CCHR’S KEY CONCERNS AND RECOMMENDATIONS CONCERNING THE DRAFT LAW ON ASSOCIATIONS AND NON-GOVERNMENTAL ORGANIZATIONS

Introduction

This analysis is written by the Cambodian Center for Human Rights ("CCHR"), a non-political, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia ("Cambodia"). The purpose of this analysis is to take a thematic approach in voicing CCHR’s key concerns and recommendations with respect to the draft law on associations and non-governmental organizations (the “Law”). This analysis is available to CCHR’s friends and partners for review and discussion. A more detailed article-by-article analysis of the Law will follow in early January. This analysis has been based upon the Law circulated by the Ministry of Interior (the “MOI”) on 15 December 2010.

Registration process

The registration requirements are unduly excessive and onerous: a balance needs to be struck between satisfying the legitimate and reasonable concerns of the Royal Government of Cambodia (the "RGC") and allowing associations and non-governmental organizations (together, “civil society organizations” (“CSOs”)) the freedom to carry out their positive and beneficial activities.

The registration process is particularly onerous for small or provincial CSOs and for community-based organizations (“CBOs”). For example, the charters requirements demand details of such vaguely-defined concepts as “structure, mandate, role, duty, establishment and functioning of the governing bodies” (Article 10). Providing such details is not merely time-consuming; without expert legal advice or significant guidance material – no guidance material is currently legislated for in the Law – many CSOs (particularly CBOs) could find the registration process prohibitively onerous. In addition, various unnecessary pieces of documentation are currently stipulated, such as photographs of CSO leaders, which could again prove impractical for those CSOs (especially CBOs) based in the provinces. Furthermore, it is not presently anticipated that applications will be submitted by way of a standard form, but by way of CSO charters. Records of registration should also be made public and collated in an easily accessible central register.

The criteria on which the MOI may reject an application are not mentioned in the Law, with total discretion accorded to the MOI (Articles 17 and 32). Registration applications should be treated impartially without motivation by political factors. There are concerns that the RGC will be in a position to exploit supposed “administrative errors” as a way of rejecting the registration or re-registration applications of “undesirable” CSOs, i.e., CSOs that are critical of the RGC and its actions, given the absence of any direction in the Law for rejecting a registration application. There should be clear and predictable reasons given for denying an application, with limited discretionary powers accorded to the RGC and/or the MOI. Furthermore, there is no provision for automatic registration if the MOI fails to rule on an application within the stipulated 45 days (Articles 17 and 32). The registration process should be transparent and free of corruption: the Law remains silent on this point.

There is a concern as to when alliances should be registered. It is unclear as to whether alliances need to be registered if two CSOs decide to work together on a particular issue, or whether the requirements only apply to formal networks (Article 21). The registration requirements involve onerous documentation, such as a common charter (Article 23). In addition, the Law implies that the legal status of the underlying
CSOs will change (Article 24). Again, it is clear that CBOs and other popular movements and grassroots networks have the greatest potential to be affected negatively by the Law as it stands.

Lastly, the Law provides that fees for registering domestic CSOs and alliances of domestic CSOs "shall be determined by an Inter-Ministerial Proclamation co-signed by [the MOI] and Minister of Economy and Finance" (Articles 13 and 22). It is presently uncertain what these fees will be. Registration fees should not be so high that legitimate CSOs are prohibited from being established and carrying out their work; they should be reasonable and sufficient to cover the administrative costs of a registration application. However, until such a proclamation is made on fees for registering domestic CSOs and alliances of domestic CSOs, it is not known whether such fees will be reasonable or not.

**Right to appeal**

There is currently no system of appeal provided for in the Law, which means that the RGC has total discretion as to whether CSOs are registered or re-registered, in addition to all other decisions that affect CSOs (such as sanctions imposed under Articles 52 to 54). The Law should include a right to appeal any decisions by the MOI to the courts, particularly with regard to registration (Article 7), with such right maintained even if the courts are not fully independent of the executive. All relevant processes should be seen to be fair and transparent.

**Limitations on activities**

There is very little in the text of the Law that limits the activities of CSOs: for example, there is no outright ban on "political activities", although it is stated that the Law should protect "personal and public interest" (Article 2), and that a domestic non-governmental organization will become a legal entity to "serve public interests" on the day that it is registered (Article 19), vague terms that are undefined and therefore subject to broad interpretation. Furthermore, CCHR’s understanding is that the Law "aims to set out formalities and conditions for forming, registering and carrying out activities [in respect of CSOs]" (Article 1). There are also references to “aid projects and programs” in relation to foreign CSOs throughout the Law, a term which, again, remains undefined. This vague language may indicate, if construed narrowly, a reduced remit in which CSOs will be permitted to operate. These two terms should be defined in such a way as to protect the constitutional right to participate in the political life of the country\(^1\) and allow for the participation of CSOs in political discussion and criticism. There should be minimal limitations on the activities that CSOs can carry out, in order to encourage CSOs to engage in activities for the public benefit; in other words, the Law should not be viewed as a way to close down "undesirable" CSOs.

