

# DRAFT LAW ON ASSOCIATIONS & NGOs: **COMMENTS** **ON THE THIRD DRAFT**

---

A LICADHO Briefing Paper  
August 2011



សម្ព័ន្ធនៃខ្មែរជំរឿននិងការការពារសិទ្ធិមនុស្ស លីកាដូ

**LICADHO**  
CAMBODIAN LEAGUE FOR THE PROMOTION  
AND DEFENSE OF HUMAN RIGHTS

## **Cambodian League for the Promotion and Defense of Human Rights (LICADHO)**

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 12 provincial offices.

LICADHO pursues its activities through two programs:

### **Monitoring and Protection Program:**

- **Monitoring of State Violations and Women's and Children's Rights:** monitors collect and investigate human rights violations perpetrated by the State and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials.
- **Paralegal and Legal Representation:** victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.
- **Prison Monitoring:** researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- **Medical Assistance:** a medical team provides assistance to prisoners and prison officials in 12 prisons, victims of human rights violations and families in resettlement sites.
- **Social Work:** staff conduct needs assessments of victims and their families and provide short-term material and food.

### **Promotion and Advocacy Program:**

- **Training and Information:** advocates raise awareness to specific target groups, support protection networks at the grassroots level and advocate for social and legal changes with women, youths and children.
- **Public Advocacy and Outreach:** human rights cases are compiled into a central electronic database, so that accurate information can be easily accessed and analyzed, and produced into periodic public reports (written, audio and visual).

**Cover Photo:** Celebrating International Children's Day in Kien Svay, 1 June 2010. © LICADHO.

### **For More Information Contact:**

Dr. Kek Galabru, President  
LICADHO (Cambodian League for the Promotion and Defense of Human Rights)  
#16, Street 99  
Phnom Penh, Cambodia

Tel: (855) 23 727 102/216 602

Fax: (855) 23 727 102/217 626

E-mail: [contact@licadho-cambodia.org](mailto:contact@licadho-cambodia.org)

Web: <http://www.licadho-cambodia.org>

## 1- OVERVIEW

On July 29, 2011, the government released a third draft of its widely criticized Law on Associations and Non-Governmental Organizations (NGO Law), once again claiming that the newest draft addresses the litany of concerns that have been raised by civil society. One needs look no further than the first chapter of the law, however, to discredit the government's reassurances. Registration is still mandatory, meaning Cambodians cannot exercise their fundamental rights of assembly, expression and association without navigating complex registration procedures and securing the blessing of government officials, who would be given absolute power to create or dissolve civil society groups.

The majority of LICADHO's comments in its briefing papers discussing the first and second drafts of the law are still relevant.<sup>1</sup> As with the second draft, the remaining changes in the third draft are almost entirely cosmetic. The third draft does, however, make one significant improvement in that it expressly mentions a right to appeal a denial of registration. This welcome addition is not without its own issues – namely the lack of a timeline and legal standards for assessing an appeal – but it is an important reflection of the impact that advocacy efforts have had to date.

In its papers analyzing the first and second drafts, LICADHO detailed how the draft law would violate Cambodians' freedoms of expression, assembly and association, and broke down its fundamental flaws as follows:

1. The law includes mandatory, burdensome requirements, and a difficult and intimidating process for organizations to lawfully register as NGOs and associations;
2. It grants excessive powers to government officials and neglects to set guidelines, which will lead to arbitrary decision-making, and potentially unreasonable registration fees;
3. It imposes intrusive requirements for organizations to report to the government, violating their independence; and
4. It places unreasonable restraints on foreign NGOs which will likely lead to greater politicization of aid to Cambodia.

Despite some positive developments in the new draft, LICADHO's previous analysis of all four areas of concern remains relevant. Changes in the third draft with respect to problematic provisions related to the first two categories, however, bear additional analysis here.

---

<sup>1</sup> *Draft Law on Association & NGOs: An Updated Analysis of the Second Draft*, a LICADHO Briefing Paper, March 2011 (available at <http://www.licadho-cambodia.org/reports.php?perm=151&pagenb=&filter=-1>); *Draft Law on Association & NGOs: Cambodian Civil Society Under Threat*, a LICADHO Briefing Paper, December 2010 (available at <http://www.licadho-cambodia.org/reports.php?perm=150&pagenb=&filter=-1>).

