

# NGO LAWS & CRACKDOWNS ON HUMAN RIGHTS DEFENDERS: INTERNATIONAL LESSONS FOR CAMBODIA

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**LICADHO**

CAMBODIAN LEAGUE FOR THE PROMOTION  
AND DEFENCE 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 the rights in Cambodia and to promote respect for civil and political rights by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the 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 its seven program offices:

- The Documentation and Resources Office compiles case files into a central electronic database, so that accurate information can be easily accessed and analyzed.
- The Human Rights Education Office provides training courses to target groups such as government officials, students, monks and provides dissemination sessions to the general public.
- The Monitoring Office investigates human rights violations and assists victims in the legal process. Specially trained staff also monitors 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- The Medical Office provides medical assistance to prisoners and prison officials in 12 prisons and provides medical care and referrals to hospitals for victims of human rights violations.
- Project Against Torture provides comprehensive rehabilitation services to victims of torture and conducts advocacy against torture.
- The Children's Rights Office educates the public on children's rights, creates child protection networks at the grassroots level, and investigates children's rights violations.
- The Women's Rights Office educates the public about women's rights, investigates women's rights violations and advocates for social and legal changes.

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### ***Background Information***

In October 2004, the Special Representative of the UN Secretary-General on Human Rights Defenders, Hina Jilani, tabled a report on the status of human rights defenders worldwide. Her report highlighted a number of factors which allow for government crackdowns on human rights defenders' work. All of these factors are present in Cambodia:

- "...weaknesses in the law and legal processes,
- limitations on the competence and independence of the judiciary,
- the lack of awareness or accountability among local authorities for the respect of international human rights standards, and
- weaknesses in civil society".<sup>1</sup>

Her report focused in particular on a worrying trend by various governments to use 'NGO laws' to restrict the activities of human rights NGOs, and highlighted a number of measures which have caused problems in other countries, including:

- "...the criminalization of non-registered human rights groups;
- unnecessarily burdensome and lengthy registration procedures;
- limits on the creation of networks;
- inappropriate denial of registration;
- limited independence of registration authorities;
- requirements to re-register when new legislation is introduced;
- State scrutiny of and interference with an organization's management, objectives and activities;
- administrative and judicial harassment;
- restrictions on access to funding;
- restrictions on cooperation with international human rights partners".<sup>2</sup>

All of the key concerns above could well result from the passage of an NGO Law in Cambodia. In some cases provisions in such laws are directly contrary to the guarantees of freedom of expression and assembly in the International Covenant on Civil and Political Rights, which Cambodia has ratified. In other cases the provisions are not objectionable on their face, and are similar to those in place in Western democracies, but they are problematic in less democratic countries when they are manipulated by politicized government agencies, or when there is no potential for review by an independent judiciary.

In the Cambodian context any NGO law – regardless of its particular content – poses a threat to the work of human rights defenders and other NGOs. While human rights defenders are most at risk because of their role in continually criticizing government actions, the objectives of all NGOs and development agents – both foreign and domestic – can be compromised.

The experience of six Asian countries with laws similar to the proposed Cambodian NGO law is outlined below. In China, Thailand, and Malaysia, the government has used registration requirements to restrict the activities of civil society organizations critical of government, even though those countries' laws theoretically protect freedom of assembly and association. In Nepal, India, and Bangladesh, the governments recently attempted to introduce NGO laws

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<sup>1</sup> Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, October 1, 2004, A/59/401, p2.

<sup>2</sup> Ibid.

which would likely have the same effect, but they met with considerable resistance from NGOs, donor agencies and the international community. In Nepal and Bangladesh the controversial bills were eventually withdrawn; in India the law has yet to be passed or implemented. Cambodia would be wise to heed the lessons of its peers on the dangers of government regulation of civil society.

