Switzerland  
Fax: + 41 22 788 77 74.  
Email: [cambodge@bluewin.ch](mailto:cambodge@bluewin.ch)
  
- cc. Mr. Surya Subedi  
UN Special Rapporteur for human rights in Cambodia  
c/o Office of the High Commissioner for Human Rights/Cambodia  
N\_ 10, Street 302, Sangkat Boeng Keng Kang I, Khan Chamcar Mon  
P.O.Box: 108  
Phnom Penh, Cambodia,  
Fax: (855) 23 212 579, 213 587, Email: [cohchr@online.com.kh](mailto:cohchr@online.com.kh)

- cc. Gabriela Carina Knaul de Albuquerque e Silva  
Special Rapporteur of the Human Council on the independence of judges and lawyers  
c/o Office of the United Nations High Commissioner for Human Rights  
United Nations Office at Geneva  
8-14 Avenue de la Paix  
1211 Geneva 10 Switzerland  
Fax: +41 22 917 9006; e-mail: [SrindependenceJL@ohchr.org](mailto:SrindependenceJL@ohchr.org)
- cc. Mrs. Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders  
c/o Office of the High Commissioner for Human Rights  
Palais Wilson United Nations Office at Geneva  
CH 1211 Geneva 10 Switzerland  
Fax: +41(0) 22.917.90.06, email: [defenders@ohchr.org](mailto:defenders@ohchr.org)
- cc. Mr. Frank La Rue  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression  
Palais des Nations  
CH-1211 Geneva 10 Switzerland  
Fax: +41 22 917 9006, Email: [freedex@ohchr.org](mailto:freedex@ohchr.org)
- cc. Christophe Peschoux  
Representative  
Office of the UN High Commissioner for Human Rights  
No. 10, Street 302, P.O. Box 108 ,  
Phnom Penh, Cambodia  
Fax: (855) 23 212 579; E-mail: [cpeschoux@ohchr.org](mailto:cpeschoux@ohchr.org)
- cc. Ambassador Ron Hoffmann  
Embassy of Canada  
P.O. Box 2090  
Bangkok 10501, Thailand  
Fax: 66 (0) 2636-0566; email: [bngkk@international.gc.ca](mailto:bngkk@international.gc.ca), [bngkk-gr@international.gc.ca](mailto:bngkk-gr@international.gc.ca)
- cc. Mr. D. Gordon Longmuir  
Honorary Consul  
Consulate of Cambodia  
903 - 168 Chadwick Court  
North Vancouver, B.C., V7M 3L4  
Phone: 604.980.1718  
Fax: 604.988.1765  
Email: [dglo@shaw.ca](mailto:dglo@shaw.ca)