**Monitoring and supervision of NGOs**

The Law currently requires that CSOs submit annual reports to the relevant executive body (i.e., domestic CSOs to the MOI and international CSOs to the Ministry of Foreign Affairs and International Cooperation (the “MOFAIC”)) (Article 46). This requirement will be burdensome for CBOs (i.e., informal popular groups/movements and grassroots networks), as well as for small and/or provincial CSOs that are loosely organized and/or have little administrative support. Furthermore, domestic CSOs must submit "reports on activities" and "action plan[s] for the next year […]" (Article 46), while collaborations of lawful associations and domestic CSOs must notify the MOI in writing of such collaborations (Article 27). The aforementioned provisions are onerous and discriminate particularly against CBOs and small and/or provincial CSOs, although they will have the effect of imposing additional criteria and limits on effective and constructive collaboration among all CSOs. It is also not clear what the term “collaborate” means in this context. Provisions for the monitoring and supervision of CSOs should not be excessive or intrusive, while a system of annual reporting is not recommended because it can be highly intrusive and can result in the abuse and harassment of CSOs. In addition, the rationale behind any monitoring and supervision systems should be clearly stated.

\(^1\) The Constitution of the Kingdom of Cambodia, art. 35(1).
The Law is silent as to whether the reports and accounts submitted by CSOs will be made available to the public. In order to reflect the RGC’s greater drive for transparency with regards to CSOs, such transparency should also apply to the collection of data regarding CSOs.

The Law provides that “the Ministry of Economy and Finance or the National Audit Authority has the right to examine the financial status reports and properties of any [domestic CSO]” (Article 48). Monitoring and supervision provisions should be clear and specific, providing certainty and limiting the RGC’s powers of discretion, particularly in relation to audits and inspections. The language in the Law is sufficiently vague as to be unduly onerous. The Law should expressly limit governmental powers to interfere with CSOs and should also require the RGC or relevant ministry to secure a court order before being able to commit actions against CSOs, such as dissolving them or seizing their assets.

**Foreign involvement restrictions**

Unreasonable barriers should not be placed on CSOs’ receiving foreign funding, since, in many cases, such funding is essential to the operation of CSOs. CCHR welcomes the fact that the RGC recognizes this principle and that the Law contains no such barriers. Another welcome observation is that the Law does not impose restrictions on CSOs’ joining international umbrella organizations or working with foreign counterparts abroad. It would be preferable for the sake of clarity if the Law formally stated that there are no such restrictions.

However, foreign CSOs pursuing their activities in Cambodia should not have to face stricter requirements or obstacles to registration than domestic CSOs. In having to apply for a memorandum agreement with the MOFAIC (Article 28) and, in doing so, submit various documents not required in respect of a domestic CSO – for example, a permit for running the CSO and a letter supporting aid projects or programs issued by the relevant ministry (Article 30) – foreign CSOs will experience undue discrimination due to the additional administrative burden. Furthermore, foreign CSOs must enter into an “aid project or program agreement” with the leadership of the relevant ministries before applying for the memorandum agreement (Article 33).

Foreign nationals should be able to work for CSOs in Cambodia without needing to register or be pre-approved. CCHR welcomes the fact that the Law reflects this position. However, the Law does include a requirement to provide a list of Khmer and foreign staff who work in Cambodia (Article 30). This requirement is arduous and unnecessary, presumably necessitating updates for changes of every employee or volunteer; if deemed absolutely necessary, the requirement should be amended so that it only applies to changes to management or other key decision-makers.

There are some restrictions on CSOs’ employing foreign staff: the Law requires that Cambodian staff be employed to “the maximum extent possible” (Article 41), an initiative that CCHR wholly endorses. However, there is a requirement that “the number of staff or workers shall be proportionate to the plan projects or programs” (Article 41), a requirement that is vague and open to discretion and abuse, and which should therefore be removed. There is a further requirement that foreign CSOs limit their “expense for administrative purposes” to 25% of their total budget (Article 39), which could require foreign CSOs to eliminate some international staff, depending on how “expense for administrative purposes” is defined. The current memoranda with the MOFAIC defines the term narrowly (i.e., with respect to projects rather than to organizations as a whole), and only requires that “average administrative expenses” do not exceed 25%. This definition should be included in the Law.

It is noted that foreign CSOs must “collaborate with relevant ministries or institutions of the [RGC] when preparing project plans, implementing, monitoring, aggregating and evaluating the result of implemented activities” (Article 36). Such a requirement imposes an unnecessary and extremely onerous administrative burden upon foreign CSOs, with the result that the work of foreign CSOs would be significantly delayed. The other consequence is that all activities would need to be monitored and approved at the most micro level. Furthermore, the Law requires CSOs to inform the municipal or provincial offices and its partner ministries or government institutions if it will be conducting activities in the provinces (Article 36), which may be exploited by the RGC, the relevant ministry or provincial authorities to limit or regulate the activities of foreign CSOs.