### *Experiences of six Asian countries*

#### **China<sup>3</sup>**

In China, freedom of association is theoretically protected by law, as it is in Cambodia. But in reality in China the government has restricted this right considerably, particularly through regulations on civil society organizations. Government policy and regulations require all professional, social, and economic organizations to gain registration and approval from government. According to the US State Department, “in practice these regulations prevented the formation of truly autonomous political, human rights, religious, spiritual, labor, and other organizations that might challenge government authority”.<sup>4</sup> In the past few years, this has been achieved partly by refusing registration or deregistering NGOs. The government also introduced a task force to oversee and interrogate NGOs, particularly those with foreign links, and those focused on social development or human rights.

#### **Thailand<sup>5</sup>**

In Thailand, it is radio stations and media outlets that have had the same problems with new registration requirements as human rights NGOs have had elsewhere. Thai statutory law only allows government entities to use radio frequencies, but a state policy allowed community radio operators to operate ‘extra-legally’ until regulations were introduced. In 2004 the government began to require registration, warning that unregistered operators would be arrested. Following the new policy, the government closed 17 community radio stations, including one that was notably critical of the government. The police also informally requested media outlets to be cautious when reporting sensitive political or social issues. Even though this request had no legal standing, it may well have prompted self-censorship by the radio stations. The crackdown on community radio stations was accompanied by incidents of censorship of television programs, newspapers, and books that were critical of government or the monarchy. In February 2006, Sathien Chanthorn, a 56-year old farmer who ran a community radio station that was occasionally critical of government, received an 840 euro fine and a four-month suspended sentence for operating his station without a license.<sup>6</sup>

#### **Malaysia<sup>7</sup>**

Malaysia also protects freedom of association in its constitution, but it is limited by several statutes. Societies must register if they are to function, and the government has manipulated this requirement for political purposes. Political opposition groups affiliated with the

<sup>3</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, March 8, 2006, “Country Reports on Human Rights Practices, China, 2005”, at [www.state.gov/g/drl/rls/hrrpt/2005/61605.htm](http://www.state.gov/g/drl/rls/hrrpt/2005/61605.htm)

<sup>4</sup> Ibid.

<sup>5</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, March 8, 2006, “Country Reports on Human Rights Practices, Thailand, 2005”, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61628.htm>

<sup>6</sup> Reporters without Borders, February 8, 2006, “Farmer gets suspended sentence for operating community radio” at [www.rsf.org/article.php3?id\\_article=16399](http://www.rsf.org/article.php3?id_article=16399)

<sup>7</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, March 8, 2006, “Country Reports on Human Rights Practices, Malaysia, 2005”, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61615.htm>

Communist or Socialist parties in Malaysia have been refused registration. The University and University Colleges Act also requires student associations to gain approval of their universities, and prohibits them from participating in political activities. A number of Universities also allowed government to monitor campus elections of student representatives.

### **Nepal<sup>8</sup>**

In November 2005, the Government of Nepal introduced a Code of Conduct for Social Organizations, as part of its Social Welfare Act. The Code would be administered by a Council of government appointees, with the power to dissolve, or to suspend and take over the administration of those organizations that contravene the Code. The Code contained a number of provisions that violated Nepal's obligations under international human rights treaties, particularly the International Covenant on Civil and Political Rights.

Among the most problematic provisions in the law were requirements that activities be in consonance with government plans (article 4.4), and that the government approve foreign funding to NGOs (11.2).

Other provisions – such as a prohibition on partisan political activities (3.3) – are common in firmly democratic countries with proper checks and balances and might not seem objectionable on their face. In Nepal, however, the same provisions are far too susceptible to manipulation by the government for the purpose of restricting NGOs' activities.

The NGO Federation of Nepal, representing 2600 national NGOs, rejected the Code outright. The Association of International NGOs, representing 50 INGOs working in Nepal, expressed serious concerns on both procedural and substantive aspects of the law. The Special Representative of the UN Secretary-General on Human Rights Defenders also affirmed that the Code was in contradiction to the UN Declaration on Human Rights Defenders.

Due to this reaction the Nepal Supreme Court was convinced to suspend the implementation of the Code, and finally in May 2006 the Nepalese Cabinet annulled the Ordinance introducing the Code, not long after the Nepalese Parliament had been restored and the King had capitulated in response to major protests.