## 2. MAJOR CHANGES IN DRAFT LAW

As mentioned above, the most alarming aspect of the law – that it mandates registration and does not allow for a temporary authorization while registration applications are pending – has been left virtually untouched. At first glance, however, this may not be entirely apparent. Article 6 has been supplemented with some essentially superfluous language in its first sentence which, if read in isolation, may mislead some to think that there is now an exception to registration. There is not.

The key to understanding the draft law’s mandatory registration lies in its broad definitions of associations and NGOs. Article 4 defines an association as: a group of Cambodians who agree to establish for the interests of the group’s members and/or the public, without conducting any activity to generate profits for sharing among their members. Similarly, it defines a domestic NGO as: a group of Cambodians who agree to establish to serve public interests, without conducting any activity to generate profits for sharing among their members.<sup>2</sup>

One need only replace the words “association” and “non-governmental organization” in Article 6 with the definitions in Article 4 to see that the current draft continues to mandate registration.

<b>Article 6: Prohibiting Provisions</b>		
<u>Second Draft:</u> Any association or non-governmental organization which is not registered or signed a memorandum in accordance with this law shall not be allowed to operate in the Kingdom of Cambodia.	<u>Third Draft:</u> Any association or non-governmental organization, which is not registered or has not signed a Memorandum, shall not enjoy any benefits from this law, and may not operate as an association or non-governmental organization <sup>3</sup> in the Kingdom of Cambodia. <sup>4</sup>	<u>Insert definitions from Article 4 to understand Article 6:</u> Any [group of Cambodians who agree ...], which is not registered or has not signed a Memorandum, shall not enjoy any benefits from this law, and may not operate as a [group of Cambodians who agree ...] in the Kingdom of Cambodia.

The additional wording in the first sentence of Article 6 thus appears to be no more than an attempt to obfuscate the law’s primary purpose of establishing a mandatory registration scheme. Indeed, the third draft even deletes an apparent attempt at allowing an exception to registration that appeared in the second draft for “community-based organizations created locally inconsistent with conditions set forth in this law and operated in compliance with other existing laws for mutual assistance.” In Khmer, the second draft’s exemption actually referred to “angkar moha

<sup>2</sup> Immediately, one can see that the two definitions are so broad that they even overlap with each other - if a group of Cambodians wishes to work in the public’s interest, are they an association or an NGO?

<sup>3</sup> The phrase “may not operate as an association ...” in this provision has also been translated as: “may not operate *in the name of* association or non-governmental organization in the Kingdom of Cambodia.” LICADHO believes that “as an association” is a more accurate translation. Regardless, however, neither translation allows for an exception to mandatory registration when examined in conjunction with Article 4, as described above.

<sup>4</sup> Article 6 now also includes a second sentence, exempting foreign NGOs who operate for less than a year from signing of a Memorandum of Understanding, but requiring a written notification about their aid projects, duration and locations of their operation to the Ministry of Foreign Affairs and International Cooperation. LICADHO considers this exemption for foreign NGOs to be a positive change.

chun,” a term used in the communist-era 1980s to refer to “people’s organizations.” This somewhat cryptic exemption no longer appears in the third draft.

In any event, where does mandatory registration under this NGO Law leave groups and non-profit entities as defined in the Civil Code, which is set to enter into effect in just a few months?<sup>5</sup> Articles 46-118 of the Civil Code already include a detailed voluntary registration scheme; including requirements for the formation and registration of both local and foreign NGOs and associations, and provisions governing registration, management and dissolution, and liquidation.<sup>6</sup>

It is also worth noting that the third draft reverts back to the 45 working day period – at least nine weeks if there are no holidays – for the government to accept or reject the registration application of an association or NGO. This revision is positive, but it is still far too long in light of the law’s express ban on activities by unregistered groups. Depending on national holidays, this timeline could be extended to over three months during the latter part of the year. There is no reason why NGOs and associations should not be allowed to operate pending registration approval, as private companies do under Article 26 of the amended 1999 Law on Commercial Rules and Register.

