

Cambodia: Revise or abandon draft NGO law

ARTICLE 19

12 NGOs have combined to insist on the protection of civil society.

Donors, who provide approximately half of Cambodia's national budget, should make clear to the Cambodian government that the fourth draft of the Law on Associations and NGOs (LANGO) must be revised to protect civil society or be withdrawn, a group of concerned international human rights organizations said today. Any revisions should involve meaningful consultation with civil society organizations and aim to support their activities instead of creating a legal framework allowing for arbitrary closure of organizations or the denial of registration.

The groups involved are Human Rights Watch, Global Witness, Freedom House, Asian Forum for Human Rights and Development (FORUM-ASIA), Article 19, Southeast Asian Press Alliance (SEAPA), Civil Rights Defenders, Lawyers' Rights Watch Canada, Centre for Law and Democracy, Protection International, and the Observatory for the Protection of Human Rights Defenders (a joint program of the International Federation for Human Rights - FIDH, and the World Organisation Against Torture - OMCT).

“The Cambodian government is pressing forward with a draft law that grants it broad authority to make arbitrary decisions about which groups can operate and which cannot,” said Brad Adams, Asia director at Human

Rights Watch. “Civil society delivers essential services and acts as a constructive watchdog over government and private sector activities. This law is hardly the sort of ‘reform’ that will benefit Cambodian citizens. Donors should say no to this farce.”

The 4th draft of the LANGO contains vague and unspecified terms that will enable the government to target critics by ordering their closure or denying them registration, the groups said. These terms should be clarified, and new and unnecessary barriers to the registration and operations of international NGOs should be eliminated. Furthermore, protections should be established to ensure that if an organization decides not to register, it is not denied legal status and therefore rendered incapacitated. Provisions placing burdensome notification requirements on community-based organizations should be removed.

Governments have a legitimate regulatory interest in providing benefits to organizations that become legal entities and preventing criminal activity. But such regulations cannot be used as a cover to undermine rights to freedom of association, expression and assembly, which are protected under the Cambodian constitution and international treaties to which Cambodia is a party.

The Cambodian context is critical for understanding the risk to Cambodia’s civil society should the current draft of LANGO pass, the groups said. Cambodian governance is still missing the checks and balances found in functioning democracies that limit arbitrary action by the executive branch of government. Government officials who react most harshly to NGO criticisms frequently are found to have a financial stake in the case at hand. Therefore, to argue that Cambodia should have a specific law on NGOs simply because other countries have one ignores the Cambodian government’s increasing actions to constrict public space for pluralistic debate and peaceful expression of views.

The fourth draft of LANGO fails to establish clear provisions to justify denial of registration to associations or NGOs. It violates Cambodia’s obligations under international law, such as under article 22 of the International

Covenant on Civil and Political Rights, to which Cambodia is party. LANGO also fails to include clear and objective standards in articles 28 and 29 concerning suspension or termination of registration. Article 28 provides that domestic organizations can be “dissolved by court decisions” but no further details are given, leaving matters to the discretion of a judiciary where political interference is common.

There are no provisions for appealing a suspension or termination and the law lacks procedural safeguards such as advance notice of regulatory action, opportunities to resolve problems prior to termination or suspension, or limiting termination to a sanction of last resort. Such provisions are extremely worrisome given the political and governance context of Cambodia, which is characterized by endemic corruption, arbitrary application of punitive legislation and an absence of judicial independence, the groups said. The Ministry of Interior’s suspension in August of the NGO Sahmakum Teang Tnaut (STT) is a harbinger of the sudden, unilateral, and non-transparent actions this law will legitimize. The government has still failed to adequately indicate the legal basis for STT’s suspension.

“Many officials in the Cambodian government have never accepted that civil society should operate independently or criticize their decisions,” said Sue Gunawardena-Vaughn, the director of Southeast Asia Program at Freedom House. “A major success of the UNTAC peacekeeping mission 20 years ago was to create this space for civil society. Now it is up to donors to protect it and ensure NGOs can continue to independently provide their essential services to Cambodians.”

Despite promises by the Cambodian government to eliminate mandatory registration, the fourth draft makes legal status dependent on registration, and thus essentially maintains the requirement. The fourth draft represents a bait-and-switch by removing the mandatory clause but then requiring an organization to register if it wants to obtain legal status. Without legal status, it is unclear under the draft law whether an association or NGO will be able to operate in Cambodia since that status is required to enter into legal contracts, open bank accounts, hire staff, import materials, and collaborate with partners “for implementing aid projects according to the existing laws.”

This arrangement effectively undermines respect for the right to freedom of association and cynically presents local associations and NGOs with the choice of either registering or facing constant bureaucratic roadblocks in their work. Although community-based organizations will no longer have to register, under article 5 of the draft law they will be required to provide prior written notice to local authorities who could be easily used to restrict their work.

The groups also expressed serious concerns that this fourth draft specifically targets international NGOs (INGOs) and would severely hamper both their projects and their advocacy efforts to promote good governance and development approaches that respect human rights. Article 17 of the draft law sets out an overly broad and vague standard that will allow the Ministry of Foreign Affairs and International Cooperation (MoFAIC) to use wide discretion in dealing with INGOs, including terminating a group's registration if the ministry decides that the INGO has conducted activities that "jeopardize peace, stability and public order...or harm the national security, national unity, culture, customs and traditions of the Cambodian national society." Moreover, the Memoranda of Understanding that INGOs would have to negotiate with ministry is valid for only three years, resulting in a de facto re-registration process. INGOs also will have no right to appeal any termination of their registration.

"This latest version of the law can be arbitrarily misused to root out international NGOs who employ rights-based development approaches and offer constructive but critical opinions and critiques of the government's policies and practices," said Yap Swee Seng, Executive Director of the Asian Forum for Human Rights and Development (FORUM-ASIA).

Finally, passage of this law is not necessary in light of existing Cambodian legislation addressing legitimate regulatory concerns: NGOs can obtain legal status through the newly effective Civil Code. Civil Code sections 46-118 provide details on registration and dissolution of non-profit legal entities, the right to appeal government decisions, and far less burdensome registration

requirements. The Penal Code and Anti-Corruption Law address fraud; meanwhile INGOs already obtain legal standing through Memoranda of Understanding with the government.

“Cambodia’s donors should press the Ministry of Interior to extend the consultation period on the fourth draft of LANGO so that all viewpoints and voices are heard,” said FIDH President Souhayr Belhassen and OMCT Secretary General Gerald Staberock.

Simon Taylor, Director of Global Witness, concluded “At stake now is the last 17 years of development assistance in Cambodia and the extent to which the donors will be remembered for failing to prevent the removal of one of the few instruments of accountability in Cambodia, nurtured to a great extent thanks to their investments.”

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