### **Bangladesh<sup>9</sup>**

In 2004, the Bangladesh government proposed an amendment to its Foreign Donations Regulation Act. The changes would have prohibited NGOs from participating in "political activity", defined vaguely and broadly as including "any activity which may be interpreted as political, or may affect politics, or such other activities which may be interpreted to be detrimental to national independence, sovereignty, culture, ethnic and religious sentiment". The new Act would also have allowed the authorities to remove the Chief Executive of an organization if the government "is satisfied that the Chief Executive ... has been responsible for any irregularity in respect of its funds or for any mal-administration in the conduct of its affairs ... or has caused the organization to be involved in any political activity, or any activity influencing politics directly". Contraventions of the Act would also give the government the power to dissolve an NGO and liquidate its assets.

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<sup>8</sup> Information provided by Forum-Asia.

<sup>9</sup> See Pandey and Shruti, above.

Under immense pressure from donor agencies and NGOs, however, the government eventually withdrew the proposed amendments.

**India<sup>10</sup>**

In 2005, the government of India proposed a Foreign Contribution Management and Control Bill. Although an existing law already requires Ministry of Home Affairs approval of any foreign funding to Indian NGOs, the new bill has the potential to restrict NGO activities even further. The Bill would add a requirement for NGOs to seek re-registration every two years, which could be denied if the Registration Authority finds that the NGO has not “undertaken meaningful activity in its chosen field”, a determination left up to the discretion of the authority. The bill would also prohibit foreign donations to “organizations of a political nature” – a term which is not defined in any greater detail, and could encompass human rights defenders and other government critics. A variety of human rights organizations – the South Asia Human Rights Documentation Centre in particular – have spoken out against the constraints the bill will imply for their activities.

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<sup>10</sup> See Pooran Chandra Pandey and Ishita Shruti, 2005, “Laws to Regulate Foreign Contribution in Commonwealth Nations”, background note, Voluntary Action Network India (VANI), New Delhi; and South Asia Human Rights Documentation Centre, February 25, 2006, “Where not to be if you’re a human rights defender”, *Human Rights Features*, HRF 136/06, at <http://www.hrdc.net/sahrdc/hrfeatures/HRF136.htm>

# Annex 1: Law on Local Associations and NGOs

The Royal Government

Kingdom of Cambodia  
Nation Religion King

## Law On Local Associations and Non-Governmental Organizations Unofficial Translation of May, 2005 Draft

### Chapter 1 General Provisions

#### Article 1:

The purpose of the law is to determine the rules, regulations and conditions for the registration and functioning of local associations and non-governmental organizations in the Kingdom of Cambodia.

#### Article 2:

This law shall not be applied to:

- Private for profit local associations or non-governmental organizations
- Employer's associations
- Labor unions
- International associations or international non-governmental organizations.

#### Article 3:

1- An association is a group of physical persons established by Khmer citizens who mutually agree to consider any common purpose on a voluntary basis aimed at serving the public interest, both in terms of the spiritual and material interests, of members of the private non-profit association.

2- A local non-governmental organization is a group of physical persons established by Khmer citizens, who mutually agree to carry out humanitarian activities for social development, social welfare and the public interest without personal gain or profit.

#### Article 4:

Local associations and non-governmental organizations shall not carry out any of the following activities:

- 1- conduct activities for any political interests;
- 2- provide non-material, material, financial means, and human resources in support of any political party;
- 3- act against its statute.

#### Article 5:

The President of a local association and non-governmental organization shall not, at the same time, serve as the president of a political party.

#### Article 6:

The local association and non-governmental organization shall have a permanent office in the Kingdom of Cambodia.

#### Article 7:

The registration of local associations and organizations shall be under the competence/authority of the Ministry of Interior.