**Restrictions on membership**
The Law requires 21 Cambodian nationals as members for an association, of which seven are to be leaders (Article 8). These figures are arbitrary, too high and unduly onerous. Such requirements appear to represent an attempt by the RGC to stifle grassroots popular politics within Cambodia by fragmenting such associations. Restrictions on CSO membership should be with a view to achieving legitimate goals and should not be articulated or applied in such a manner as to prevent CSO operations or membership on arbitrary grounds. Furthermore, individuals barred from joining a CSO should be given a written explanation and granted the right to appeal to the courts.

Sanctions and penalties

Provision is made for the court to “postpone or dissolve” all CSOs, both domestic and foreign (Articles 49 and 50, respectively), although no indication is given as to the basis on which the court may do so, in other words, no criteria for impositions of postponement or dissolution are outlined. As discussed under the “Rights to appeal” section above, the Law does not provide for the right to appeal a judgment of the court: decisions could therefore be selectively applied to CSOs which the RGC considers “undesirable”. This omission appears to violate the provisions of the Civil Code (Articles 64-65), which specifies the limited grounds on which a court may order the dissolution of a juridical person. Sanctions and penalties should always be administered by the courts (or other independent arbiter), since governmental (or executive) sanctions and penalties have the potential to be arbitrary and unreasonably severe.

In contrast to the fairly limited and reasonable provisions regarding breaches of the reporting requirements under Article 46 by domestic CSOs (Article 53), the provisions regarding breaches of the same requirements by foreign CSOs are unusually onerous: a decision shall be issued that postpones the CSO’s activities and invalidates its memorandum (Article 53). This provision is far too severe: international CSOs should be subject to the same requirements as their domestic counterparts, and standards for sanctions and penalties should be clearly described and proportionate to the severity of the violation. Again, there is no right to appeal such a decision.

Despite the fact that “resources and properties [belonging to CSOs that have been dissolved or had their memorandum terminated] shall be distributed in accordance with the final court’s judgment” (Article 52), the Law contains no guidance as to how it should be done. Potential therefore remains for the courts to dissolve a CSO if it has valuable assets. It is, however, noted that neither the RGC nor the relevant ministry is able to confiscate a CSO’s property without proper direction from the courts, which CCHR welcomes. Again, there is no right to appeal.

The Law attributes legal personality to CSOs, which means that government lawsuits can now be brought against CSOs in the civil courts rather than against individuals in the criminal courts (Article 54). Criminal proceedings against individuals will therefore no longer be necessary: imprisonment should not be employed as a sanction for a breach of the Law, since it is unreasonably severe and can only be levied against individuals. It is therefore of great concern that the Law stipulates that “[f]oreign and Cambodian staff of foreign [CSOs] do not have immunity from judicial actions against their job-related acts or all other types of litigation” (Article 45). It is also a concern that the Law states that if a CSO or alliance of CSOs commits a serious or repeat violation of its charter or memorandum, it shall be “punished in accordance with the law in force” (Article 54). Such vague terminology conceals the possibility of criminal sanctions under existing legislation, such as the Penal Code (for criminal defamation), the Anti-Corruption Law or the Anti-Terrorism Law, if the CSO in question engages in activities that are beyond the remit of the purpose and objective stated in its charter or memorandum. Alternatives to criminal sanctions should be provided for, including the revocation of a CSO’s registration, and fines. The circumstances in which such measures may be taken must be clearly defined and strictly applied.

Implementation of legislation

The Law currently stipulates that pre-existing domestic associations and NGOs must re-register (Article 55), although foreign NGOs that have already signed a memorandum of understanding shall continue to be valid (Article 56). However, CCHR contests that all pre-existing CSOs should be automatically deemed registered. A period of 180 days has been prescribed for re-registration, which CCHR considers to be an adequate and reasonable time-frame if re-registration is deemed necessary. However, it must be noted that there is no obligation on the MOI to notify pre-registered CSOs of this requirement to re-register,
which could adversely affect CSOs in the provinces that are relatively isolated and cut off from news and/or communications regarding the Law.

Conclusions

CCHR hopes that the good work that CSOs pursue, and the positive effect that they have upon Cambodian society, is recognized by the RGC. CCHR welcomes many aspects of the Law, but this analysis shows that there are several areas of concern. The following are CCHR’s principal concerns:

- The registration process is unduly burdensome and lacking in guidance or standard forms.
- The monitoring and supervision provisions are unduly onerous.
- Some of the sanctions and penalties are unnecessarily severe and onerous.
- There is discrimination against foreign CSOs under the Law as it stands.
- There is no right to appeal with respect to any decisions affecting CSOs, meaning that the RGC and/or the relevant ministry has total discretion in all areas, thereby enabling any “undesirable” CSOs to be rejected outright.
- The Law impacts most upon CBOs (i.e., informal popular groups/movements and grassroots networks) and small and/or provincial CSOs, suggesting that the RGC’s principal concern in passing the Law is not Phnom Penh-based international and domestic CSOs, but popular movements and grassroots politics.

CCHR urges both the RGC and the CSO community to consider these concerns, and looks forward to working constructively with all parties during the consultation process with a view to passing a law that represents a positive step in Cambodian’s development and democratization and a commitment by the RGC to uphold the rights to freedom of expression and assembly and the right to “participate actively in the political, economic, social and cultural life of the nation”.

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