#### **Excessive powers of government officials:**

The law continues to grant extensive powers to government ministries responsible for registration. Most worrying is the law’s lack of clear grounds for denying registration to an association or NGO. As such, there are still no safeguards in place to prevent arbitrary decision-making by the ministries. Even if an application is not denied outright, the numerous registration and reporting requirements provide room for officials to rule that applicants have not fully met certain requirements, creating delays which serve to intimidate and deter them from pursuing their applications or activities (particularly for provincial-based ones without the means to travel repeatedly to Phnom Penh).<sup>7</sup>

The third draft does, however, expressly include a right to appeal where the government has denied an association or domestic NGO’s registration.<sup>8</sup> This is a welcome addition. Unfortunately, the provision does not provide any specific guidelines for registration denial or legal standards on appeal. Nor does it specify a time period in which an appeal must be heard. Since the law continues to mandate registration, and expressly prohibits any activities or operations before registration is approved, an appeal timeline should be specified. This is especially true in light of the lengthy time period allowed for processing registration applications, and the fact that organizations are prohibited from undertaking any activities while their applications are pending.

---

<sup>5</sup> The Law on Implementation of the Civil Code was signed on May 31, 2011. The law itself provides for a 6 month waiting period before it enters into effect.

<sup>6</sup> Article 4 also makes no effort to reconcile its broad definitions with the draft trade union law currently winding its way through the legislative process.

<sup>7</sup> The third draft, as the second, allows the Ministry of Interior to delegate the authority for registration of associations or domestic NGOs to sub-national administrative institutions. (See Article 7 in third draft, and Article 20 in second draft.) Under the law, this delegation thus remains at the whim of the Ministry of Interior.

<sup>8</sup> See Third Draft of Law on Associations and NGOs, Article 17.

### 3. CONCLUSION AND RECOMMENDATIONS

The third draft of the law on associations and NGOs remains a fundamentally flawed piece of legislation whose only apparent purpose is to control civil society. It has been clear since the release of the first draft that the law is intended to create obstacles to the existence of associations and NGOs through registration and reporting requirements – to make them spend significant time and resources in a complicated process open to arbitrary and opaque decisions by government officials – rather than to strengthen civil society. The third draft still does not address this problem.

Again, it must be remembered that the freedoms of association, expression and assembly in Cambodia are already heavily restricted, particularly at the community level. Ordinary people are limited in their ability to voice opinions on issues affecting their welfare and development, and NGOs and other groups which seek to work with them have limited room to operate. Anyone who is perceived to be challenging local or government officials is open to persecution, including arrest, detention, threats and violence. The draft law must be assessed within this context.

As before, LICADHO recommends the following:

- Registration must be voluntary. The law’s mandatory registration provisions violate Cambodia’s own Constitution, international norms, and multiple international conventions which Cambodia has ratified. It also puts the NGO Law in direct conflict with several other Cambodian laws, creating a confused, impossible-to-navigate legal landscape for all groups wishing to assemble or undertake a broad array of activities in Cambodia.
- The law should specify that organizations and associations are temporarily authorized to operate while their registration applications are pending.
- The government must articulate a justification for the law, particularly in light of Cambodia’s 2007 Civil Code. The current stated purposes in Article 2 are entirely unsatisfactory: “giving” rights that Cambodians already possess, and providing opportunities that already exist.<sup>9</sup> Stating a coherent justification will allow Cambodia’s legislators the ability to assess the stated purpose of the law and determine whether it is merited or whether modifications are warranted.

Khmer citizens shall have freedom of expression, press, publication and assembly. . . .

- Article 41, Cambodian Constitution

Khmer Citizens shall have the right to establish associations and political parties. These rights shall be determined by law.

-- Articles 42, Cambodian Constitution

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

-- Article 22, International Covenant on Civil and Political Rights, ratified by Cambodia.

□□□

<sup>9</sup> See Article 2, third draft of NGO Law.