## **Chapter 2**

### **Registration of the Local Association and Non-Governmental Organization**

#### **Article 8:**

In order to obtain the legal personality as a legal entity, the president of the local association or non-governmental organization shall submit an application form for registration with the Ministry of Interior. That application form shall be signed by the president of the local association or non-governmental organization and the following documents shall be attached:

- 1- Full name, abbreviation and logo of the local association or non-governmental organization
- 2- Address of the central office of the local association or non-governmental organization certified by the chief of commune -Sangkat.
- 3- Two copies of the original statute of the local association or non-governmental organization.
- 4- Summary biography of the president and the governing body of the local association or non-governmental organization, including details of at least 2 persons aged 18 or older (two copies for each person with the affixed 4x6 photo).
- 5- Internal regulations of the local association or non-governmental organization, if available.

#### **Article 9:**

The Ministry of Interior shall issue a receipt for the application form of the local association or non-governmental organization, which has submitted a complete form according to the requirements provided by article 8 of this law.

#### **Article 10:**

The Ministry of Interior shall examine the substance of the dossier of the local association or non-governmental organization, after the date of receiving the application form submitted as provided in article 9 of this law.

Within at least 30 days, the Ministry of Interior shall make a decision as to whether or not to approve the registration of the local association or non-governmental organization.

Provided that, within 30 days after the application form for registration was received, the Ministry of Interior fails to make a written response, the concerned local association or non-governmental organization shall be considered as having received legal validity. The Ministry of Interior shall immediately issue a ministerial proclamation of registration of the local association or non-governmental organization.

#### **Article 11:**

Where the dossier of a local association or non-governmental organization is determined to be complete and consistent with the constitution, law on the local associations and non-governmental organizations and other laws in force, the Ministry of Interior shall issue a letter of its approval for the registration and send it to the concerned local association or non-governmental organization attaching a copy of the statute signed and sealed by the Ministry of Interior, in which it mentions the date of the registration of the local association or non-governmental organization.

#### **Article 12:**

Where the dossier of a local association or non-governmental organization is determined incomplete and inconsistent with the constitution, law on the local associations and non-governmental organizations and other laws in force, the Ministry of Interior shall issue a notification letter and send it to the concerned local association or non-governmental organization. The concerned local association or non-



governmental organization shall make corrections and submit additional documents as requested in the notification letter, 30 days after this notification is received at the latest. If submitted after 30 days, the Ministry of Interior shall issue a proclamation refusing the registration.

**Article 13:**

If the Ministry of Interior has issued a letter refusing the registration as provided in article 12 of this law, the concerned local association or non-governmental organization shall be entitled to file a complaint with the court in order to request registration to be approved. After the complaint is received, the court shall hear the case within 30 days.

The Ministry of Interior shall issue a proclamation of registration for the local association or non-governmental organization, immediately after having received the court's final judgment or decision in support of registration.

### **Chapter 3 Statute and Structure**

**Article 14:**

Each local association or non-governmental organization shall prepare its statute in writing including the president's signature and it shall contain at least the following points:

- 1- Full name, abbreviation and logo.
- 2- Goals and objectives.
- 3- Rules of recruitment, termination and dismissal of membership or staff.
- 4- Rights and duties of members and personnel.
- 5- Structure, roles, duties, organization and functioning of the governing body.
- 6- Mandate, roles and duties of the president and the governing body.
- 7- Rules of recruitment, termination, dismissal, transfer, and removal of the president and the governing body.
- 8- Ordinary and extra-ordinary meeting procedures of the governing body.
- 9- Quorum for the meeting of the governing body and legality of the decision of the meeting.
- 10- Sources of resources and properties.
- 11- Rules of administration and management of resources and properties.
- 12- Rules of making alliances, reshuffling and amending the statute.
- 13- Rules of dissolution, management of properties of the local association or non-governmental organization when it is dissolved.

**Article 15:**

Local association or non-governmental organization shall have the name and logo as follows:

- 1- Name of the local association or non-governmental organization shall have a Khmer meaning.
- 2- Full name, abbreviation, and logo of the local association or non-governmental organization shall be different from the full name or abbreviation and logo of the local associations or non-governmental organizations already registered with the Ministry of Interior.
- 3- The logo of the local association or non-governmental organization shall not be copied or duplicated from the national symbols, national institutions' logos, coat of arms or the statues of any Khmer King.

**Article 16:**

The governing body of the local association or non-governmental organization shall at least have the following:

- Congress or general meeting or equivalent meeting.
- Governing body or board of director or executive committee or equivalent body.

Names of the members of the governing body of the local association or non-governmental organization may be subject to change according to the statute of each concerned local association or non-governmental organization.

#### **Chapter 4 Resources and Property**

**Article 17:**

Income which shall be considered as resources and property of the local association or non-governmental organization includes the following:

- 1- Contributions or dues of the members
- 2- Other income from legitimate activities
- 3- Donations of internal and external charitable persons
- 4- Donations or assistance of internal and external legal entities
- 5- Personal property of the local association or non-governmental organization

**Article 18:**

A local association or non-governmental organization shall, by any means, be prohibited from receiving donations or assistance from terrorist organizations.

#### **Chapter 5 Rights and Interests**

**Article 19:**

The registered local associations or non-governmental organizations may change their name, reshuffle or amend their statute, change their president, and move their central office. In such case, the local association or non-governmental organization shall send a notification to the Ministry of Interior in writing, attaching the newly revised dossier.

**Article 20:**

The registered local associations or non-governmental organizations may open their offices, office branches or carry out their activities in municipalities-provinces throughout the Kingdom of Cambodia. In such case, the local associations or organizations shall send a notification to the municipal authorities in writing, attaching the declared registration, statute and the project plans.

**Article 21:**

The registered local associations or non-governmental organization shall have the right to:

- Implement the activities in accordance with their statute.
- Enter into contracts.
- Hire or recruit staff and laborers.
- Open an account in the name of the local association or non-governmental organization with the banks in the Kingdom of Cambodia licensed by the National Bank of Cambodia.
- Disseminate the information on their activities by legal means.

## **Chapter 6 Reports and Assessments**

### **Article 22:**

The reports and the documents relevant to accounting shall be kept for at least 5 years and shall be open to examination in conformity with the statute or internal regulations of the local associations or non-governmental organizations, or in conformity with decisions by the court or competent institutions.

### **Article 23:**

The registered local associations or non-governmental organizations shall send their reports to the Ministry of Interior and the Ministry of Economic and Finance annually before March 31<sup>st</sup> and shall copy them to the commune-Sangkat, district-Khan and municipality-province authorities where they are located to carry out the activities. The reports shall be signed by the president of the local association or non-governmental organization.

The reports shall contain the following:

- 1- The main activities of the local association or non-governmental organization
- 2- Balance table indicating the annual categorized incomes and expenses
- 3- Balance list of all properties, including ownership properties and debts of the local association or non-governmental organizations.

### **Article 24:**

The Ministry of Economics and Finance shall be responsible for the examination of balance lists as provided for in point 2 and 3 of article 23 of this law.

## **Chapter 7 Alliances and Dissolution**

### **Article 25**

The registered local associations or non-governmental organizations may make bi-lateral or multi-lateral alliances as decided by the concerned associations or non-governmental organizations and shall submit notification in writing to the Ministry of Interior.

### **Article 26:**

The local association or non-governmental organization may dissolve itself as decided by the governing body in conformity with the statute. The local association or non-governmental organization shall submit notification in writing on its dissolution to the Ministry of Interior in order to delete its name from the register.

### **Article 27:**

None of the competent authorities shall have the right to dissolve a local association or non-governmental organization, except through a final judgment or final verdict of the court which declares the dissolution of the local association or non-governmental organization. In such cases, the Ministry of Interior, after receiving the final judgment or final verdict of the court, shall delete the name of the concerned local association or non-governmental organization from the register.

### **Article 28:**

The management of the remaining properties of the local associations or non-governmental organizations, where dissolution is declared as provided for in article 26 of this law, shall be implemented in accordance to the determination clause of their statute. In cases where there is no provision in the statute, they shall be dissolved according to the decision made by the governing body of the local associations or non-governmental organizations.

**Article 29:**

Any local associations or non-governmental organization which declares dissolution/ is declared dissolved as provided for in article 27 of this law, shall have its remaining properties transferred to the National Red Cross of Cambodia after everything is resolved.

**Chapter 8  
Penalties**

**Article 30:**

Any local association or non-governmental organization acting in contravention of article 23 of this law shall be subject to a fine of five hundred thousand Riel (500.000 Riel).

In cases of non-compliance, the local association or non-governmental organization shall be subject to a double fine and may be subject to a one-year suspension of their activities.

**Article 31:**

Any local associations or non-governmental organizations acting in contravention of article 4 and article 18 of this law shall be subject to a one-year suspension of their activities.

In cases of non-compliance, the local association or non-governmental organization shall be subject to dissolution.

**Article 32:**

Any person, which continues managing and leading the local association or non-governmental organization where suspension of activities or dissolution is declared by the final judgment or final verdict of the court, shall be subject to a fine from one million Riel (1,000,000 R) to five million Riel (5,000,000 R).

In case of non-compliance, he/she shall be punishable with imprisonment from 6 months to one-year.

**Chapter 9  
Inter-Provision**

**Article 33:**

After this law comes into force, local associations or non-governmental organizations, which have already recorded their application dossier with the Ministry of Interior, shall, not later than within 180 days, re-prepare their application dossier for registration according to the determinations provided for in Chapter 2 of this law.

Where it is submitted later than in the required period, the local association or non-governmental organization shall be considered to have given up/revoked its application for registration.

**Chapter 10  
Final Provision**

**Article 34:**

Any provisions contrary to this law shall be null and void.

**Article 35:**

This law shall be declared as a matter of emergency.  
.....The end.....

## Annex 2: Key Legislation to Improve the Rule of Law in Cambodia<sup>11</sup>

In order to ensure the independence and integrity of the judiciary in Cambodia, and to ensure the constitutionality of legislation, the Cambodian government agreed with the Consultative Group of international donors in 2004 that the following eight key laws must be developed in accordance with international norms and passed:

- Civil Code
- Code of Civil Procedure
- Criminal Code
- Code of Criminal Procedure
- Law on the Organization and Functioning of the Courts
- Law on the Status of Judges and Prosecutors
- Amendments to the Law on the Supreme Council of Magistracy
- Law on Anti-Corruption

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<sup>11</sup> See LICADHO, February 2006, "Legal and Judicial Reform in Cambodia", p. 2, at [www.licadho.org/reports/files/79LICADHOLegalJudicialReformPaper06.pdf](http://www.licadho.org/reports/files/79LICADHOLegalJudicialReformPaper06.pdf)

## Annex 3: Sample letter sent to both the Cambodian and International Community

**Cambodian Human Rights Action  
Committee  
(CHRAC)**

**Alliance for Freedom Expression  
in Cambodia  
(AFEC)**

Phnom Penh, August 25, 2006

### **Re: Proposed Cambodian NGO Law**

Excellency,

We are writing you to share with you our grave concerns over the Cambodian government's proposed Law on Local Associations and Non-Governmental Organizations ('NGO Law').

In early 2006, the World Bank agreed to assist the Cambodian government in developing such a law by providing research and technical advice, and by conducting consultations with NGOs, which have already begun. Strong reactions by numerous NGOs prompted the World Bank in June 2006 to scale back the objectives of the consultation process to discussing ways to "improve the policy environment for NGOs", which it now explains "may" include the drafting of an NGO law. Regardless of the World Bank's newly expressed intentions, the Cambodian government seems to be determined to proceed with the law. Even after the World Bank announced its ostensibly more modest objective, Mr. Sar Kheng, Minister of the Interior, was reported in *Cambodge Soir* as having committed to tabling a bill by the end of 2006. 1

In a lawless country such as Cambodia, any initiative to regulate – or more accurately to control – the NGO sector must be viewed with legitimate suspicion. While in developed countries, certain NGO regulations can help the non-governmental sector effectively contribute to a democratic society, the situation in Cambodia is very different. The rule of law is weak at best, the judicial and legislative branches are often controlled by the Executive, and indeed the only institutions in society that are independent from government are certain NGOs. The government has often shown intolerance for NGOs – human rights and watchdog NGOs in particular – and we have every reason to believe that the NGO Law will lead to restrictions on program activities of legitimate NGOs. Where other legal tools have been available – such as the offences of incitement or defamation – the government has not hesitated to use these against the leaders or staff of NGOs and Community Based Organizations (CBOs) with whom it disagrees.

In other countries in the region under similar circumstances, NGO laws have been used to crack down on human rights defenders and other development organizations. An accompanying note highlights the experience of several such countries, and considers recommendations on NGO laws by the UN Special Representative on Human Rights Defenders (UNSRHRD), Hina Jilani.

Already, the latest draft of the Cambodian NGO Law dated May 2005 (see enclosure 2) contains numerous problematic provisions, many directly contrary to the UNSRHRD recommendations. The draft sets out a highly complex registration process with vague requirements, which would be highly onerous for smaller NGOs and CBOs and would provide "legal means" to delay or deny registration to legitimate groups. Unregistered associations that continue to function would in fact be criminalized, contrary to guarantees of freedom of association in the Cambodian constitution as well as in the International Covenant on Civil and Political Rights, which Cambodia has signed. The draft law would also enable the

government to monitor NGO program activities and prohibit activities for 'political interests', without further defining the concept, which could make it impossible for legitimate groups and individuals to advocate against the persecution of political dissidents. Finally, the draft law would require NGOs to inform local authorities of their activities, which would pose serious problems for human rights defenders whose job is to monitor human rights abuses by those very authorities.

Previous drafts of the NGO Law included a requirement for all funding to NGOs to flow through the Ministry of Finance, an approach clearly contrary to the fundamental nature of NGOs as institutions independent of the government.

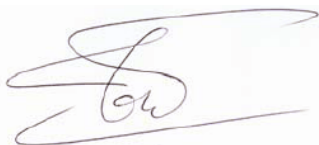
But beyond the particular measures described above which could be problematic, the nature of the rule of law in Cambodia is such that even reasonable and clear provisions – such as those that exist in developed countries or that NGOs might have drafted themselves – can be manipulated to restrict legitimate NGO work. Provisions on registration, reporting, and political activity – which must either be highly technical or leave room for judicial discretion – are particularly susceptible to such manipulation.

An NGO Law will only work properly in Cambodia after long-promised judicial reform is achieved. In order to ensure the independence and competence of the judiciary, a suite of 8 key bills agreed to by the Cambodian government and the Consultative Group of international donors must be drafted and passed (see enclosure 3). Furthermore, the Supreme Council of Magistracy (SCM) and the Constitutional Council (CC) must be reformed. Indeed, upon her recent visit to Cambodia, the UN High Commissioner for Human Rights (UNHCHR), Louise Arbour, affirmed the "capital importance" of judicial reform in Cambodia. Her statement made but one other key recommendation: to "safeguard and support" the NGO sector, which she saw as a "remarkable asset" for the country's development.

We hope you recognize, as we do, the clear danger the NGO law poses to Cambodian civil society in the absence of an independent judiciary. The attached documents will provide greater detail on the implications of such a law. We thus request your support in encouraging the Cambodian government and the World Bank to postpone the NGO Law initiative until judicial reform is complete.

We hope that you will provide the necessary support to ensure that Cambodian NGOs and CBOs are able to play their crucial roles in monitoring human rights, fostering democracy, and providing vital services to Cambodians. As always, please do not hesitate to contact us should you or your office require additional information. In the meantime, we would like to take this opportunity to express our most sincere gratitude to you for your continued assistance and support towards the reconstruction of Cambodia.

Yours sincerely,



Thun Saray,  
President of ADHOC, Chairman of CHRAC



Ou Virak,  
Public Relations Officer of CCHR, General Secretary of AFEC